

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Michael Ydigoras v. Costco Wholesale Corporation

Ydigoras v. Costco Wholesale Corporation, No. 3:25-cv-01394-RBM-MMP (S.D. Cal. Dec. 2, 2025) · No. 3:25-cv-01394-RBM-MMP · Decided December 2, 2025

SUMMARY

The United States District Court for the Southern District of California granted Costco Wholesale Corporation’s Rule 12(b)(6) motion to dismiss Michael Ydigoras’s claims. The court dismissed claims for ADA discrimination, negligence, ADA retaliation, and violation of the Unruh Civil Rights Act because the complaint did not adequately plead the required elements. The dismissal was without prejudice, and the plaintiff was granted leave to amend by January 5, 2026.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Ruth Bermudez Montenegro
JURISDICTION	United States District Court for the Southern District of California
DECIDED	December 2, 2025
DOCKET	3:25-cv-01394-RBM-MMP
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff's First Amended Complaint. The court granted the motion and dismissed all claims with leave to amend.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court tests the legal sufficiency of the claims, accepts well-pleaded factual allegations as true, construes the pleadings in the light most favorable to the nonmoving party, and liberally construes a pro se plaintiff's pleadings. A complaint must allege enough facts to state a facially plausible claim for relief.
PRECEDENTIAL VALUE	unpublished

TOPICS

- motions to dismiss
- ada / disability
- public accommodations discrimination
- negligence
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiff plausibly alleged a Title III ADA discrimination claim based on Costco's alleged failure to make a reasonable and necessary modification.
2. Whether Plaintiff plausibly alleged negligence based on an alleged duty arising from the ADA reasonable-accommodation process.
3. Whether Plaintiff plausibly alleged ADA retaliation where he failed to state an underlying ADA discrimination claim.
4. Whether Plaintiff plausibly alleged a claim under the California Unruh Civil Rights Act based on disability discrimination.

HOLDINGS

1. Plaintiff failed to state a Title III ADA discrimination claim because he did not sufficiently allege that he was an individual with a qualifying disability, that Costco employed a discriminatory policy or practice, or that the requested discussion was a necessary modification connected to disability-based discrimination.
2. Plaintiff failed to state a negligence claim because the ADA does not itself create an independent duty of care supporting a state-law negligence claim.
3. Plaintiff's possible ADA retaliation claim failed because he did not state the underlying ADA discrimination claim that serves as the predicate for retaliation.
4. Plaintiff failed to state an Unruh Act claim because he did not allege facts showing either a Title III ADA violation or intentional disability discrimination involving willful, affirmative misconduct.

KEY QUOTATIONS

“To succeed on a claim under that statutory provision, Plaintiff must show that: (1) he is disabled as that term is defined by the ADA; (2) [Defendant] is a private entity that owns, leases, or operates a place of public accommodation; (3) [Defendant] employed a discriminatory policy or practice; and (4) [Defendant] discriminated against [Plaintiff] based upon [Plaintiff’s] disability by (a) failing to make a requested reasonable modification that was (b) necessary to accommodate [Plaintiff’s] disability.” (Section III.B)

“A modification is “necessary” when failure to provide it would prevent a disabled customer from having “a like experience” as a non-disabled customer.” (Section III.B.3)

“the ADA does not create a duty of care giving rise to a negligence claim.” (Section III.C)

“there can be no retaliation . . . claim without an underlying ADA discrimination claim.” (Section III.D)

FACTUAL BACKGROUND

Plaintiff alleged that he is over sixty-five and disabled, visited Costco's Carlsbad warehouse on or about September 6, 2024, was denied service by one employee, and was stalked and intimidated by another. He

submitted an ADA reasonable-modification request seeking a discussion about the alleged conduct, but Costco did not arrange the requested discussion. Costco later cancelled Plaintiff's and his spouse's memberships, and Plaintiff alleged that he was denied entry to a Costco pharmacy.

PROCEDURAL HISTORY

Plaintiff filed an initial complaint in California state court, and Defendant removed the case to federal court after Plaintiff filed an amended complaint in state court. The state court sustained Defendant's demurrer to the initial complaint. In federal court, Plaintiff opposed Defendant's Rule 12(b)(6) motion, but the court dismissed all claims with leave to amend.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- PGA Tour, Inc. v. Martin, 532 U.S. 661, 691–92 (2001)
- Tauscher v. Phx. Bd. of Realtors, Inc., 931 F.3d 959, 964 (9th Cir. 2019)
- Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 998 (9th Cir. 2018)
- In re Bozic, 888 F.3d 1048, 1051 n.1 (9th Cir. 2018)
- United States v. Howard, 381 F.3d 873, 876 n.1 (9th Cir. 2004)
- Conservation Force v. Salazar, 646 F.3d 1240, 1241–42 (9th Cir.)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007)
- Karczewski v. DCH Mission Valley LLC, 862 F.3d 1006, 1009 (9th Cir. 2017)
- Karczewski v. DCH Mission Valley LLC, 862 F.3d 1006, 1010 (9th Cir. 2017)
- Caputo v. City of San Diego Police Department, Case No. 16-cv-00943-AJB-BLM, 2018 WL 4092010, at *8 (S.D. Cal. Aug. 28, 2018)
- Roughgarden v. YottaMark, Inc., No. 5:10-CV-04098 JF (PSG), 2011 WL 856279, at *4 (N.D. Cal. Mar. 9, 2011)
- Drawsand v. F.F. Props., L.L.P., 866 F. Supp. 2d 1110, 1119 (N.D. Cal. 2012)
- Jones v. Nat'l R.R. Passenger Corp., Case No. 15-cv-02726-MEJ, 2016 WL 4538367, at *2 (N.D. Cal. Aug. 31, 2016)
- Disabled Rights Action Comm. v. Fremont St. Experience L.L.C., 44 F. App'x 100, 103 (9th Cir. 2002)
- Fernandez v. O'Reilly Auto Enters., LLC, Case No. 2:19-cv-05464-ODW (KSx), 2021 WL 3403742, at *3 (C.D. Cal. Aug. 3, 2021)
- Fernandez v. Fisher, Case No. 2:19-cv-06036-SB-JEM, 2021 WL 718296, at *3 (C.D. Cal. Feb. 24, 2021)
- Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997)

- Baughman v. Walt Disney World Co., 685 F.3d 1131, 1135 (9th Cir. 2012)
- Fortytune v. Am. Multi-Cinema, Inc., 364 F.3d 1075, 1083 (9th Cir. 2004)
- Strojnik v. Bakersfield Convention Hotel I, LLC, 436 F. Supp. 3d 1332, 1344 (E.D. Cal. 2020)
- Jones v. Nat'l R.R. Passenger Corp., Case No. 15-cv-02726-TSH, 2023 WL 6450528, at *4 (N.D. Cal. Oct. 2, 2023)
- Estavillo v. Cortese, Case No. 23-cv-04032-VKD, 2024 WL 2808651, at *4 (N.D. Cal. May 30, 2024)
- McColm v. San Francisco Hous. Auth., No. C 02-5810 PJH, 2015 WL 3396673, at *7 (N.D. Cal. May 26, 2015)
- Martinez v. Cot'n Wash, Inc., 81 Cal. App. 5th 1026, 1035 (2022)
- Koebke v. Bernardo Heights County Club, 36 Cal. 4th 824, 853 (2005)
- C.B. v. Sonora Sch. Dist., 691 F. Supp. 2d 1123, 1155 (E.D. Cal. 2009)

OPINION

1 2 3 4 5 6 7 8 9 UNITED STATES DISTRICT COURT 10 SOUTHERN DISTRICT OF
 CALIFORNIA 11 12 MICHAEL YDIGORAS, Case No.: 3:25-cv-01394-RBM-MMP 13 Plaintiff,
 ORDER GRANTING MOTION TO 14 v. DISMISS PLAINTIFF'S FIRST AMENDED
 COMPLAINT 15 COSTCO WHOLESALE CORPORATION, 16 [Doc. 3] Defendant. 17 18 19
 Pending before the Court is Defendant Costco Wholesale Corporation's 20 ("Defendant" or
 "Costco") Motion to Dismiss Plaintiff's First Amended Complaint 21 ("Motion to Dismiss") under
 Federal Rule of Civil Procedure ("Rule") 12(b)(6).

(Doc. 3.) 22 Pro se Plaintiff Michael Ydigoras ("Plaintiff") filed an Opposition to Defendant's
 Motion 23 to Dismiss Plaintiff's First Amended Complaint ("Opposition") (Doc. 4), and
 Defendant 24 filed a Reply to Plaintiff's Opposition to Motion to Dismiss Plaintiff's First
 Amended 25 Complaint ("Reply"). (Doc. 5.) 26 The Court finds this matter suitable for
 determination without oral argument 27 pursuant to Civil Local Rule 7.1(d)(1).

Having reviewed the filings above, and for the 28 reasons below, Defendant's Motion to Dismiss
 (Doc. 3) is GRANTED. 1 I. BACKGROUND 2 Plaintiff's Amended Complaint for Damages
 ("Complaint") (Doc. 1-2 at 53-65) 3 "consist[s] of two causes of action: 1) Negligence and 2)
 Discrimination," both "asserted 4 under [Title III of] the Americans with Disabilities Act"
 ("ADA").

(Doc. 1-2 at 53.) 3 5 Plaintiff is a "Senior over 65 (years of age), (and a) permanently disabled
 individual 6 under State and Federal definitions of Disability." (Id. at 54.) Plaintiff visited
 Defendant's 7 warehouse in Carlsbad, California on or about September 6, 2024, where he was
 denied 8 service by one of Defendant's employees and subjected to stalking and intimidation by 9
 another of Defendant's employees.

(Id.) Plaintiff reported a “near assault of [his] person” 10 by Defendant’s employees to local law enforcement. (Id.) 11 Plaintiff submitted an ADA Reasonable Modification of Procedure Request (“ADA 12 Request”) on September 11, 2024. (Id. at 54–55.) Through the ADA Request, Plaintiff 13 sought only to discuss his denial of service and subsequent stalking and intimidation.

(Id. 14 15 1 The factual summary in this section reflects Plaintiff’s allegations, not conclusions of 16 fact or law by this Court. Well-pled factual allegations are accepted as true for purposes 17 of the Motion to Dismiss. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). 18 2 The Court cites the CM/ECF electronic pagination for all filings unless otherwise noted.

19 The Complaint is duplicated at Doc. 1-2 at 33–45, but the Court will not cite to those pages in this Order. The Court also notes that Defendant removed this case to federal court after 20 Plaintiff filed an amended complaint in state court. (See *infra* Section III.A.) 21 3 Plaintiff also refers to Titles I and II of the ADA. (Doc. 1-2 at 57.) “The ADA has three 22 separate titles: Title I covers employment discrimination, Title II covers discrimination by 23 government entities, and Title III covers discrimination by places of public accommodation.” *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 691–92 (2001) (Scalia, J., 24 dissenting).

Because Plaintiff’s claims are not rooted in employment discrimination or 25 discrimination by a government entity, the Court discusses only Title III. See also *Tauscher v. Phx. Bd. of Realtors, Inc.*, 931 F.3d 959, 964 (9th Cir. 2019) (“The ADA does 26 not make [the] ‘interactive process’ requirement applicable to public accommodations.... 27 Title III and its implementing regulations make no mention of an ‘interactive process’ that mirrors the process required in the employment context.”).

28 1 at 54.) Plaintiff explained to the Costco Assistant Vice President of San Diego Region 2 District 1 that he was making the ADA Request out of “medical necessity.” (Id. at 55.) 3 Plaintiff was told that the Carlsbad general manager, Lisa, would have a discussion with 4 him. (Id.) But that discussion never happened. (Id.) When Plaintiff followed up with 5 Defendant over email in October 2024, Defendant represented that it believed Plaintiff had 6 already had a discussion with Lisa.

(Id. at 59–60.) After Plaintiff clarified that this was 7 not the case, Defendant represented that “more recent communications had been escalated 8 to senior management instead of [to Lisa].” (Id. at 60.) 9 A month later, in November 2024, Defendant still had not engaged in discussions 10 with Plaintiff regarding his ADA Request. (Id. at 62.) And on November 27, 2024, 11 Defendant cancelled “Plaintiff’s membership and membership of Plaintiff’s same sex 12 spouse, barring both for life.” (Id.)

As recently as April 2025, Plaintiff was denied entry 13 to Costco Pharmacy when he attempted to “pick up prescription for his ADA therapy 14 animal.” (Id. at 63.) 15 II. LEGAL STANDARDS

16 A. Judicial Notice 17 The Court may consider documents beyond the pleadings on a motion to dismiss 18 under Rule 12(b)(6) through “judicial notice under Federal Rule of Evidence 201.” Khoja 19 v. Orexigen Therapeutics, Inc., 899 F.3d 988, 998 (9th Cir.

2018). The court may take 20 judicial notice of adjudicative facts that are “not subject to reasonable dispute” because 21 they are either: (1) “generally known within the trial court’s territorial jurisdiction;” or 22 (2) “can be accurately and readily determined from sources whose accuracy cannot 23 24 25 4 In his Opposition (Doc. 4) and his Declaration (Doc.

6) that the Court liberally construes to be in support of his Opposition, Plaintiff alleges several new facts and includes an exhibit 26 from his doctor. These new allegations do not appear in the Complaint, and the Court does 27 not consider them in this Order. See *Apple Inc. v. Allan & Assocs. Ltd.*, 445 F. Supp. 3d 42, 59 (N.D. Cal. 2020) (noting “it is axiomatic that the complaint may not be amended by 28 1 reasonably be questioned.” Fed.

R. Evid. 201(a)–(b). 2 B. Rule 12(b)(6) 3 A complaint must contain “a short and plain statement of the claim showing that the 4 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “A motion to dismiss under [Rule] 5 12(b)(6) for failure to state a claim upon which relief can be granted tests the legal 6 sufficiency of a claim.” *Conservation Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir.

7 2011) (internal citation omitted). An action may be dismissed for failure to allege “enough 8 facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 9 U.S. 544, 570 (2007). A claim is plausible on its face “when the plaintiff pleads factual 10 content that allows the court to draw the reasonable inference that the defendant is liable 11 for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

For purposes of ruling on a Rule 12 12(b)(6) motion, the Court “accept[s] factual allegations in the complaint as true and 13 construe[s] the pleadings in the light most favorable to the nonmoving party.” *Manzarek 14 v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

The Court 15 liberally construes a pro se plaintiff’s pleadings. *Erickson v. Pardus*, 551 U.S. 89, 94 16 (2007). 17 III. DISCUSSION 18 The Complaint asserts two causes of action: (1) negligence and (2) disability 19 discrimination under Title III of the ADA. (Doc. 1-2 at 53.) Liberally construed, the 20 Complaint may also assert causes of action for retaliation under the ADA5 and disability 21 22 23 5 Plaintiff “asserts Costco’s actions were retaliatory for exercising [his] right to submit 24 ADA Reasonable Modification Request to discuss a curtailment of the retaliatory behavior 25 in 2024.” (Doc.

1-2 at 62.) And although it is couched in a discussion of his spouse’s obligation as a nurse to report elder abuse, Plaintiff also cites to 42 U.S.C. § 12203, which 26 prohibits retaliation against an

individual who opposed an act made unlawful by the ADA. 27 (Id. at 58.) Construing the Complaint liberally, the Court considers Plaintiff to bring a claim for retaliation under the ADA.

28 1 discrimination under the Unruh Civil Rights Act (“the Unruh Act”). The Court dismisses 2 all claims⁷ with leave to amend. 3 A. Request for Judicial Notice 4 Defendant requests that the Court take judicial notice of Plaintiff’s “initial complaint 5 filed in the Superior Court for the State of California, County of San Diego, Case No. 6 24CU026610N, on December 4, 2024” and the “April 18, 2025 order sustaining 7 Defendant’s demurrer to Plaintiff’s initial complaint.” (Doc.

3-2 at 2.) Plaintiff does not 8 oppose. As the document is not subject to reasonable dispute, the Court GRANTS 9 Defendant’s request for judicial notice. See *In re Bozic*, 888 F.3d 1048, 1051 n.1 (9th Cir. 10 2018) (taking judicial notice of minute orders from other cases) (citing *United States v. 11 Howard*, 381 F.3d 873, 876 n.1 (9th Cir. 2004) (“stating that a court may take judicial 12 notice of court records in another case”)).

13 B. ADA Discrimination Claim (Count Two) 14 “Title III of the ADA prohibits discrimination by public accommodations.” 15 *Karczewski v. DCH Mission Valley LLC*, 862 F.3d 1006, 1009 (9th Cir. 2017) (citation 16 omitted). Section 12182 “begins with a ‘General rule’ in subsection (a): 17 No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, 18 advantages, or accommodations of any place of public accommodation by any 19 person who owns, leases (or leases to), or operates a place of public accommodation.

20 21 22 6 Plaintiff notes: “the Unruh Civil Rights Act in California... prohibits businesses from 23 discrimination based on certain protected characteristics, including age, ancestry, color, disability, national origin, race, religion, sex, and sexual orientation.” (Doc. 1-2 at 57.) 24 The Court thus considers Plaintiff to bring a claim under the Unruh Act.

25 7 Plaintiff also alleges that he was “denied entry to Costco Pharmacy in violation of CA 26 Business and Professional Code BPC 4000.” (Doc. 1-2 at 63.) That statute authorizes 27 regulation of the pharmacy industry in California. See Cal. Bus. & Prof. Code § 4000.

Thus, even liberally construed, Plaintiff’s single allegation here does not plausibly bring a 28 1 Id. (quoting 42 U.S.C. § 12182(a)). 2 For purposes of subsection (a), and relevant to the allegations in the Complaint, 3 discrimination includes: 4 a failure to make reasonable modifications in policies, practices, or 5 procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals 6 with disabilities, unless the entity can demonstrate that making such 7 modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations 8 § 12182(b)(2)(A)(ii).

9 10 Plaintiff claims that Defendant “reneged on the agreed upon [ADA Request] to have 11 Carlsbad Costco General Manager, Lisa have discussion with Plaintiff.” (Doc. 1-2 at 56.) 12

Plaintiff also cites to 28 C.F.R. § 36.302, which states that “[a] public accommodation shall 13 make reasonable modifications in policies, practices, or procedures, when the 14 modifications are necessary to afford goods, services, facilities, privileges, advantages, or 15 accommodations to individuals with disabilities.” (Id. (citing 28 C.F.R. § 36.302).)

16 Therefore, the Court construes Plaintiff’s ADA discrimination claim to arise under 42 17 U.S.C. § 12182(b)(2)(A)(ii). 18 To succeed on a claim under that statutory provision, Plaintiff must show that: 19 (1) he is disabled as that term is defined by the ADA; (2) [Defendant] is a private entity that owns, leases, or operates a place of public accommodation; 20 (3) [Defendant] employed a discriminatory policy or practice; and (4) 21 [Defendant] discriminated against [Plaintiff] based upon [Plaintiff’s] disability by (a) failing to make a requested reasonable modification that was 22 (b) necessary to accommodate [Plaintiff’s] disability.

23 Karczewski, 862 F.3d at 1010 (citation omitted). 24 25 Defendant argues that Plaintiff’s claim must be dismissed because he fails to allege 26 facts sufficient to establish: (1) Plaintiff is disabled; (2) Defendant employs a 27 discriminatory policy or practice; and (3) Plaintiff’s request for modification was both 28 reasonable and necessary. (Doc. 3-1 at 10.)

The Court discusses each argument in turn. 1 1. Disability 2 Under the ADA, a “qualifying individual with a disability is a person that suffers 3 from [an] impairment that substantially limits one or more major life activities, has a record 4 of such an impairment, or is regarded as having such an impairment.” *Caputo v. City of 5 San Diego Police Dep’t*, Case No.: 16-cv-00943-AJB-BLM, 2018 WL 4092010, at *8 6 (S.D.

Cal. Aug. 28, 2018) (citing 42 U.S.C. §§ 12102(1)(A)–(C)). Defendant argues that 7 Plaintiff’s claim must be dismissed because it contains only the type of “vague, conclusory 8 allegations” that “are insufficient to state a claim for disability discrimination under the 9 ADA.” (Doc. 3-1 at 10.) Plaintiff argues that he “is permanently disabled under both 10 Federal and State definitions with multiple chronic and life-threatening conditions,” and 11 that “Title III of the ADA does not require individuals to disclose the specific details of 12 their disabilities to access public accommodations.” (Doc.

4 at 3.) The Complaint does 13 not sufficiently address Plaintiff’s status as a qualifying individual with a disability. 14 Plaintiff states that he is a “Senior over 65 (years of age), (and a) permanently 15 disabled individual under State and Federal definitions of Disability.” (Doc. 1-2 at 54.) 16 He also alleges “damages... identified as including emotional distress and the onset of 17 stress induced auto immune dysfunction with Elias score of 43 when anything above 25 is 18 precursor to organ damage, several occurrences of painful stress induced shingles, with 19 radiating facial pain and episodes of stress induced dysarthria.” (Id. at 56.)

Plaintiff also 20 filed two letters from his medical provider in his Declaration (Doc. 6 at 4–5) and alleges 21 additional facts regarding his use of a cane in his Opposition (Doc. 4 at 4), but the Court 22 does not consider these facts in this Order. (See supra n.4.) 23 “Ultimately, these assertions are insufficient as they do not contain any clear 24 allegations about Plaintiff’s alleged impairment, major life activities that are substantially 25 limited, records of disability, or being regarded as having such an impairment.” Caputo, 26 2018 WL 4092010, at *8; see also Roughgarden v. YottaMark, Inc., No. 5:10-CV-04098 27 JF (PSG), 2011 WL 856279, at *4 (N.D.

Cal. Mar. 9, 2011) (holding that although a 28 “reference [to a previous back surgery] may suggest an impairment, [the plaintiff] does not 1 allege that such impairment limited his ability to participate in a major life activity”); 2 *Drawsand v. F.F. Props., L.L.P.*, 866 F. Supp. 2d 1110, 1119 (N.D. Cal. 2011) (noting the 3 court “cannot assess whether [the plaintiff] has a [disability]... because she does not 4 provide any details regarding her alleged disability,” stating only that “she is a disabled 5 veteran receiving a disability, which qualified her for her federally subsidized assistance 6 program Section 8”); *Jones v. Nat’l R.R.*

Passenger Corp., Case No. 15-cv-02726-MEJ, 7 2016 WL 4538367, at *2 (N.D. Cal. Aug. 31, 2016) (collecting cases). If Plaintiff files an 8 amended complaint, he must sufficiently plead the threshold issue in his disability 9 discrimination claim: that he is disabled within the meaning of 42 U.S.C. §§ 12102(1)(A)– 10 (C). 11 2. Discriminatory Policy or Practice 12 Defendant argues that “Plaintiff fails to identify any policy, practice, or procedure 13 that is allegedly discriminatory,” and that even if he had, “a person’s singular experience 14 on one occasion does not establish a policy, practice, or procedure.” (Doc.

3-1 at 11 (citing 15 *Disabled Rights Action Comm. v. Fremont St. Experience L.L.C.*, 44 F. App’x 100, 103 16 (9th Cir. 2002); *Fernandez v. O’Reilly Auto Enters., LLC*, Case No. 2:19-cv-05464-ODW 17 (KSx), 2021 WL 3403742, at *3 (C.D. Cal. Aug. 3, 2021); *Fernandez v. Fisher*, Case No. 18 2:19-cv-06036-SB-JEM, 2021 WL 718296, at *3 (C.D. Cal. Feb. 24, 2021).) 19 The cases cited by Defendant do not stand for the proposition that a person’s singular 20 experience can never give rise to a discriminatory policy or practice claim.

The court in 21 *O’Reilly* found that the plaintiff’s isolated encounters with allegedly discriminatory actions 22 did not establish a discriminatory policy, in part because the court had held a bench trial 23 and credited the defendant’s testimony to the contrary. 2021 WL 3403742, at *3.

The 24 same is true in *Fisher*. 2021 WL 718296, at *2. And in *Disabled Rights Action Committee*, 25 the court noted that “a lone violation does not establish a pattern or practice on the part of 26 [the defendant],” but also that the court could have issued an injunction to remedy the lone 27 violation. 44 F. App’x at 103. Ultimately, the court found the issue moot.

Id. Therefore, 28 the Court does not find that Plaintiff's claim fails because it is an isolated incident. 1 The Court does find, however, that Plaintiff's claim does not contain "a short and 2 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 3 8(a)(2). Plaintiff does not allege that Defendant has a discriminatory policy, written or 4 otherwise.

It is also unclear whether Plaintiff alleges that Defendant engaged in a 5 discriminatory practice by refusing him service and stalking him on or about September 6, 6 2024, or by refusing to engage with him in a conversation about his ADA Request. Either 7 way, the allegations do not show how any of these actions discriminated on the basis of 8 Plaintiff's disability.

See *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th 9 Cir. 1997) (holding that even "a liberal interpretation" of a complaint "may not supply 10 essential elements of the claim that were not initially pled"). 11 3. Reasonable and Necessary Modification 12 A modification is "necessary" when failure to provide it would prevent a disabled 13 customer from having "a like experience" as a non-disabled customer.

Baughman v. Walt 14 Disney World Co., 685 F.3d 1131, 1135 (9th Cir. 2012). "[W]hether a particular 15 modification is 'reasonable' involves a fact-specific, case-by-case inquiry that considers, 16 among other factors, the effectiveness of the modification in light of the nature of the 17 disability in question and the cost to the organization that would implement it." *Fortyune 18 v. Am.*

Multi-Cinema, Inc., 364 F.3d 1075, 1083 (9th Cir. 2004) (citation omitted). 19 Defendant argues that Plaintiff has not "addressed in any way how the alleged failure 20 to provide the requested modification deprived him from having a 'like experience' akin 21 to that of other Costco members." (Doc. 3-1 at 13.) Plaintiff does not respond specifically 22 to this point.

Rather, he argues that Defendant has mischaracterized both the timeline of 23 events and the nature of his ADA Request. (Doc. 4 at 2–3.) Plaintiff clarifies that "[t]he 24 nature of the ADA Request was for clarification of the untoward actions of Costco workers 25 upon the Plaintiff." (Id. at 3.) 26 The Court finds that Plaintiff has not alleged facts sufficient to show that his 27 requested modification was necessary.

Plaintiff has alleged no facts showing that 28 Defendant's allegedly discriminatory actions were taken "on the basis of" Plaintiff's 1 disability. 42 U.S.C. § 12182(a). Plaintiff alleges that he was refused service by one 2 Costco employee and followed and intimidated by another Costco employee. (Doc. 1-2 at 3 54–55.) He alleges that his ADA Request—made to clarify the reasons that these actions 4 were taken against him—was ignored by several other Costco employees.

(Id. at 59–60.) 5 It is unclear what disability Plaintiff has, how Defendant discriminated against Plaintiff on 6 the basis of such disability, or how a discussion clarifying the actions taken by

Defendant's 7 employees on or about September 6, 2024 would be necessary to accommodate such 8 disability.

Therefore, the Court finds that Plaintiff has not sufficiently pled that a 9 conversation with the Costco Carlsbad manager was necessary for him to have "a like 10 experience" as a non-disabled customer. In light of this finding, the Court does not reach 11 the reasonableness question.

Accordingly, Count Two is DISMISSED with leave to 12 amend. 13 C. Negligence Claim (Count One) 14 Plaintiff alleges that Defendant "had a responsibility to act with reasonable care in 15 compliance with the reasonable accommodation process established in the [ADA]." (Doc. 16 1-2 at 55.) Defendant correctly notes that "the ADA does not create a duty of care giving 17 rise to a negligence claim." (Doc.

3-1 at 13-14 (citing *Strojnuk v. Bakersfield Convention 18 Hotel I, LLC*, 436 F. Supp. 3d 1332, 1344 (E.D. Cal. 2020) ("Plaintiff provides no 19 authority, nor is the Court aware of any, to show that Congress enacted the ADA as a 20 separate duty of care to give rise to an independent negligence claim under state laws."); 21 *Jones v. Nat'l R.R. Passenger Corp.*, Case No. 15-cv-02726-TSH, 2023 WL 6450528, at 22 *4 (N.D.

Cal. Oct. 2, 2023) ("Plaintiff's reliance on the ADA is misplaced here, as courts 23 have declined to find that the ADA is a statute establishing a duty of care to maintain an 24 independent negligence claim") (collecting cases).)

Thus, Plaintiff has not established a 25 duty of care to maintain an action for negligence. Count One is DISMISSED with leave 26 to amend for Plaintiff to allege facts that plausibly show Defendant owed him an 27 independent duty of care. 28 1 D. ADA Retaliation Claim 2 Plaintiff may intend to bring a claim for retaliation under the ADA. (See *supra* 3 n.5.)

As Defendant correctly notes, "there can be no retaliation... claim without an 4 underlying ADA discrimination claim." (Doc. 3-1 at 14 (citing *Estavillo v. Cortese*, Case 5 No. 23-cv-04032-VKD, 2024 WL 2808651, at *4 (N.D. Cal. May 30, 2024) (holding that 6 "the complaint does not allege sufficient facts establishing a claim of discrimination under 7 the ADA, which is 'the predicate for any claim of retaliation'" under the ADA) (quoting 8 *McColm v. San Francisco Hous.*

Auth., No. C 02-5810 PJH, 2015 WL 3396673, at *7 9 (N.D. Cal. May 26, 2015) ("[B]ecause plaintiff cannot allege a claim of discrimination 10 under the ADA..., which constitutes the predicate for any claim of retaliation..., she 11 also cannot assert a claim of retaliation" under 42 U.S.C. § 12203).) Plaintiff's retaliation 12 claim, like his ADA claim, is DISMISSED with leave to amend.

13 E. Unruh Civil Rights Act Claim 14 The Unruh Act provides: "All persons within the jurisdiction of this state... no 15 matter what their... disability... are entitled to the full and equal

accommodations, 16 advantages, facilities, privileges, or services in all business establishments of every kind 17 whatsoever.” Cal. Civ. Code § 51(b). “A plaintiff can recover under the [Unruh Act] on 18 two alternate theories: (1) a violation of the ADA[]; or (2) denial of access to a business 19 establishment based on intentional discrimination.” *Martinez v. Cot’n Wash, Inc.*, 81 Cal. 20 App.

5th 1026, 1035 (2022). Because Plaintiff has not plausibly pled a violation of the 21 ADA, he must establish that Defendant denied him access to a business establishment 22 based on intentional discrimination. Plaintiff has failed to do so. 23 The Complaint falls short of alleging the “willful, affirmative misconduct” required 24 to state an Unruh Act claim separate from an ADA claim.

Koebke v. Bernardo Heights 25 County Club, 36 Cal. 4th 824, 853 (2005). As one court reasoned: 26 [The plaintiff] refers to allegations that District [d]efendants knew of [the plaintiff’s] disability, knew how to handle it because of the provisions of the 27 IEP, yet threatened [the plaintiff] with police intervention....

The Complaint 28 alleges that there was no justification for this treatment. The Complaint 1 alleges that District [d]efendants committed these acts “maliciously,” “oppressively” and “in bad faith, with the wrongful intent of injuring [the plaintiff], and in conscious disregard of [the plaintiff’s] rights.” None of these 3 allegations state that this conduct was undertaken to discriminate against [the A plaintiff] because of his disabilities.

5 || *CB. v. Sonora Sch. Dist.*, 691 F. Supp. 2d 1123, 1155 (E.D. Cal. 2009) (emphasis added). 6 Here, Plaintiff argues that “Costco was aware of Plaintiff being disabled even before 7 || the first amended complaint... as not only was this discussed with [Defendant], it was 8 || reiterated in declaration under penalty of perjury filed in opposition to Defendant’s earlier 9 || request of demurrer in Superior Court.” (Doc.

4 at 4.) Like the plaintiff in *C.B.*, Plaintiff 10 alleges that Defendant knew he was disabled and acted in bad faith in its dealings with him. 11 ||*Ud.*; Doc. 1-2 at 59-60.) And like the plaintiff in *C.B.*, Plaintiff fails to state factual 12 ||allegations sufficient to show that Defendant’s conduct was undertaken to discriminate 13 ||against Plaintiff because of his disabilities.

(See *supra* Section III.B.3.) Therefore, the 14 || Unruh Act claim is DISMISSED with leave to amend. 15 IV. CONCLUSION 16 Based on the foregoing reasons, the Court GRANTS Defendant’s Motion to 17 || Dismiss. All claims are DISMISSED with leave to amend. Plaintiff may file an amended 18 ||complaint in accordance with the directives above on or before January 5, 2026.

In light 19 ||of Plaintiff’s previous amendment (see Doc. 3-2 at 10-11), Plaintiff is cautioned that if he 20 || chooses not to file an amended complaint, or if the amended complaint does not cure the 21 || pleading deficiencies, his claims may be dismissed with prejudice and without further leave 22 amend. 23 IT IS SO ORDERED. 24 ||Dated: December 2, 2025 Fe Le?

L > 29 HON. RUTH BERMUDEZ MONTENEGRO 26 UNITED STATES DISTRICT JUDGE 27
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