

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

Thomas Edgtion, Jr. v. Costco Wholesale Corporation

Edgtion v. Costco · No. 2:23-cv-00318-DC-CSK PS · Decided May 16, 2025

OPINION

(PS) Edgtion v. Costco Wholesale Corp.

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 THOMAS EDGTION, JR., Case No. 2:23-cv-00318-DC-CSK PS 12 Plaintiff,

13 v. ORDER AND FINDINGS AND

RECOMMENDATIONS GRANTING IN

14 COSTCO WHOLESALE PART AND DENYING IN PART

CORPORATION, DEFENDANT’S MOTION FOR SUMMARY

15 ADJUDICATION

Defendant. 16 (ECF No. 27) 17 18 Pending before the Court is a motion for summary adjudication (partial summary 19 judgment) by Defendant Costco Wholesale Corporation.¹ (ECF No. 27.) Plaintiff Thomas 20 Edgtion, Jr., who is proceeding without counsel, brings claims for a negligence and gross 21 negligence. Compl. (ECF No. 1). Plaintiff also seeks punitive damages. Id. The motion 22 for summary adjudication is fully briefed. (ECF Nos. 27, 31, 32.) On April 1, 2025, the 23 Court held an in-person hearing. (ECF No. 34.) Attorney Thomas Lininger appeared on 24 behalf of Defendant, and Plaintiff appeared pro se. For the reasons that follow, the Court 25 RECOMMENDS GRANTING IN PART AND DENYING IN PART Defendant’s motion for 26 summary adjudication. 27 1 This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636, Fed. R. 28 Civ. P. 72, and Local Rule 302(c).

1 I. BACKGROUND

2 A. Factual Background² 3 On November 22, 2020, Plaintiff was shopping at the Costco warehouse in 4 Rancho Cordova, California. Compl. at § III.3. Plaintiff cut his hand on a sharp exposed 5 edge while he was attempting to pull a bag of frozen chicken from a freezer. Id. at § III.4- 6 5. Plaintiff filed his complaint on November 1, 2022, and seeks, in part, punitive 7 damages.³ Id. at IV.B. 8 B. Procedural Background 9 On November 1, 2022, Plaintiff filed his complaint in Sacramento Superior Court. 10 (ECF No. 1.) On December 29, 2022, Defendant answered Plaintiff’s complaint. Id. at 11 41. On February 21, 2023, Defendant removed the action to this Court. Id. Defendant 12 filed a motion for summary judgment on August 15, 2024. (ECF

No. 9.) However, on

13 August 19, 2024, the Court granted Plaintiff's attorney's request to withdraw as attorney
14 of record, and stayed the case for thirty (30) days to allow Plaintiff to find new counsel. 15
(ECF No. 13.) Plaintiff did not obtain new counsel and is proceeding pro se. On October 16 15,
2024, upon request from the parties, the case was referred to Magistrate Judge 17 Allison Claire
for settlement proceedings. (ECF Nos. 14, 16.) The parties attended a 18 Settlement Conference
before Judge Claire on February 5, 2025, and the case did not 19 settle. (ECF No. 25.) Because
the motion for summary judgment (ECF No. 9) was still 20 pending on February 5, 2025, but was
not re-noticed before the undersigned as 21 required, the Court denied the motion without
prejudice to re-filing. (ECF No. 26.) The 22 Court narrowly modified the scheduling order to
permit Defendant to re-file and re-notice 23 2 In their reply, Defendants argue that their statement
of undisputed facts should be 24 considered undisputed because Plaintiff's response did not
comply with the Local Rules and Federal Rules of Civil Procedure. (ECF No. 32 at 2-3.) Where
Defendant's facts are 25 supported by the record, they will be considered undisputed. See
Caldwell-Parker v. 26 Surprise Police Dep't, 2022 WL 18110867, at *2 n.3 (D. Ariz. Dec. 2,
2022). 3 Defendant objects to certain exhibits attached to Plaintiff's opposition. (ECF No. 32 at 27
3.) Because the Court does not rely on any objected-to evidence in its analysis of Defendant's
motion, the objections are overruled as moot. See Gooch v. American Eagle 28 Airlines, Inc.,
2016 WL 590190, at *1 n.1 (C.D. Cal. Feb. 10, 2016). 1 its motion for summary judgment. Id. 2
On February 5, 2025, Defendant filed the operative motion for summary 3 adjudication, seeking
to dismiss Plaintiff's request for punitive damages. (ECF No. 27.) 4 On March 3, 2025, Plaintiff
opposed the motion (ECF No. 31), and Defendant filed a 5 reply (ECF No. 32.) On March 19,
2025, Plaintiff filed a second opposition. (ECF No. 33.)

6 II. LEGAL STANDARDS

7 A. Summary Adjudication Legal Standards 8 Summary judgment is appropriate when there is
"no genuine dispute as to any 9 material fact and the mov[ing party] is entitled to a judgment as a
matter of law." Fed. R. 10 Civ. P. 56(c). Rule 56 allows a court to grant summary adjudication,
also known as 11 partial summary judgment, when there is no genuine issue of material fact as to
a claim 12 or a portion of that claim. See Fed. R. Civ. P. 56(a); *Lies v. Farrell Lines, Inc.*, 641 F.2d
13 765, 769 n.3 (9th Cir. 1981) ("Rule 56 authorizes a summary adjudication that will often 14 fall
short of a final determination, even of a single claim" (internal quotation marks 15 and
citation omitted)). The standards that apply on a motion for summary judgment and 16 a motion
for summary adjudication are the same. See Fed. R. Civ. P. 56(a), (c); *Mora v. 17 Chem-Tronics*,
16 F. Supp. 2d 1192, 1200 (S.D. Cal. 1998). 18 The principal purpose of summary judgment or
summary adjudication is to 19 dispose of factually unsupported claims or defenses. *Celotex Corp.*
v. Catrett, 477 U.S. 20 317, 325 (1986). Therefore, the "threshold inquiry" is whether there are
any factual 21 issues that could reasonably be resolved in favor of either party, or conversely,
whether 22 the facts are so one-sided that one party must prevail as a matter of law. *Anderson v.*

23 Liberty Lobby, Inc., 477 U.S. 242, 250-52 (1986). Summary judgment should be entered, 24 after adequate time for discovery and upon motion, against a party who fails to make a 25 showing sufficient to establish the existence of an element essential to that party's case, 26 and on which that party will bear the burden of proof at trial. Celotex Corp., 477 U.S. at 27 322. "[A] complete failure of proof concerning an essential element of the nonmoving 28 party's case necessarily renders all other facts immaterial." Id. at 323. 1 In a summary judgment or summary adjudication motion, the moving party must 2 inform the court of the basis for the motion and identify the portion of the record that it 3 believes demonstrates the absence of a genuine issue of material fact. Celotex, 477 4 U.S. at 323. If the moving party meets its initial burden, the burden then shifts to the 5 opposing party to establish that there is a genuine issue of material fact. Matsushita 6 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585 (1986). To establish the 7 existence of genuine issue of material fact, the opposing party may not rely upon the 8 allegations or denials of its pleadings, but must tender evidence of specific facts in the 9 form of affidavits, and/or admissible discovery material. See Fed. R. Civ. P. 56(c); 10 Matsushita, 475 U.S. at 586 n.11. The opposing party must demonstrate that the fact 11 might affect the outcome of the suit and a reasonable jury could return a verdict for the 12 opposing party. See Anderson, 477 U.S. at 248; T.W. Elec. Serv., Inc. v. Pacific Elec. 13 Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987). For the moving party to succeed, 14 the court must conclude that no rational trier of fact could find for the opposing party. 15 Matsushita, 475 U.S. at 587. 16 All reasonable inferences that may be drawn from the facts placed before the 17 court must be drawn in favor of the opposing party. See Anderson, 477 U.S. at 255; 18 Matsushita, 475 U.S. at 587. Nevertheless, inferences are not drawn out of the air, and it 19 is the opposing party's obligation to produce a factual predicate from which the inference 20 may be drawn. See Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D.

21 Cal. 1985), aff'd, 810 F.2d 898, 902 (9th Cir. 1987). In addition, while a verified 22 complaint may be considered as evidence at the summary judgment stage "if it is based 23 on personal knowledge and if it sets forth the requisite facts with specificity," Lopez v. 24 Smith, 203 F.3d 1122, 1132 n. 14 (9th Cir. 2000) (en banc), an unverified complaint 25 cannot be considered as evidence. Moran v. Selig, 447 F.3d 748, 759-60 (9th Cir. 2006) 26 (citing Schroeder v. McDonald, 55 F.3d 454, 460 & nn.10-11 (9th Cir. 1995); Lew v. 27 Kona Hospital, 754 F.2d 1420, 1423-24 (9th Cir. 1985)). 28 ///

1 III. DISCUSSION

2 Plaintiff brings claims for negligence and gross negligence against Defendant for 3 allegedly failing to correct a sharp metal edge inside a freezer that created an 4 unreasonably dangerous condition, and for allegedly covering the defect. Compl. at 5 § IV.A-B. Plaintiff seeks punitive damages in addition to compensatory damages and 6 prejudgment interest. Id. at § IV.C. 7 Defendant moves for summary adjudication on Plaintiff's request for punitive 8 damages. Def. MSJ at 1-2 (ECF No. 27-1). 9 A. Preliminary Issues 10 During the April 1, 2025 hearing, the

Court ruled on the following matters on the 11 record. The Court memorializes those rulings here. First, the Court denied Plaintiff's 12 informal request to reopen discovery that was contained in the parties' Joint Status 13 Report from October 10, 2024. (See ECF No. 14.) Requesting to reopen discovery in a 14 joint status report is improper, and must be made pursuant to Federal Rule of Civil

15 Procedure 26 and the undersigned's Civil Standing Orders. Second, the Court denied 16 Defendant's request to exclude Plaintiff's first opposition to the motion for summary 17 judgment as untimely. (ECF No. 32 at 2; see ECF No. 31.) Even though Plaintiff's first 18 opposition was filed late, the Court accepted Plaintiff's first opposition and noted that 19 Defendant had an opportunity to respond and did respond to this opposition. Third, the 20 Court struck Plaintiff's second opposition (ECF No. 33) because it was filed one month 21 late and because Plaintiff did not seek or receive leave to file a second opposition. 22 B. Punitive Damages 23 In a diversity action, the availability of punitive damages is a question of state law. 24 *Nuwintore v. Mgmt. & Training Corp.*, 2018 WL 3491676, at *7 (E.D. Cal. July 19, 2018) 25 (citing *Central Office Tel. v. AT&T Co.*, 108 F.3d 981, 993 (9th Cir. 1997), rev'd on other 26 grounds, 524 U.S. 214, 228 (1998)). Under California law, a claim for punitive damages 27 is an additional remedy that is dependent on a viable cause of action for an underlying 28 tort. 569 E. Cnty. Blvd. LLC v. Backcountry Against the Dump, Inc., 6 Cal.App.5th 426, 1 429 n.3 (2016). A plaintiff may recover punitive damages for tortious acts under 2 California law when there is "clear and convincing evidence" that the defendant 3 committed the tortious act with "oppression, fraud, or malice." Cal. Civ. Code § 3294(a). 4 Defendant argues that Plaintiff's request for punitive damages is improper 5 because it is based on conduct that occurred after Plaintiff's injury. See Def. MSJ at 3-4. 6 To support this argument, Defendant identifies specific portions of the complaint. See id.; 7 Def. Stmt. Undisputed Fact No. 4 (citing Compl. at § IV.B) (ECF No. 27-2). Defendant 8 reads Plaintiff's complaint too narrowly, however. Because Plaintiff is appearing pro se, 9 the Court must liberally construe his pleadings. See *Eldridge v. Block*, 832 F.2d 1132, 10 1137 (9th Cir. 1987) (citing *Boag v. MacDougall*, 454 U.S. 364, 365 (1982)). In addition 11 to the portions Defendant identifies, the complaint also includes allegations that 12 Defendant "failed to correct an unreasonably dangerous defect in their freezer that had 13 very sharp edges." Compl. at § II.1. The complaint further alleges that Defendant's 14 "conduct is malicious and ongoing," and that "[a]s of the date of this Complaint, 15 [Defendant] has not rectified the issue, the sharp edge in the freezer still presents a 16 danger." Id. at §§ IV.B.1, IV.B.2. Therefore, the complaint is not, as Defendant argues, 17 limited to challenging Defendant's conduct after Plaintiff's injury. Defendant fails to meet 18 its initial burden as the movant to demonstrate the absence of a genuine issue of 19 material fact, and summary judgment should be denied in part on this ground. 20 The Court declines to address Plaintiff's argument in his opposition that a portion 21 of his complaint is not accurate. See Pl. Opp. at 9 (ECF No. 31). To the extent Plaintiff's 22 opposition argument is an attempt to amend the complaint, this is improper. Plaintiff 23 must file a motion to amend the

complaint, and Plaintiff may not add new claims or theories in an opposition to a summary judgment motion. See *Coleman v. Quaker Oats*, 253 F.3d 1271, 1294 (9th Cir. 2000) (“Only if the defendants have been put on notice may the plaintiffs proceed on [an alternate] theory at the summary judgment stage”); 27 *Pickern v. Pier 1 Imps. (U.S.), Inc.*, 457 F.3d 963, 969 (9th Cir. 2006) (affirming district court’s grant of summary judgment for defendants on theories not originally raised in the complaint because “the complaint gave the [defendants] no notice of the specific factual allegations presented for the first time in [plaintiff’s] opposition to summary judgment”). 3 Further, to the extent that the complaint includes inconsistent allegations or theories, that is permissible pursuant to Federal Rule of Civil Procedure 8(d). 5 Defendant also argues that Plaintiff lacks standing to request punitive damages against Defendant for conduct against the “public at large.” Def. MSJ at 4. To the extent 7 Plaintiff is attempting to seek punitive damages on behalf of other individuals, Defendant 8 is correct that Plaintiff may not do so. See *Philip Morris USA v. Williams*, 549 U.S. 346, 93 S.Ct. 353-55 (2007) (stating that punitive damages may not be used to punish a defendant for injury it inflicts on nonparties). Defendant’s motion for summary adjudication should be 11 granted in part on this ground. 12 The Court notes that during the hearing, Defendant argued for the first time that 13 Plaintiff is not entitled to punitive damages because Plaintiff submitted no evidence to 14 support a finding that an officer or director of Defendant knew, authorized, or ratified the 15 alleged conduct at issue. Though Defendant could have raised this argument in its 16 motion, Defendant did not. See Def. MSJ; see also Def. Reply. An argument raised for 17 the first time at the hearing is improper, and the Court declines to consider it. See *Rice Corp. v. Grain Bd. of Iraq*, 582 F. Supp. 2d 1309, 1313 (E.D. Cal. 2008); *Acasio v. Lucy*, 2017 WL 1316537, at *10 (N.D. Cal. Apr. 10, 2017). 20 Therefore, Defendant’s motion for summary adjudication should be GRANTED IN 21 PART to the extent Plaintiff seeks punitive damages on behalf of other individuals, and 22 DENIED IN PART as to the remainder of Defendant’s motion.

23 IV. CONCLUSION

24 In conclusion, IT IS HEREBY ORDERED that: 25 1. Plaintiff’s informal request to reopen discovery (see ECF No. 14) is 26 DENIED; and 27 2. Plaintiff’s second summary judgment opposition is STRICKEN (ECF No. 28 33). 1 Further, based upon the findings above, it is RECOMMENDED that Defendant’s 2 || motion for summary adjudication (ECF No. 27) be GRANTED IN PART to the extent 3 | Plaintiff seeks punitive damages on behalf of other individuals, and DENIED IN PART as 4 | to the remainder of Defendant’s motion. 5 These findings and recommendations are submitted to the United States District 6 | Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 7 | 14 days after being served with these findings and recommendations, any party may file 8 || written objections with the Court and serve a copy on all parties. This document should 9 | be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any 10 | reply to the objections shall be served on all parties and filed with the Court within 14 11 || days after service of the objections. Failure to file

objections within the specified time 12 || may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 13 | 455 (9th Cir. 1998); Martinez v. Yist, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 14 15 | Dated: May 15, 2025 C iy s \U

16 CHI SOO KIM

17 UNITED STATES MAGISTRATE JUDGE

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