

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Maria Rosengren v. SF Markets, LLC

No. 2:22-cv-00848-RSWL-PD (C.D. Cal. Mar. 13, 2023) · No. 2:22-cv-00848-RSWL-PD · Decided March 13,
2023

OPINION

Maria Rosengren v. SF Markets, LLC

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11

12 | MARIA ROSENGREN, CV 22-8 48-RSWL-PD x

13 Plaintiff, DEFENDANT'S MOTION FOR

14 SUMMARY JUDGMENT [18]

be SF MARKETS, LLC,

16 Defendant. 17

8. \$a

19 Plaintiff Maria Rosengren ("Plaintiff") brings this 20 Action, asserting claims for general
negligence, 21 premises liability, and negligent infliction of 22 emotional distress. Currently
before the Court is 53 Defendant SF Markets, LLC's ("Defendant") Motion for DA Summary
Judgment. Plaintiff failed to file an 25 opposition or an objection. 26 Having reviewed all papers
submitted pertaining to 54 the Motion, the Court NOW FINDS AND RULES AS FOLLOWS: 28
the Court GRANTS Defendant's Motion. Case 2:22-cv-00848-RSWL-PD Document 28 Filed
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1 I. BACKGROUND

2 A. Factual Background 3 Defendant operates a grocery store (the "Store") in 4 Simi Valley,
California. Def.'s Statement of 5 Uncontroverted Facts ("Def.'s SUF") No. 1, ECF No. 18- 6 3.1
In 2019, it was the Store's regular policy to 7 conduct an hourly visual inspection "sweep" of the 8
entire Produce Department floor, which includes the 9 Store's entrance. Sobrino Decl. ¶ 7, ECF
No. 18-1. 10 When conducting the sweeps, employees would use a mop or 11 push broom to clear
trash and dropped items off the 12 floor. Id. ¶ 8. Employees conducting the sweeps were 13
required to clock-in upon completion. Id. Employees 14 were further instructed that they must
clean up any 15 potential slipping or tripping hazards when spotted. 16 Id. ¶ 9. 17 On July 9,
2019, Plaintiff entered the Store at 18 1:14:24 p.m. See Def.'s Mot., Ex. A, ECF No. 18-6. 19 Four
seconds after entering the Store, Plaintiff slipped 20 and fell on a cherry on the floor next to the

front left 21 corner of the Produce Display. See *id.* Before falling, 22 1 The Court relies on Defendant's Statement of 23 Uncontroverted Facts [18-3] as Plaintiff has not disputed the 24 facts stated therein. See C.D. Cal. L.R. 56-3 ("the Court may assume that the material facts as claimed and adequately 25 supported by the moving party are admitted to exist without controversy except to the extent such facts are . . . 26 controverted by [] written evidence filed in opposition to the motion."); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 27

(1986) (holding that a fact is considered controverted only where

28 a "genuine" factual dispute exists). 2 Case 2:22-cv-00848-RSWL-PD Document 28 Filed 03/13/23 Page 3 of 11 Page ID #:331 1 Plaintiff was not looking at the floor nor did she see 2 the cherry. Def.'s SUF Nos. 46-47. Plaintiff does not 3 know how the cherry came to be on the floor nor does she 4 know how long the cherry was on the floor before she 5 fell. *Id.* Nos. 48-49. 6 On July 9, 2019, Joshua Reed ("Mr. Reed"), a Store 7 employee, mopped around the front left corner of the 8 Produce Display three times in the afternoon. See 9 Def.'s Mot., Ex. A. Mr. Reed finished mopping around 10 the front left corner of the Produce Display at 12:49:26 11 p.m. See *id.* A little after 1:00 p.m., Mr. Reed 12 completed his sweep around the Store. See Def.'s Mot., 13 Ex. B, ECF No. 18-7. Other than Plaintiff's fall, 14 Defendant received no reports or complaints regarding a 15 slip or fall at the Store on July 9, 2019. *Sobrino* 16 Decl. ¶ 16. 17 B. Procedural Background 18 Shortly after Plaintiff filed her Complaint, 19 Defendant removed to this Court [1] and filed an Answer. 20 Defendant filed the instant Motion [18] on December 15, 21 2022. Plaintiff has not filed an opposition to 22 Defendant's Motion.

23 II. DISCUSSION

24 A. Legal Standard 25 Summary judgment is appropriate when the moving 26 party "shows that there is no genuine dispute as to any 27 material fact and the movant is entitled to judgment as 28 a matter of law." Fed. R. Civ. P. 56(a). A fact is 3 Case 2:22-cv-00848-RSWL-PD Document 28 Filed 03/13/23 Page 4 of 11 Page ID #:332 1 "material" if it might affect the outcome of the suit, 2 and the dispute is "genuine" if the evidence is such 3 that a reasonable factfinder could return a verdict for 4 the nonmoving party. *Anderson*, 477 U.S. at 248. 5 The moving party bears the initial burden of 6 proving the absence of a genuine dispute of material 7 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 8 (1986). Where the nonmoving party bears the burden of 9 proof at trial, the moving party need only show "an 10 absence of evidence to support the nonmoving party's 11 case." *Id.* at 325. If the moving party meets its 12 burden, the burden then shifts to the nonmoving party to 13 present "specific facts showing that there is a genuine 14 issue for trial." *Anderson*, 477 U.S. at 250. The 15 nonmoving party "must show more than the mere existence 16 of a scintilla of evidence . . . or some 'metaphysical 17 doubt' as to the material facts at issue." In re Oracle 18 Corp. Sec. Litig., 627 F.3d 376, 387 (9th Cir. 2010). 19 The evidence, and all reasonable inferences based 20 on underlying facts, must be construed in the light most 21 favorable to the nonmoving party. *Scott v. Harris*, 550 22 U.S. 372, 378 (2007). In reviewing the record, the 23 court's function is not to weigh the evidence but only 24 to determine if a genuine

issue of material fact exists. 25 Anderson, 477 U.S. at 255. “A district court’s ruling 26 on a motion for summary judgment may only be based on 27 admissible evidence.” In re Oracle Corp. Sec. Litig., 28 627 F.3d at 385. “While the evidence presented at the 4 Case 2:22-cv-00848-RSWL-PD Document 28 Filed 03/13/23 Page 5 of 11 Page ID #:333 1 summary judgment stage does not yet need to be in a form 2 that would be admissible at trial, the proponent must 3 set out facts that it will be able to prove through 4 admissible evidence.” Norse v. City of Santa Cruz, 629 5 F.3d 966, 973 (9th Cir. 2010). 6 B. Discussion 7 Plaintiff does not oppose the present motion. In 8 the absence of an opposition, the Court nevertheless 9 decides a motion for summary judgment on its merits. 10 See Cristobal v. Siegel, 26 F.3d 1488, 1494-95 (9th Cir. 11 1994) (holding that an unopposed motion for summary 12 judgment may be granted only after the court determines 13 there are no material issues of fact). Therefore, 14 Defendant must still meet its burden of showing the 15 absence of a genuine issue of material fact. 16

1. General Negligence and Premises Liability 17 Claims 18 Plaintiff’s first two claims are for general 19 negligence and premises liability. See generally 20 Compl., ECF No. 1. Premises liability is a type of 21 negligence, and the same analysis applies to both. 22 Mirtaheri v. Sprouts Farmers Mkt., Inc., No. 2:20-cv- 24 (C.D. Cal. Dec. 29, 2021). Therefore, to establish 25 liability on a premises liability or negligence theory, 26 “a plaintiff must prove duty, breach, causation, and 27 damages.” Conroy v. Regents of Univ. of Cal., 45 Cal. 28 4th 1244, 1250 (2009). 5 Case 2:22-cv-00848-RSWL-PD Document 28 Filed 03/13/23 Page 6 of 11 Page ID #:334 1 “It is well established in California that although 2 a store owner is not an insurer of the safety of its 3 patrons, the owner does owe them a duty to exercise 4 reasonable care in keeping the premises reasonably 5 safe.” Ortega v. Kmart Corp., 26 Cal. 4th 1200, 1205 6 (2001). “A store owner exercises ordinary care by 7 making reasonable inspections of the portions of the 8 premises open to customers, and the care required is 9 commensurate with the risks involved.” Id. 10 Here, Defendant required its employees to conduct 11 hourly visual inspection sweeps of the Produce 12 Department and surrounding floor, and the employees were 13 required to clock-in upon completion of the sweeps. 14 Def’s SUF Nos. 4-6. However, performing visual 15 inspection sweeps is not enough to avoid liability. See 16 Alacan v. Target Corp., No. CV 14-04564-AB (VBKx), 2015 18 2015). The store owner must lack actual or constructive 19 knowledge of the dangerous condition that caused the 20 plaintiff’s fall. Id. It is Plaintiff’s burden to show 21 that Defendant either had actual or constructive 22 knowledge of the dangerous condition and is therefore 23 liable. Id. at 6-7. 24

a. Actual Knowledge of a Dangerous Condition 25 “The ‘mere possibility’ that a defendant had notice 26 of a dangerous condition is not enough to impose 27 liability under California law.” Alacan, 2015 U.S. 28 Dist. LEXIS 178484, at *8. In Mirtaheri v. Sprouts 6 Case 2:22-cv-00848-RSWL-PD Document 28 Filed 03/13/23 Page 7 of 11 Page ID #:335 1 Farmers Market, Inc., an employee walking over a spill 2 was not on its own sufficient to show that the employee 3 or the store had actual notice of the spill. 2021 U.S. 5 Defendant’s employees not walk over the cherry, but they 6 did not walk even near the cherry before Plaintiff’s 7 fall. See Def.’s Mot., Ex. A. On top of this, 8 Plaintiff

presented no evidence of Defendant having 9 actual notice. 10 Here, Plaintiff cannot show that Defendant had 11 actual knowledge of the spilled cherry. Plaintiff does 12 not know how the cherry came to be on the floor or for 13 how long it was there before she fell. Def.'s SUF Nos. 14 48-49. Furthermore, Plaintiff is unaware of anyone else 15 slipping on the floor at the Store and Defendant 16 received no other reports or complaints of people 17 slipping that day. Id. Nos. 50-51. Therefore, 18 Plaintiff cannot show that Defendant had actual 19 knowledge of the dangerous condition. 20 b. Constructive Knowledge of a Dangerous 21 Condition 22 Plaintiff also cannot show that Defendant had 23 constructive knowledge of the dangerous condition. 24 Although the question is usually one for the jury, "lack 25 of constructive knowledge can be determined as a matter 26 of law if it is undisputed that an inspection occurred 27 within a short enough amount of time prior to the 28 incident, such that the condition could not have existed 7 Case 2:22-cv-00848-RSWL-PD Document 28 Filed 03/13/23 Page 8 of 11 Page ID #:336 1 for any longer than that short interval." *Castrellon v. 2 Costco Wholesale Corp.*, No. CV 20-3295-DMG (ASx), 2021 4 (2021). 5 "As a general proposition, if there is undisputed 6 evidence that an active inspection of the relevant area 7 occurred less than [thirty] minutes before the accident, 8 summary judgment in favor of the store owner is 9 appropriate; if not, the question should be resolved by 10 a jury." *Satamian v. Costco Wholesale Corp.*, No. 2:20- 11 cv-05776-VAP-ASx, 2021 U.S. Dist. LEXIS 201196, at *12 12 (C.D. Cal. June 25, 2021); *Cardoza v. Target Corp.*, 13 No. CV 17-2232-MWF (RAOx), 2018 U.S. Dist. LEXIS 117106, 14 at *8 (C.D. Cal. June 22, 2018) ("As a general 15 proposition, California courts apply a [thirty]-minute 16 threshold for submitting questions of actual notice to a 17 jury[.]"); *Alacan*, 2015 U.S. Dist. LEXIS 178484, at *10 18 ("This is consistent with the rulings of California 19 courts, where nothing less than thirty minutes between 20 the last inspection and a plaintiff's fall has been held 21 to raise a genuine dispute of material fact or 22 sufficient to uphold a plaintiff's verdict."). 23 Here, Mr. Reed mopped around the front left corner 24 of the Produce Display at 12:49:26 p.m. See Def.'s 25 Mot., Ex. A. About thirty-three seconds after Mr. 26 Reed's sweep, a cherry lay on the floor where Mr. Reed 27 performed his sweep. See id. Mr. Reed did not cause 28 the cherry to be on the floor, as the Store video 8 Case 2:22-cv-00848-RSWL-PD Document 28 Filed 03/13/23 Page 9 of 11 Page ID #:337 1 surveillance appears to show a Store customer dropping 2 the cherry after Mr. Reed's sweep was completed. See 3 id. At 1:14:28 p.m., Plaintiff slipped and fell on that 4 cherry at the front left corner of the Produce Display. 5 See id. This is at most about a twenty-five-minute gap 6 between a store inspection and a dangerous condition 7 being left on the floor. 8 A more thorough inspection and cleaning by Mr. Reed 9 would not have helped to detect or remedy a spilled 10 cherry that had not fallen to the floor yet. Under 11 California law, because the evidence is undisputed that 12 Mr. Reed inspected the area less than thirty minutes 13 before Plaintiff's accident, Plaintiff cannot show that 14 Defendant had constructive knowledge of a dangerous 15 condition in the Store. See *Satamian*, 2021 U.S. Dist. 16 LEXIS 201196, at *12; *Castrellon*, 2021 U.S. Dist. LEXIS 17 114456, at *8; *Alacan*, 2015 U.S. Dist. LEXIS 178484, at 18 *10. 19

Therefore, because Plaintiff has produced no evidence that Defendant had actual or constructive knowledge of a dangerous condition in sufficient time to correct it, Defendant is entitled to summary judgment on Plaintiff's claims for premises liability and negligence. 2. Negligent Infliction of Emotional Distress Claim In California, "[n]egligent infliction of emotional distress is a form of the tort of negligence, to which the elements of duty, breach of duty, causation and damages apply." *Huggins v. Longs Drug Stores Cal., Inc.*, 6 Cal. 4th 124, 129 (1993). To recover under negligent infliction of emotional distress, a plaintiff must prove that the defendant's conduct meets the four elements of negligence. *Roberts v. Orange Glo*,

No. 2:14-000421 WBS DAD, 2014 U.S. Dist. LEXIS 156771,

at *8 (E.D. Cal. Nov. 4, 2014); see also *Dunkins v. Cty. of San Bernardino*, No. CV 12-01432 MMM (SPx), 2013 U.S. (holding that a plaintiff's negligent infliction of emotional distress claim is simply a negligence claim). Here, given that Defendant lacked actual or constructive notice of the dangerous condition that caused Plaintiff's injuries, Plaintiff is unable to prove the causation element of negligence. See *Bean v. Costco Wholesale Corp.*, 561 F. Supp. 3d 915, 920 (E.D. Cal. 2021) ("California slip and fall plaintiffs must prove the store owner had actual or constructive notice of a dangerous condition prior to the plaintiff's injury to establish causation.") Therefore, given that Plaintiff cannot prove one of the necessary elements, Defendant is entitled to summary judgment on Plaintiff's claim for negligent infliction of emotional distress. Thus, the Court GRANTS Defendant's Motion for Summary Judgment. Case 2:22-cv-00848-RSWL-PD Document 28 Filed 03/13/23 Page 11 of 11 Page ID #:339

III. CONCLUSION

Based on the foregoing, the Court GRANTS Defendant's Motion for Summary Judgment. The Court enters judgment in favor of Defendant and against Plaintiff on Plaintiff's general negligence, premises liability, and negligent infliction of emotional distress claims. IT IS SO ORDERED. DATED: March 13, 2023 /s/Ronald S.W. Lew
HONORABLE RONALD S.W. LEW
Senior U.S. District Judge