TENTATIVE RULINGS

FOR: September 11, 2020

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

Remote appearances via Zoom are mandatory to prevent the spread of COVID-19. Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

Dept. A Zoom
Join by Video (Preferred)
https://us02web.zoom.us/j/85897874559?pwd=Nk1VTnNQZmIzNXQwbVNiUk1iQTNCZz09
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Dept. B Zoom
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Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to http://napacountybar.org/court-reporting-services/ for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Conservatorship of Ann Bradley **26-65934**

STATUS REVIEW HEARING FOR PROBATE CODE SECTION 2628 DECLARATION

TENTATIVE RULING: The conservator represents the conservatee's assets remain the same as they were prior to the sale of the property and the accounting requirement should continue to be waived due to the lack of assets in the conservatorship estate. The proceeds from the sale of the residence are in the conservatee's trust. Thus, accountings shall remain waived as long as Probate Code section 2628 is satisfied.

After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. Thus, the case is set for a biennial review hearing in two years, on September

9, 2022, at 8:30 a.m. in Dept. A. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

At 2:00 p.m.
Estate of Ruth Lynch **18PR000034**

(1) HEARING ON PERMANENT REMOVAL OF TEMPORARILY SUSPENDED ADMINISTRATOR CHARLES RAY AMBEAU II AND RESPONDENT NIEMA AMBEAU-BARNETT'S OBJECTIONS

APPEARANCE REQUIRED

(2) PETITION FOR LETTERS OF ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT petition, subject to a ruling from the hearing on whether to permanently remove the temporarily suspended administrator Charles Ray Ambeau II.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Robert Alaniz v. James R. Trumble, *et al.* **18CV001456**

[1] DEFENDANT TRUMBLE'S MOTION FOR SUMMARY JUDGMENT/SUMMARY ADJUDICATION

TENTATIVE RULING: Trumble's motion for summary judgment is DENIED. His motion for summary adjudication of Plaintiff's cause of action for general negligence is also DENIED. Trumble's motion for summary adjudication of Plaintiff's cause of action for strict liability pursuant to Civil Code section 3342 (Section 3342) is GRANTED.

A. Factual and Procedural Background

Defendant James R. Trumble moves the Court for summary judgment, or in the alternative summary adjudication of the causes of action asserted against him by the Complaint of Plaintiff Robert Alaniz.[1]

Through the Complaint, Plaintiff alleges that while he was delivering mail to a business owned by Defendant Regan and Sons, Inc., a dog named Juno owned by Trumble ran out of the

[1] Defendant's Notice of Motion indicates that he seeks summary adjudication of Plaintiff's cause of action for Premises Liability "to the extent this cause of action is directed at [Trumble]." (Motion at 1:27-28.) Trumble is not, however, named in the Complaint's cause of action for Premises Liability. (See Complaint at Form PLD-PI-001(4).) The Court concludes, therefore that the Complaint does not assert claims against Trumble based on Premises Liability.

business and attacked Plaintiff. Plaintiff alleges that he suffered injuries as a result of falling during the alleged encounter with the dog.

Plaintiff asserts two causes of action against Trumble: strict liability pursuant to Section 3342, and general negligence.

B. Legal Analysis

The party moving for summary judgment and/or summary adjudication bears the burden of persuasion that there is no triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A defendant meets this burden by showing that one or more elements of plaintiff's cause of action cannot be established, or that there is a complete defense thereto. (*Ibid*.) The moving party also bears an initial burden of production to make a prima-facie showing of the nonexistence of any triable issue of material fact. (*Id.* at p. 850-51.) If the party carries this burden, there is a shift and the opposing party is then subjected to a burden of production to make a prima-facie showing. (*Ibid*.) Alternatively, "[s]ummary judgment in favor of the defendant will be upheld when the evidentiary submissions conclusively negate a necessary element of the plaintiff's cause of action or show that under no hypothesis is there a material issue of fact requiring the process of a trial." (*Biscotti v. Yuba City Unified School Dist.* (2007) 158 Cal.App.4th 554, 557–558.)

"In ruling on the motion, the trial court views the evidence and inferences therefrom in the light most favorable to the opposing party." (*Collin v. CalPortland Co.* (2014) 228 Cal.App.4th 582, 588.)

1. *Defendant Fails to Show that One or More Elements of Plaintiff's General Negligence Cause of Action Cannot Be Established.*

"Except for animal trespass, one who possesses or harbors a domestic animal that he does not know or have reason to know to be abnormally dangerous, is subject to liability for harm done by the animal if…he is negligent in failing to prevent the harm." (Rest. 2d Torts, §518.) Trumble argues that, "based on the facts in the instant case, [Trumble] did not act unreasonably in taking care of his dog." The Court finds, however, that Plaintiff has presented evidence from which a jury could conclude that Trumble acted unreasonably in taking care of his dog at the time of the incident. (See, *e.g.*, Trumble's Separate Statement at statements 10-17; Plaintiff's Separate Statement at statements 8, 22-25.)

Based on the foregoing, Trumble's motion for summary judgment and motion for summary adjudication of Plaintiff's cause of action for general negligence are DENIED.

2. *Defendant is Entitled to Summary Adjudication on Plaintiff's Strict Liability Claim as Plaintiff Fails to Make a Prima Facie Showing that He was Bitten.*

"The owner of any dog is liable for the damages suffered by any person who is bitten by the dog while in a public place or lawfully in a private place, including the property of the owner of the dog, regardless of the former viciousness of the dog or the owner's knowledge of such viciousness." (Section 3342, subd. (a).) Trumble argues that Plaintiff fails to allege and fails to present any evidence tending to show that Trumble's dog bit Plaintiff. (Opposition at 12:7-11.)

Plaintiff concedes that "the dog tried to bite him several times but [Plaintiff] was able to prevent being bitten because he protected himself with a magazine he had in his hand." (Plaintiff's Reply to Trumble's Separate Statement at statement 23.) During deposition, Plaintiff affirmatively testified that the dog did not bite him. (Declaration of Dionne Choyce (Choyce Decl.) at Exh. A, 47:25-48:1.) The Court finds that this admission "conclusively negate[s] a necessary element of the plaintiff's cause of action" for strict liability under Section 3342. (*Biscotti v. Yuba City Unified School Dist., supra*, 158 Cal.App.4th at 557-558.)

Plaintiff attempts to argue around this evidence by noting that "[i]n order to establish a claim [under] Section 3342(a), a bite wound or contact with the skin is not required." (Opposition at 6:22-23.) Plaintiff fails, however, to present any authority suggesting that liability under the section may be imposed in the absence of a bite. The authority cited by Plaintiff is distinguishable from the facts at issue here.[2] As Plaintiff notes, the issue in *Johnson v. McMahan* (1998) 68 Cal.App.4th 173, 176, was "[a]ssuming that plaintiff's leg was between Timber's jaws, separated only by the jeans plaintiff was wearing, was there a 'bite' even though the skin was not broken or wound inflicted?" That court noted that, "[i]n Webster's Third New International Dictionary (1993) page 222, we find the term [bite] defined at length. The first meaning is 'to seize with the teeth so that they enter, grip, or wound.' The next variant is 'to remove a part of something with the teeth," AND THE NEXT: "to seize, pinch, or sever with the jaws.'" (*Ibid.* Capitalization in original.) The court concluded that, "[i]n plain terms, if the dog's jaws clamped upon a portion of plaintiff's trousers so that a part of plaintiff's leg was between the jaws, albeit separated from tooth by the cloth, a bite occurred." (*Ibid.*)

Again, Plaintiff concedes that the dog in this case did not bite his person. Plaintiff argues that strict liability under the statute should be extended to this case because "[the dog] attempted to bite Plaintiff several times but Plaintiff used a magazine to shove in the dog's mouth to prevent injury." (Opposition at 14:6-9; see also Declaration of Dionne Choyce at Exh A, 49:9-24.) Importantly, Plaintiff is *not* arguing that the dog bit the rolled-up magazine. In fact, Plaintiff was specifically asked this question during deposition. "Q. So the dog – did the dog actually bite into the magazine? A. I cannot recall." (Choyce Decl. at Exh. A, 49:25-50:2.) Rather, Plaintiff argues simply that the dog's *attempts* to bite Plaintiff should be sufficient to invoke strict liability in this case. (See, *e.g.*, Opposition at 14: 8-9, 16.)

"In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted…." (Code Civ. Proc. §1858.) Extending strict liability under Section 3342 to cases in which a dog attempts, but does not bite, would require the Court to insert language into the statute.

Based on the foregoing, Trumble's motion for summary adjudication is GRANTED as to Plaintiff's cause of action for strict liability under Section 3342.

[2] REGAN DEFENDANTS MOTION FOR SUMMARY JUDGMENT / SUMMARY ADJUDICATION

[2] *Frederickson v. Kepner* (1947) 82 Cal.App.2d 905 did not involve a strict liability claim but rather a claim based on a property owner's common law liability in keeping a viscous dog on the premises. (See *Id*. at 908.)

TENTATIVE RULING: The motion for summary judgment brought by Defendants and Cross-Complainants Ryan Regan and Regan & Sons, Inc. (collectively Regan Defendants), is GRANTED.

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Moving party/counsel is directed to contact the opposing party/ies forthwith and advise of Local Rule 2.9 and the Court's tentative ruling procedure. Notwithstanding the procedures set forth in Local Rule 2.9, the moving party/counsel shall appear at the hearing, by Zoom, unless it is confirmed that no party requests oral argument.

A. Factual and Procedural Background

Regan Defendants move the Court for summary judgment, or in the alternative summary adjudication of the causes of action asserted against them by the Complaint of Plaintiff Robert Alaniz.

Through the Complaint, Plaintiff alleges that while he was delivering mail to a business owned by Defendant Regan and Sons, Inc., a dog named Juno owned by Defendant Trumble ran out of the business and attacked Plaintiff. Plaintiff alleges that he suffered injuries as a result of falling during the alleged encounter with the dog.

Plaintiff asserts two causes of action against Regan Defendants: General Negligence and Premises Liability.

B. Preliminary Matters

Regan Defendants object that Plaintiff's opposition papers should be disregarded as they exceed the page limit imposed by California Rules of Court rule 3.1113, subdivision (d). The Court notes that, rather than submitting separate memoranda in opposition to each of (1) Regan Defendants and (2) Defendant Trumble's respective motions for summary judgment, Plaintiff submitted a single memorandum addressing all issues raised through both motions. Regan Defendants further complain of impropriety in Plaintiff's election to use an independent separate statement document to set forth additional facts upon which Plaintiff opposes the two motions, rather than to include these facts in both of his responsive separate statements. Finally, Regan Defendants complain that the Declaration of Dionne E. Choyce is improper in that it attaches a 372-page deposition transcript without highlighting or underlining.

The Court acknowledges that Plaintiff's approach has the potential to cause confusion. However, based on the common facts at issue in the two motions for summary judgment, and the overlapping legal theories, the Court finds that, in this situation, Plaintiff's approach is sensible and unlikely to cause prejudice to any of the Defendants. Regan Defendants fail to establish that they have suffered any such prejudice. For the foregoing reasons, and in light of the strong policy favoring resolution of litigants' cases on their merits, the Court exercises its discretion, and accepts Plaintiff's opposition filings. (See *Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal.App.5th 1197, 1202.)

The Court rules on the Regan Defendants' evidentiary objections as follows:

Objection Nos. 1, 3, and 4: OVERRULED. The declaration that the matters are within the personal knowledge of Mr. Choyce, together with the Court Reporter's respective indications that "Dionne Choyce, Esquire, appeared as counsel on behalf of the Plaintiff" are sufficient to lay a foundation for the subject evidence. The Court declines to exercise its discretion and disregard the subject evidence.

Objection No. 2: GRANTED.

C. Legal Analysis

The party moving for summary judgment and/or summary adjudication bears the burden of persuasion that there is no triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A defendant meets this burden by showing that one or more elements of plaintiff's cause of action cannot be established, or that there is a complete defense thereto. (*Ibid*.) The moving party also bears an initial burden of production to make a prima-facie showing of the nonexistence of any triable issue of material fact. (*Id.* at p. 850-51.) If the party carries this burden, there is a shift and the opposing party is then subjected to a burden of production to make a prima-facie showing. (*Ibid*.) "In ruling on the motion, the trial court views the evidence and inferences therefrom in the light most favorable to the opposing party." (*Collin v. CalPortland Co.* (2014) 228 Cal.App.4th 582, 588.)

"Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself." (Civil Code §1714.) "The application of this provision entails an inquiry as to whether in the management of his property he has acted as a reasonable person in view of the probability of injury to others. A landowner has an affirmative duty to exercise ordinary care to keep the premises in a reasonably safe condition, and therefore must inspect them or take other proper means to ascertain their condition. And if, by the exercise of reasonable care, he would have discovered the dangerous condition, he is liable." (*Salinas v. Martin* (2008) 166 Cal.App.4th 404, 411-412. Citations omitted.) The determination of whether a landowner owes a duty of care to prevent injuries to persons from occurring on his property "involves the balancing of a number of a number of considerations." (*Ibid*. at 412. Citations omitted.) Among these are, "the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and the consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." (*Ibid*.) "Foreseeability and the extent of the burden to the defendant are ordinarily the crucial considerations, but in a given case one or more of the other Rowland factors may be determinative of the duty analysis." (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213.) "The existence and scope of a defendant's duty is a question of law for the court's resolution." (*Salinas v. Martin, supra* at 412.)

Regan Defendants argue that both causes of action Plaintiff asserts against them fail for the same reason: Regan Defendants lacked actual or constructive knowledge that Trumble's dog

had dangerous propensities. (See, *e.g.*, Opposition at 8:1-3, 11:16-19, 13:15-16, 14:9-10.) Regan Defendants cite cases involving the duty of care imposed on a *landlord* in circumstances in which a tenant's dog injures a third-party. (See Support Memo at 7:22-8:4.) "The general duty of care owed by a landowner in the management of his or her property is attenuated when the premises are let because the landlord is not in possession, and usually lacks the right to control the tenant and the tenant's use of the property. Consequently, it is well established that a landlord does not owe a duty of care to protect a third party from his or her tenant's dog unless the landlord has actual knowledge of the dog's dangerous propensities, and the ability to control or prevent the harm." (*Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1369; see also *Yuzon v. Collins* (2004) 116 Cal.App.4th 149, 152, *Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 507.)

As noted, this so-called "bright line rule" is based on the landlord's having surrendered his possessory interest to a tenant and, as a result, landlord being restrained under the law from engaging in "intrusive oversight or control of the tenant's use of the property." (*Salinas v. Martin*, *supra*, 166 Cal.App.4th at 413.) Where a property owner maintains possessory rights to the property and has a "continued presence" on the property, "we do not merely examine the evidence for proof of respondent's actual knowledge of the vicious nature of the dogs and his ability to prevent the attack, as we would if he was a residential landlord. Instead, we must examine the totality of the factors…that are pertinent to determination of the scope of [the property owner's] duty." (*Id.* at 415.)

Turning to these factors, the Court finds that the evidence and all reasonable inferences drawn therefrom are simply not sufficient to support a finding that the Regan Defendants owed Plaintiff a duty to ensure that he would not experience the events that led to his alleged injuries.

Again, "[f]oreseeability and the extent of the burden to the defendant are ordinarily the crucial considerations, but in a given case one or more of the other Rowland factors may be determinative of the duty analysis." (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213.) The evidence does not establish that the alleged incident was foreseeable to the Regan Defendants. The Court acknowledges the uncontradicted evidence of the following. Plaintiff was exercising his duties as a U.S. Postal Service mail carrier at the time of the alleged incident. (Plaintiff's Separate Statement at statements 1, 2; Regan Separate Statement at statement 9.) Plaintiff had been assigned to the same specific postal route for some 15 years. (Plaintiff's Separate Statement at statement 2.) Defendant Ryan Regan had known Plaintiff for twelve years prior to the incident. (*Id*. at statement 4.) Mr. Regan testified at deposition that if the business was open, Plaintiff would hand the mail to Mr. Regan, rather than using the mail slot. (*Id.* at statement 20.) Based on the foregoing, it was foreseeable that Plaintiff would encounter Juno on the day in question.

However, "[a] dog is presumed to be tame, docile and harmless until the contrary appears." (*Drake v. Dean* (2011) 15 Cal.App.4th 915, 922.) The Court finds no evidence tending to show that the Regan Defendants had actual or constructive knowledge that Juno had any history of aggression or otherwise exhibited any dangerous propensities. The Court notes the evidence that Defendant Ryan Regan had a significant relationship with Juno from the time the dog was a puppy. (Plaintiff's Separate Statement at statement 9-12, Regan's Separate Statement

at 18.) Plaintiff notes that Mr. Regan would take his own dog "Liberty" to meet with Mr. Trumble and Juno "approximately once a week"; that "Juno would come to the cabinet shop frequently to hang out with Mr. Regan and Liberty"; and that "Mr. Regan has kept Juno for several days at a time when Mr. Trumble was out of town." (Plaintiff's Separate Statement at statements 10-12.) In this context, Mr. Regan's uncontroverted testimony is particularly relevant: "I have never seen Juno be mean or aggressive towards anything or anybody or – she is around kids, older people, so I have never seen it. I've been around Juno her whole life. I have never – I just never witnessed that." (Choyce Decl. at Exh. C, p. 72:3-7.)

Plaintiff attempts to infer that the Regan Defendant's had actual or constructive knowledge that Juno was aggressive simply based on Mr. Regan's knowledge that "Trumble was not a dog trainer, did not attend dog training school, nor did Juno attend dog training school" (Plaintiff's Separate Statement at statement 52; see also Opposition at 22:28-23:2;) The Court does not find the inference reasonable, particularly in light of the presumption of harmlessness articulated in *Drake v. Dean*, *supra*, 15 Cal.App.4th at 922.

The Court finds no evidence supporting Plaintiff's suggestion that "Regan should have known about Juno's aggressive behaviors toward other dogs and the potential to show aggression toward strangers." (Opposition at 23:19-21.) First, Plaintiff cites no evidence suggesting that Mr. Regan ever witnessed Juno acting aggressively even towards other dogs. Moreover, the Court does not find evidence in the record suggesting that Juno ever exhibited aggressive behavior toward other dogs. Trumble's admission that he has seen Juno "sort of show his teeth" while "playing with dogs," standing alone does not constitute any such evidence. (See Opposition at 23:13-17.) The Court can find no other evidence suggesting any "potential to show aggression toward strangers." Finally, even if Mr. Trumble's admission were evidence of aggression towards other dogs, such knowledge would not be imputed to the Regan Defendants merely "because Regan's dog played with [Juno] almost every week." (Opposition at 23:19.)

The Court agrees with Plaintiff that, viewing the evidence and inferences therefrom in the light most favorable to Plaintiff, as we must on a motion for summary judgment, the burden on Mr. Regan to take steps to reduce the possibility of the incident was small. (*Collin v. CalPortland Co.*, *supra*, 228 Cal.App.4th at 588.) Mr. Regan could have relocated the dog bed away from the front door of the shop, closed the door while he was away from the area, or even posted signs indicating the presence of dogs. None of these steps would have been costly in terms of time, effort, or money. However, in light of the Court's finding that the events were unforeseeable to the Regan Defendants, this determination alone is insufficient to create a duty.

The Court does not find that the "closeness of the connection between the defendant's conduct and the injury suffered," weighs in favor of finding a duty. Mr. Regan was present throughout the events leading up to the alleged incident and enjoyed the right and ability to take steps to reduce the likelihood of the alleged events taking place. However, given the lack of foreseeability discussed above, and Mr. Regan's identity as property owner, rather than dog owner, Mr. Regan's conduct was remote from the injury suffered.

The Court finds no "moral blame attached to the defendant's conduct," whatsoever. There is no evidence tending to show that the Mr. Regan exhibited any intentional or wanton disregard for Plaintiff's safety.

In light of the unforeseeability of the injury, and the remote connection between the Regan Defendant's conduct and the injury suffered, the Court finds that the potential consequences to the community of imposing a duty to exercise care, with resulting liability for breach, outweighs the benefits of preventing future harm of this type.

Finally, while Plaintiff argues that insurance against this type of injury is available, neither party presented evidence on the issue of the availability, cost, and prevalence of insurance for the risk involved.

Because "Foreseeability and the extent of the burden to the defendant are ordinarily the crucial considerations…." (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213.)

Ultimately, the Court is swayed by the lack of foreseeability, from Regan Defendants' perspective, that they did not have a duty to take steps to prevent what occurred in this case. (*Salinas v. Martin, supra*, 166 Cal.App.4th at 411.) Because Plaintiff has not presented evidence sufficient to establish such duty, and because such duty is a required element of both his general negligence and premises liability causes of action asserted against the Regan Defendants, their motion for summary judgment is GRANTED.

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

In the Matter of Brian Mikel Leak, et al. **20CV000463**

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.