SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
NORTH COUNTY COURTHOUSE

TENTATIVE RULINGS - February 19, 2026

HEARING DATE: 2/20/2026 HEARING TIME: 1:30 P.M. DEPT.: N-28

JUDICIAL OFFICER: Hon. Earl H. Maas, III

CASE NO.:37-2024-00022064-CU-PO-NC

CASE TITLE: Fox-Powell vs Andrews [IMAGED]

CASE TYPE: (U)Other PI/PD/WD: PI/PD Other

HEARING TYPE: Motion for Summary Judgment

Defendant Saloon Entertainment, LLC, dba The Shelter Bar and Lounge & The Saloon's ("Saloon") motion for summary judgment (ROA # 26) is denied.

Plaintiff David Fox-Powell's ("Plaintiff") written objections (ROA # 38) are overruled. Such objections burden the record and impose unnecessary inefficiencies on the Court. When objections are asserted as a matter of habit rather than necessity, they serve less as a tool for evidentiary gatekeeping and more as an irritant that detracts from effective advocacy.

Summary judgment is proper when all the papers submitted on the motion show there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843; *Code Civ. Proc.* § 437c(c).) A defendant moving for summary judgment bears an initial burden of showing that one or more elements of the plaintiff's cause of action cannot be established or that there is a complete defense to that cause of action. (*Aguilar, supra,* 25 Cal.4th at p. 849.) If the defendant meets this burden, the plaintiff has the burden to demonstrate one or more triable issues of material fact as to the cause of action or defense. (*Ibid*.) A triable issue of material fact exists "if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Id.* at p. 850.) To establish a triable issue of material fact, the party opposing the motion must produce substantial responsive evidence. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 166.)

In California, bars are generally provided civil immunity stemming from its serving of alcoholic drinks. (See *Bus. & Prof Code* § 25602(b); see also *Civ. Code* § 1714(b).) Despite this immunity, establishments serving alcohol remain subject to the possibility of premises liability claim under the special relationship doctrine. "[T]he proprietor of a place where intoxicating liquors are dispensed owes a duty of exercising reasonable care to protect his patrons from injury at the hands of his fellow guests." (*Cantwell v. Peppermill, Inc.* (1994) 25 Cal.App.4th 1797, 1801.)

The principle of bars having a duty to their patrons was reaffirmed in 2005. In *Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, the California Supreme Court distinguished between different levels of protective measures based on foreseeability of the incident at issue noting that bars need only provide guards when "'heightened' foreseeability of third party criminal activity on the premises exists." (*Delgado, supra,* 36 Cal.4th at p. 240.) This responsibility manifests as a duty to "take

reasonable, relatively simple, and minimally burdensome steps to attempt to avert the danger" when patrons are faced with the possibility of third-party criminal conduct. (*Delgado, supra,* 36 Cal.4th at p. 250.)

Specific circumstances under which bars may be held liable have been established in case law. "(T)he duty of a tavern keeper to protect a patron from injury by another arises only when one or more of the following circumstances exists: (1) A tavern keeper allowed a person on the premises who has a known propensity for fighting; (2) the tavern keeper allowed a person to remain on the premises whose conduct had become obstreperous and aggressive to such a degree the tavern keeper knew or ought to have known he endangered others; (3) the tavern keeper had been warned of danger from an obstreperous patron and failed to take suitable measures for the protection of others; (4) the tavern keeper failed to stop a fight as soon as possible after it started; (5) the tavern keeper failed to provide a staff adequate to police the premises; and (6) the tavern keeper tolerated disorderly conditions (citations)." (*Saatzer v. Smith* (1981) 122 Cal.App.3d 512, 518, citing *Slawinski v. Mocettini* (1963) 217 Cal.App.2d 192, 196-197.)

Plaintiff presents arguments and evidence addressing several of these circumstances. Of those presented, the clearest example of an issue of material fact is circumstance (5) – the adequacy of the staff to police the premises. Here, the parties agree that on the night in question Saloon had 5 or 6 employees tasked with security related duties. (See UMF 6.) Despite this agreement, Plaintiff argues this was inadequate because one or two of the security guards were positioned outside at the front entrance, one was positioned on the back patio, and two others escorted bottle service girls as protection. Plaintiff also presents evidence that security would often help wait staff with bussing and service. Accepted as true, this would mean there was no security staff patrolling the inside of the establishment to monitor for any possible security-related incidents.

In support of his opposition, Plaintiff presents testimony from Robert C. Smith, President and CEO of Nightclub Security Consultants. (Plaintiff's Evidence, ROA # 35, Ex. 15.) Though Saloon challenges the foundation for Mr. Smith's opinion, it does not challenge his qualifications. Mr. Smith presents numerous opinions. For purposes of this issue he is of the opinion that Saloon's "number of security guards was woefully inadequate and below any industry standard on the night of the incident." (Smith Decl., p. 5.)

The Court finds the foregoing sufficient to create a triable issue of material fact. In ruling on a summary judgment/adjudication motion, the Court must "liberally construe" the opposing party's evidence and "strictly scrutinize" the moving party's evidence, and "resolve any evidentiary doubts or ambiguities" in favor of the party opposing the motion. (*McDonald v. Antelope Valley Community College District* (2008) 45 Cal.4th 88, 96-97.) Similarly, "any doubts as to the propriety of granting a summary judgment motion should be resolved in favor of the party opposing the motion." (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535.)

Saloon's motion for summary judgment (ROA # 26) is denied.