Tentative Rulings for April 29, 2026
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

25CECG00342 ***Sunny Le v. Amarjeet Singh*** **is continued to Wednesday, May 20, 2026, at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(03)

Tentative Ruling

Re: ***Probate Advance, LLC v. Rogers***
Case No. 25CECG05791

Hearing Date: April 29, 2026 (Dept. 403)

Motion: Plaintiff's Application for Writ of Attachment

Tentative Ruling:

To deny plaintiff's application for writ of attachment, without prejudice.

Explanation:

"[Code of Civil Procedure] Section 484.090 provides that before an attachment order is issued, the Court must find all of the following: (1) the claim upon which the attachment is based is one upon which an attachment may be issued; (2) the applicant has established 'the probable validity' of the claim upon which the attachment is based; (3) the attachment is not sought for a purpose other than the recovery on the claim upon which the request for attachment is based; and (4) the amount to be secured by the attachment is greater than zero. This is true '[u]nder the Attachment Law, "[w]hether or not the defendant appears in opposition...."' To establish the 'probable validity' of the claim, the applicant must show 'it is more likely than not' it will obtain a judgment against the defendant on its claim." (*VFS Financing, Inc. v. CHF Express, LLC* (C.D. Cal. 2009) 620 F.Supp.2d 1092, 1096, citations omitted.)

"Except as otherwise provided by statute, an attachment may be issued only in an action on a claim or claims for money, each of which is based upon a contract, express or implied, where the total amount of the claim or claims is a fixed or readily ascertainable amount not less than five hundred dollars ($500) exclusive of costs, interest, and attorney's fees." (Code Civ. Proc., § 483.010, subd. (a).) However, an attachment may not issue on a claim that is secured by any interest in real property. (Code Civ. Proc., § 483.010, subd. (b).)

Also, "If the action is against a defendant who is a natural person, an attachment may be issued only on a claim which arises out of the conduct by the defendant of a trade, business, or profession." (Code Civ. Proc., § 483.010.) In addition, under Code of Civil Procedure section 487.020, certain property is exempt from attachment. This includes "Property which is necessary for the support of a defendant who is a natural person or the family of such defendant supported in whole or in part by the defendant." (Code Civ. Proc., § 487.020, subd. (b).)

In the present case, the plaintiff seeks to attach real property located at 3715 Gansey Lane, Bakersfield, CA 93309. Plaintiff's claim is based on a contract, and the amount of the alleged debt is more than $500. Plaintiff alleges that the debt arises out of the conduct by defendant of a business, trade, or profession. However, plaintiff has not explained what the business purpose of the loan was, and there is nothing in the documents submitted with the application or complaint that show that the defendant

borrowed money for a business purpose. It seems possible that the debt was incurred for personal reasons rather than for a business purpose. Plaintiff's conclusory statement that the debt was incurred for a business purpose is not supported by the attached documents. Thus, it does not appear that plaintiff has met its burden of showing that defendant incurred the debt for a business purpose.

Also, plaintiff has not yet filed a proof of service showing that it served defendant with the notice of application and application for writ of attachment. Under Code of Civil Procedure section 484.0140, "No order or writ shall be issued under this article except after a hearing. At the times prescribed by subdivision (b) of Section 1005, the defendant shall be served with all of the following: (a) A copy of the summons and complaint. (b) A notice of application and hearing. (c) A copy of the application and of any affidavit in support of the application." (Para. breaks omitted.)

Here, the proof of service filed with the application shows that only the declaration of James Stawski was served on defendant by mail on January 8, 2026. (See proof of service attached to decl. of Stawski.) There is no evidence that the rest of the application has been served on defendant. Since there is no proof of service for the rest of the application, the court may not grant the application, as defendant has not yet been given notice of the application and an opportunity to oppose it.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 4-28-26.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Williams v. Welbe Health Sequoia Pace***
Case No. 25CECG01900

Hearing Date: April 29, 2026 (Dept. 403)

Motion: Plaintiff's Motions to Compel Initial Responses as to Defendant Welbe Health and Further Responses as to Defendant Han

Tentative Ruling:

To deny plaintiff's motions to compel initial responses from defendant Welbe Health Sequoia Pace and further responses from defendant Dr. Han. To deny plaintiff's request for sanctions against both defendants.

Explanation:

Motion to Compel Dr. Han's Further Responses: With regard to the motion to compel further responses from Dr. Han, plaintiff's motion is procedurally defective and untimely. Under Code of Civil Procedure sections 2030.300, subdivision (c), "Unless notice of this motion is given within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the propounding party and the responding party have agreed in writing, the propounding party waives any right to compel a further response to the interrogatories." (Code Civ. Proc., § 2030.300, subd. (c).) Section 2031.310 contains the same 45-day time limit for bringing a motion to compel further responses to requests for production of documents. (Code Civ. Proc., § 2031.310, subd. (c).)

The time limit to bring a motion to compel further responses is jurisdictional in the sense that the court lacks the authority to rule on the merits of a motion to compel brought after the deadline. Thus, if the party fails to bring their motion within 45 days, or such later date as the parties agree to in writing, the motion must be denied. (*Vidal Sassoon v. Superior Court* (1983) 147 Cal.App.3d 681, 685; *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.)

Here, plaintiff does not state in her declaration when Dr. Han served his responses to the interrogatories and document requests. However, according to Dr. Han's attorney, his responses were served on November 4, 2025. (Marshall decl., ¶ 4.) Defense counsel does not state how the responses were served. However, assuming they were served by regular United States mail, then plaintiff had 50 days in which to file her motions to compel, unless the parties agreed to a later date in writing. Defendant counsel states that no extension of time was granted to plaintiff. (*Id*. at ¶ 6.) Plaintiff sent one meet and confer letter on November 26, 2025, but apparently the parties did not communicate after she sent her sole meet and confer letter. (*Id*. at ¶ 5.) Thus, plaintiff had to file her motion to compel by December 24, 2025 in order to avoid waiving her right to compel further responses.

However, plaintiff did not file her motion to compel until February 3, 2026, 91 days after defendant served his responses. As a result, the motion to compel was filed 41 days past the deadline for bringing a motion to compel, and the court must deny the motion as untimely.

In addition, plaintiff also failed to comply with Fresno Superior Court Local Rule 2.1.17, which requires a party seeking to bring a motion to compel further responses to first file a pretrial discovery conference request and obtain leave of court before filing their motion to compel. (Fresno Sup. Ct. Local Rule, 2.1.17 A.) Here, plaintiff did not file a request for pretrial discovery conference regarding the disputed responses, nor did the court grant an order permitting her to file her motions.

Therefore, the court finds that plaintiff's motion is procedurally defective, and it intends to deny the motion without hearing its merits. The court will also deny plaintiff's request for sanctions against Dr. Han, as plaintiff did not prevail on her underlying motion or support her request for sanctions with any evidence.

Motion to Compel Welbe Health's Initial Responses: Plaintiff alleges that Welbe Health failed to serve any responses to her discovery requests, and therefore it should be compelled to provide responses without objections. (Code Civ. Proc., §§ 2030.290, subd. (b); 2031.300, subd. (b).) However, plaintiff has not provided any admissible evidence showing when the discovery requests were served on Welbe Health, or showing that Welbe did not respond to the requests.

Plaintiff's declaration states that, "On [date], I served on Defendants Welbe Health Sequoia Pace and Han Honshik, M.D. the following discovery…" (Williams decl., ¶ 2.) She states that "Welbe Health has provided no responses…" (*Id*. at ¶ 7.) However, she does not state when she served the discovery requests on Welbe, or the manner of service. Her declaration is also unsigned. Nor has she attached a copy of the discovery requests or a proof of service for the requests. Therefore, she has not provided any admissible evidence showing that she ever served discovery responses on Welbe Health, or shown that Welbe failed to respond to the requests.

In addition, Welbe Health's attorney has provided his declaration stating that his office never received plaintiff's discovery requests, either by regular United States mail or email. (Maxwell decl., ¶ 3.) Counsel's office staff has confirmed that no requests were received, and there is no record of requests being served on Welbe. (*Ibid*.) No discovery requests have been logged in, and no emails with discovery requests have been received. (*Ibid*.) Furthermore, defense counsel states that he has not received any meet and confer correspondence from plaintiff. (*Ibid*.) Defense counsel requested that plaintiff withdraw her motion, but she has not done so. (*Ibid*.)

Therefore, since there is no admissible evidence that plaintiff served her discovery on Welbe or that Welbe failed to respond to the requests within 30 days, and since Welbe denies ever receiving the requests, plaintiff is not entitled to an order compelling Welbe to respond. Nor is plaintiff entitled to any sanctions, as she has not prevailed on her underlying motion.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 4-28-26.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Larry Zamora v. Juan Bautista***
Superior Court Case No. 24CECG04081

Hearing Date: April 29, 2026 (Dept. 403)

Motion: By Defendant Costco Wholesale Corporation for Summary Judgment

Tentative Ruling:

To deny the motion without prejudice.

Explanation:

The plaintiff, Larry Zamora (Plaintiff), filed a complaint for damages and personal injuries based on general negligence and premises liability against defendants Costco Wholesale Corporation (Costco) and its store manager, Juan Bautista. Plaintiff alleges he was injured while attempting to walk through Costco's restaurant area to sit at the tables, when he slipped and fell on a slippery substance. Costco contends it is entitled to summary judgment because Plaintiff cannot establish the necessary elements of either breach of duty or causation.

Code of Civil Procedure section 437c, subdivision (c) provides that summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 (*Aguilar*).) If the defendant satisfies this initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.)

The trial court must "carefully scrutinize the moving party's papers and resolve all doubts regarding the existence of material, triable issues of fact in favor of the party opposing the motion." (*Connelly v. County of Fresno* (2006) 146 Cal.App.4th 29, 36.) The court must strictly construe the moving party's declarations and liberally construe the opposing party's declarations. (*Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 575 [affirming trial court's granting of employer's summary judgment motion]; *Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 839 [reversing summary judgment where evidence suggested strong possibility trier of fact would resolve issues in favor of moving defendant, but not necessarily so].) "A triable issue of fact is created when the evidence reasonably permits the trier of fact, under the applicable standard of proof, to find the purportedly contested fact in favor of the party opposing the motion." (*Loomis v. Amazon.com LLC* (2021) 63 Cal.App.5th 466, 475 [reversing summary judgment where genuine issues of material fact existed on consumer's strict products liability claim].)

Costco Fails to Satisfy Its Initial Burden

Negligence and Premises Liability

In its notice of motion, Costco moves for summary judgment based on what it characterizes as four independent grounds: (1) Plaintiff cannot prove Costco breached its duty with a dangerous condition; (2) Plaintiff cannot prove Costco had notice of a dangerous condition; (3) the burden of proof should be shifted to Plaintiff due to his factually-devoid discovery responses; and (4) Plaintiff cannot prove a dangerous condition caused his injury. In its separate statement Costco includes these four issues, following the format for a motion for summary adjudication set forth in California Rules of Court, rule 3.1350, although Costco does not move for summary adjudication.

The parties agree that "[t]he elements of a negligence claim and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury." (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158.) Plaintiff correctly notes Costco admits it has a legal duty of care, but by its motion Costco contends Plaintiff cannot establish breach of duty or proximate cause. The first issue the court must determine, after stringent review of the direct, circumstantial, and inferential evidence, is whether Costco meets its initial burden of production to show, as a matter of law, that Plaintiff cannot prove an essential element of negligence and cannot reasonably obtain the needed evidence.

Breach of Duty

To establish a defendant's breach of duty, Costco contends, and Plaintiff does not dispute, that CACI No. 1003 applies in cases involving the negligent maintenance of property. To establish that Costco breached a duty, Plaintiff must prove the following three requirements:

> [*Name of defendant*] was negligent in the use or maintenance of the property if: [¶] 1. A condition on the property created an unreasonable risk of harm; [¶] 2. [*Name of defendant*] knew or, through the exercise of reasonable care, should have known about it; and [¶] 3. [*Name of defendant*] failed to repair the condition, protect against harm from the condition, or give adequate warning of the condition.

(CACI No. 1003, rev. Oct. 2008.) Costco correctly states if Plaintiff cannot prove any one of these requirements, he cannot establish negligence. Costco contends Plaintiff has no evidence to establish the first requirement of an unsafe condition, nor can he satisfy the second requirement that Costco knew, or should have known, of the danger.

Dangerous Condition

To support its position that Plaintiff lacks evidence of an unsafe condition, Costco cites *Zito v. Weitz* (1944) 62 Cal.App.2d 161 (*Zito*),[1] where the plaintiff sued the defendant

[1] Costco miscites *Zito*'s date as 1994.

after striking his head on a lowered fire-escape ladder at the defendant's apartment house. In *Zito*, the trial court correctly granted the defendant's motion for nonsuit after the plaintiff had an opportunity to present his evidence at trial, finding:

> No defect in the ladder or the fire-escape was proved, but on the contrary it was shown in evidence that they were in good order at the time of the accident and were of a proper design. There was nothing in the evidence to charge defendant with notice, either actual or constructive, that the ladder was down at the time of the accident.

(Id. at p. 163.)

Costco suggests Plaintiff's "case has an even more glaring lack of evidence than was true in *Zito* . . . here, Plaintiff lacks sufficient evidence that the substance he encountered was in fact dangerous at all." (Memo., p. 8:6-9.) Citing Fact No. 6, Costco argues "Plaintiff has alleged that an unknown substance was on the floor of the Costco and responsible for his fall." (Memo., p. 8:9-10.) Costco mischaracterizes Plaintiff's complaint. In the paragraphs cited by Costco to support its Fact No. 6, Plaintiff alleged the substance was slippery, not "unknown":

> 10. On or about June 1, 2024, Plaintiff went to the premises operated by Defendants, when [he] slipped and fell on a slippery substance, causing him to fall and sustain significant personal injuries. [¶] 11. Plaintiff was attempting to walk through the restaurant area to sit at the tables, when he slipped and fell.

(Comp., ¶¶ 10, 11.)

Costco then argues:

> Plaintiff failed to provide any meaningful description of the characteristics of this mystery substance, beyond alleging that he slipped. (SSUMF 5, 6, 8.) This disconnect should arise suspicion on the part of the Court that Plaintiff has any idea what the substance he reportedly encountered in fact was, and what its characteristics were in terms of posing a safety risk. No reasonable jury can find that the substance was dangerous with such vague allegations regarding the nature of the substance. [¶] Furthermore, Plaintiff is completely ignorant of the quantity of the substance on the floor—he acknowledged that he never saw the substance before he fell, and never looked at it afterwards either. (SSUMF Nos. 5, 8.) Therefore, Plaintiff can provide no evidence of the amount of mystery substance thathe encountered. This lack of evidence also prevents Plaintiff from establishing any dangerous condition on the floor prior to his fall.

(Memo., p. 8:10-20.)

Costco's Fact No. 8 provides "Plaintiff does not remember looking over to discover what it was that caused him to fall after he fell." To support this fact, Costco cites the following excerpt from Plaintiff's deposition testimony:

Q. Okay. After you fell, did you ever look back to try to see what caused you to fall?
A. No, I don't remember that, sir.

(Zamora depo., p. 36:12-14, Costco's Compendium of Evidence [COE], ex. 1.)

A stringent review of the direct, circumstantial, and inferential evidence in this case shows Costco completely ignores some of the evidence it presents to the court in its own moving papers. For example, in his deposition, Plaintiff described a cooler that dispensed bottled water (sometimes referred to as a water cooler or a water bottle machine) that Plaintiff contends had fluid underneath it before his fall. Costco submits photographs of the water cooler with paper towels stuffed underneath it, which Costco attaches to its COE as exhibit B to the declaration of Mr. Rodriguez. (See COE, p. 45.) Costco also submits the following excerpt from the transcript of the Zamora deposition, wherein Plaintiff described the wet, "old," water-stained paper towels that "looked like they had been collecting water for a while" underneath the water cooler that he had seen as he walked by the water cooler to get his sodas:

BY MR. ENABNIT:
Q. So, Mr. Zamora -
A. Mm-hmm.
Q. -- I was looking at some photographs that your attorney produced in the discovery process
A. Mm-hmm.
Q. -- and unfortunately, my computer is acting up. I'm not able to print it out right now. But I'm just going to do this, Tyler [Kobylinski], if you want to just kind of look to what I'm showing him. I'm showing you a -- let me kind of stand over your shoulder here. Okay. So, this is a copy of a photograph that your attorney produced, I think it's -- it's page, just for the record, 115 out of page 121 of the document production. It's not a great copy, because my computer's kind of fading out a bit. But do you see this photograph that shows we'll just call it a water will cooler --
A. Okay. Water.
Q. Do you see that photo?
A. Uh-huh.
Q. Do you think -- have you ever seen that photo before?
A. Yeah, I got one.
Q. Does it look like a photo that your son took?
A. Mm-hmm.
Q. You have to say yes.
A. Yes.
Q. And can you see that there's what appears to be like paper towels kind of stuck right under that water

cooler?
A. Uh-huh.
Q. Do you remember on the day of the accident actually seeing this water cooler and with towels underneath it, paper towels?
A. Yeah, because I passed right here to go get soda, and I see the towels wet.
Q. Do you remember seeing that on the day of the accident?
A. Yes.
Q. Right after you fell?
A. Yes.
Q. Okay. So, this -- this little water cooler area is right next to the soda dispenser.
A. Yeah, more this side. You see the mat right there.
Q. Yeah. Okay. And is it your testimony that after your -- after you fell, you were able to see this water cooler, and it had paper towels under it?
A. Uh-huh.
Q. Is that what you saw?
A. Uh-uh.
Q. You have to say yes.
A. Oh, yes.
Q. So, this photograph that's a little bit unclear to me, you can see the paper towels under the water cooler. Do you remember if you also saw that day water right at the base or the bottom of that water cooler?
A. *These right here are different*, I have.
Q. This is -- you have more photographs?
A. There's all -- see the tiles, it's all wet.
Q. Okay.
A. All right here, a bunch of them right here wet.
Q. Right by the water cooler.
A. This more down here, too, all right here.
Q. You're saying you have photos --
A. Yeah.
Q. -- that actually show the wetness on the ground?
A. Right here.
Q. By the water cooler?
A. Yes.
Q. Not just the towels, but you can see the water?
A. The water with the towels.
Q. Okay.
A. *Like been old, stained, you know how old, been there.*
Q. What do you mean?
A. Like paper towels.
Q. Yeah?

A. Like damp, you could see like a -- like rod.
Q. The paper towels were damp?
A. Yeah. Old, like old stain on it.
Q. Okay.
A. Like water.
Q. Looked like they had been collecting water for a while?
A. Yeah.

(Zamora depo., pp. 44:14-47:25, italics added [COE pp. 15-18].)

On page 19 of its 20-page memorandum in support of its motion, Costco finally addresses Plaintiff's theory that he fell on a liquid, probably water, that had been present for a period of time under the water cooler, based on the presence of old, damp, stained, paper towels stuffed under the water cooler that Plaintiff had personally observed as he passed by the water cooler. Rather than resolving all doubt's in Plaintiff's favor, Costco characterizes Plaintiff's theory as follows:

> Plaintiff's theory of the case seems to be that because he fell, there must have been some liquid emanating onto the floor from the water bottle machine that he was next to when he fell. However, the facts render this theory implausible. The machine he fell next to does not dispense liquid—it dispensed plastic bottles of water. Simply put, no water line ran to this machine, negating any possibility that there was a leak from it. (SSUMF No. 28.) The only way this machine would have leaked any type of liquid would be if a water bottle broke inside of it, if the refrigeration mechanism inside of it failed, or if a condensation mechanism inside of it failed. (SSUMF No. 29.) Costco has no records of any such malfunction from this machine at or around the time of Plaintiff's fall on June 1, 2024. (SSUMF No. 30.) The Costco Employee who examined the area within 30 seconds observed no broken water bottles in the vicinity either. (SSUMF No. 15.)
>
> The only other plausible explanation for a mystery liquid on the floor where Plaintiff fell would be that it originated from the soda machines, which do distribute liquid and ice. However, Costco had perforated rubber mats in place in front of this machine at the time of the accident ([SSUMF No. 31), which would have provided traction to Plaintiff's feet even if something fell to the floor from these machines, and also would have prevented stray liquid or ice from migrating to the area in front of the water bottle machine.
>
> In short, Plaintiff's theory here is based entirely on his speculation and conjecture that because he fell, there must have been a dangerous condition that caused him to fall. But plaintiff has no evidence establishing that he did, in fact, fall *due to the mystery substance*. Accordingly, pursuant to *Peralta v. The Vons Companies, Inc.* [2018] 24 Cal.App.5th 1030 [*Peralta*], Costco is entitled to summary judgment.

(Memo., p. 19:1-21, italics original.)

In *Peralta*, a woman wearing three- to four-inch stiletto heels slipped and fell at a Von's grocery store. The woman thought her foot slid on "some sort of oil or grease." In the customer accident form "she wrote that she 'felt the floor was slippery' but did not know if there was anything on the floor." (*Peralta*, *supra*, 24 Cal.App.5th at p. 1032.) After the fall, a Von's employee searched the floor and found nothing except crumbs from the pastries the woman had been carrying. The woman "unequivocally stated that she did not see anything on the floor prior to or after her fall[,]" and the employee "who immediately responded to the scene of the fall, inspected the surrounding area and did not find any substances on the floor other than the crumbs[.]" (*Id.* at p. 1035.)

Here, Costco submits the deposition testimony of its manager, Mark Rodriguez, wherein Mr. Rodriguez states another Costco employee was already at the scene when Mr. Rodriguez arrived. There were paper towels in front of the water cooler on the floor when Mr. Rodriguez arrived. He admitted the paper towels "were either there or when I got there someone was already trying to clean up the spill and I told them to stop. I said, 'Stop. Let me take pictures first.'" (Rodriguez depo., p. 15:10-15 [COE, p. 27].) In his follow-up deposition testimony, Mr. Rodriguez said he did not know if the paper towels were there before Plaintiff "fell or if somebody left them there because they were cleaning up and I told them to stop, I don't know what the answer is." (*Id.*, at p. 15:21-24.) Plaintiff contends a reasonable trier of fact could conclude, from the presence of old, water-soaked and stained paper towels, that water or another substance had been collecting under the water cooler for a while, which created an unsafe condition that could cause a patron to fall.

In its reply, Costco contends this case is analogous to *Buehler v. Alpha Beta Co.* (1990) 224 Cal.App.3d 729 (*Buehler*), a case where the plaintiff, an 84-year-old woman, carrying several items in her hands and not using a cart, slipped and fell in the defendant's store. The plaintiff did not know what she slipped on, but her theory was that the floor was improperly waxed. (*Id.* at p. 733.) There was an eyewitness to the fall who stated that she did not see why the plaintiff fell and, furthermore, she did not think the floor was slippery and did not observe any slippery substances on the floor. (*Id.* at p. 734.) In her deposition, the plaintiff testified that she did not notice any liquid or solid debris on the floor before or after she fell. Based on those facts, the appellate court stated '[c]onjecture that the floor might have been too slippery at the location where appellant happened to fall is mere speculation which is legally insufficient to defeat a summary judgment." The plaintiff in *Buehler* had no facts, either directly or indirectly of any circumstances from which negligence might be inferred. Therefore, the appellate court affirmed the trial court's decision to grant the motion for summary judgment. (As an independent reason to grant the motion, the trial court also noted the plaintiff failed to file a separate statement.) (*Ibid.*)

Here, the court finds the facts submitted by Costco differ substantially from *Buehler* and *Peralta*. Resolving all doubts about the existence of material, triable issues of fact in Plaintiff's favor as the party opposing the motion, a jury could infer that water (or another substance) had been present under or near the water cooler for a period of time before Plaintiff's fall, which caused him to slip when he stepped on the fluid. Viewed in its best light, this evidence supports a reasonable inference that Plaintiff can prove the condition of the floor near the water cooler on Costco's premises created a dangerous condition.

Therefore, the court finds Costco fails to show Plaintiff lacks evidence of an unsafe condition as a matter of law.

Actual or Constructive Notice of Dangerous Condition

Next, the court must consider whether Costco meets its burden to show Plaintiff cannot prove the second requirement of duty to show Costco knew or, through the exercise of reasonable care, should have known about the unsafe condition.

Costco cites *Moore v. Wal-Mart Stores, Inc.* (2003) 111 Cal.App.4th 472, where the court explained the relevant inquiry as follows:

> A store owner exercises ordinary care by making reasonable inspections of the portions of the premises open to customers. The care required is commensurate with the risks involved. Thus, for example, if the owner operates a self-service grocery store, where customers are invited to inspect, remove, and replace goods on shelves, the exercise of ordinary care may require the owner to take greater precautions and make more frequent inspections than would otherwise be needed. . . . However, the basic principle to be followed in all these situations is that the owner must use the care required of a reasonably prudent person acting under the same circumstances.

(*Id.* at p. 476, citing *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205, internal quotation marks and citations omitted [trial court erred by omitting notice requirement from jury instructions].) Thus, the question here is whether Costco used the care required of a reasonably prudent person acting under the same circumstances.

Costco's Fact No. 19 states: "Costco has no record showing any Costco employee had knowledge of any spill or dangerous condition in the area where Plaintiff fell prior to his fall." To support this fact, Costco relies on Mr. Rodriguez's declaration, wherein he states "As a Manager, I would necessarily be aware of any such evidence in the possession of Costco if it existed." (Rodriguez decl., p. 3:15-16.) Yet Mr. Rodriguez's deposition testimony shows Mr. Rodriguez had the opportunity to ask the Costco employee who was already cleaning the spill when Mr. Rodriguez arrived about 30 seconds later about the paper towels under the cooler, but he did not do so, nor did he know the name of the employee or whether he was male or female.

From the fact that Costco has no record of any employee with knowledge of the problem, coupled with Plaintiff's testimony about the old, water-soaked, stained wet paper towels he saw under the water cooler, a reasonable trier of fact could disbelieve Mr. Rodriguez's statement that he "necessarily" would know about all evidence Costco possesses, and instead infer that Costco had no records because it deliberately ignored the problem or it kept poor records. Unlike the cases upon which it relies, Costco has no affirmative evidence that the water cooler was in good working order or that an employee examined the area where Plaintiff slipped to determine why the old, stained, paper towels had been placed under the water cooler.

As Plaintiff contends, the evidence can support an inference of not only constructive notice, but also actual notice:

> Here, Plaintiff contends that the evidence suggests, taken in the light most favorable to Plaintiff and with all reasonable inferences drawn from that evidence, that [Costco's] employees had been made aware of the very condition that caused Plaintiff to fall and suffer injuries. Plaintiff's fall was caused by fluid leaking out of the water cooler right next to the site of his fall. Prior to the fall, paper towels had been stuffed underneath the water cooler in an apparent attempt to stop and absorb the flow of water from leaking onto the floor. [Resp. SSUMF No. 11]. Mr. Rodriguez even admitted that paper towels were there when he arrived on the scene 30 seconds after the fall and he didn't know when they had gotten there. [Resp. SSUMF No. 11]. It is reasonabl[y] possible and inferable that, if only 30 seconds had passed between Plaintiff falling and Mr. Rodriguez arriving and securing the scene, that the paper towels had already been present.
>
> If paper towels were already present under the water cooler prior to Plaintiff's fall, it is reasonable to deduce that [Costco's] employees placed them there in an effort to soak up the water leaking from the water cooler unit. These actions are indicative that they were aware of the danger posed and that Plaintiff ultimately suffered as a result of. The evidence, taken in the light most favorable to Plaintiff and with all inferences reasonably made from it, supports a finding of actual notice and [Costco's] arguments to the contrary should be rejected.

(Opp., pp. 12:24-13:12.)

The court finds the evidence Costco itself has submitted reasonably permits the trier of fact to find Costco had notice of a dangerous condition before Plaintiff's fall. Therefore, Costco fails to meet its initial burden to show Plaintiff cannot establish the notice requirement. Although Costco fails to meet its initial burden to show Plaintiff cannot establish the necessary element of breach of duty, Costco will prevail if it shows Plaintiff cannot prove causation as a matter of law.

Causation

Costco contends Plaintiff cannot prove the essential element of causation. In general, the doctrine res ipsa loquitur does not apply in the ordinary slip-and- fall case. The plaintiff must provide evidence of a dangerous condition. In *Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820 the California Supreme Court explained the general rule that res ipsa loquitur does not ordinarily apply as follows: "something slippery on the floor affords no res ipsa case against the owner of the premises, unless it is shown to have been there long enough so that he should have discovered and removed it." (*Id.,* at p. 826, citation and internal quotation marks omitted.) But in *Ortega v. Kmart Corp., supra*, 26 Cal.4th 1200, the high court explained a plaintiff need only show that it is more likely than not, that the defendant's conduct was a factual cause of the plaintiff's injury:

> On the issue of the fact of causation, as on other issues essential to the cause of action for negligence, the plaintiff, in general, has the burden of proof. The plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant. In the context of a business owner's liability to a customer or invitee, speculation and conjecture with respect to how long a dangerous condition has existed are insufficient to satisfy a plaintiff's burden. In other words, proof of negligence in the air, so to speak, will not do.

(*Id.* at pp. 1205–1206, citations and internal quotation marks omitted.)

Thus, to prove causation, a plaintiff cannot rely on mere speculation or conjecture, but causation "may be predicated on an inference, if reasonable, and . . . the question [of causation] is generally one of fact for the jury." (*Newman v. San Mateo County* (1953) 121 Cal.App.2d 825, 829; *Smith v. Lockheed Propulsion Co.* (1967) 247 Cal.App.2d 774, 780 ['Although a finding of causation may not be based on mere speculation or conjecture, such finding may be predicated on reasonable inferences drawn from circumstantial evidence"].)

Relying on *Peralta, supra*, Costco contends Plaintiff cannot establish causation. The court has distinguished the cases where the plaintiff had no idea what caused the fall, and a subsequent and full investigation revealed no dangerous condition. Unlike the facts in the cases upon which Costco relies, Costco provides no evidence that it carefully investigated the floor after the fall; nor does it provide affirmative evidence that the water cooler had been inspected by an expert and was in good working order at the time of the fall. It relies solely on its manager's evidence that if a dangerous condition had existed, he '"necessarily" would have been aware of it. But the manager failed to interview or document the name of the employee first on the scene to determine when and why the paper towels were placed under the water cooler.

Here, Plaintiff has presented evidence showing a plausible connection between his fall and the fluid he encountered near the water cooler before his fall:

> Plaintiff was a patron and invitee at Defendant's Costco Wholesale Warehouse and was in the food court doing exactly what any reasonable property owner would expect, getting food and drinks. Despite operating a food service area, Defendant, whether knowingly or not, allowed its water bottle dispenser and cooler to be leaking fluid at the base. This fluid was allowed to escape onto the floor in the direct [foot] traffic of Defendant's patrons. It is plainly apparent that a wet floor can be slippery and therefore dangerous. It is the primary reason why stores employ bright and clearly visible 'CAUTION WET FLOOR' signs when similar issues are discovered. Defendant's employees did not provide any such warning and instead simply stuffed paper towels at the base of the water cooler. This did

> not alleviate the danger and only served to prevent it from being as plainly noticeable to the general public

(Opp., p. 16:13-22.) Costco itself has presented evidence in support of its motion, which includes a photograph of the water cooler with clean paper towels underneath it, and Plaintiff's deposition testimony that the paper towels he saw were different—old, wet, and water-stained. This evidence provides a reasonable basis for the trier of fact to decide it is more likely than not that Costco's conduct was a cause in fact of Plaintiff's fall (although the trier of fact might also reach the opposite conclusion).[2]

When the moving party fails to make the initial showing, it is unnecessary to review the opposing party's evidence and the court must deny the motion. (*Aguilar, supra,* 25 Cal.4th at p. 849-850; *Hawkins v. Wilton* (2006) 144 Cal.App.4th 936, 940 [defendant's motion for summary judgment should have been denied without looking at opposing evidence because defendant failed to refute tenable pleaded theories].) Here, the burden here does not shift to Plaintiff to raise a triable issue of fact and the court may stop its analysis here. Therefore, the court denies Costco's motion for summary judgment.

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[2] Costco asks the court to shift Costco's initial burden of proof due to Plaintiff's alleged "deficient discovery responses." To prevail on summary judgment, a defendant must show not only that a plaintiff has no evidence on an essential element, but "the defendant must also show that the plaintiff *cannot reasonably obtain* needed evidence[.]" (*Gaggero v. Yura* (2003) 108 Cal.App.4th 884, 889, italics original [trial court erred in granting summary judgment in defendant's favor where defendant failed to present evidence to show plaintiff could not reasonably obtain the needed evidence].)

Plaintiff cites *Ganoe v. Metalclad Insulation Corp.* (2014) 227 Cal.App.4th 1577 (Ganoe), where the court summarized a defendant's burden to prevail on summary judgment based on factually-devoid discovery responses as follows:

> "[A] defendant moving for summary judgment [must] present evidence, and not simply point out that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." ([*Aguilar, supra,* 25 Cal. 5th]at p. 854, fn. omitted.) Circumstantial evidence supporting a defendant's summary judgment motion "can consist of 'factually devoid' discovery responses from which an absence of evidence can be inferred," but "the burden should not shift without stringent review of the direct, circumstantial and inferential evidence." (*Scheiding* [*v. Dinwiddie Construction Co.* (1999)], 69 Cal.App.4th [64, 83.) Once the defendant has met that burden, the burden shifts to the plaintiff to make a prima facie showing that a triable issue of material fact exists. ([*Aguilar*], *supra,* 25 Cal.4th at p. 850.)

(*Ganoe v. Metalclad Insulation Corp., supra,* 227 Cal.App.4th at p. 1582.) Here, Plaintiff points out that Costco relies on a single response to an interrogatory propounded at the very outset of discovery, and attempts to portray this single response as conclusively establishing that Plaintiff cannot prove a dangerous condition. The court finds Plaintiff's discovery responses are not deficient to the degree required to shift the burden of proof.

Evidentiary Objections

The court declines to rule on the parties' evidentiary objections because none are directed to evidence that is material to the disposition of Costco's motion. (Code Civ. Proc., § 437c, subd. (q) [court need rule only on objections court deems material to its disposition].) Furthermore, the court overrules all evidentiary objections by Plaintiff because the format is defective. (Plaintiff fails to number consecutively each objection, as required by California Rules of Court, rule 3.1354(b).).

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 4-28-26.
(Judge's initials)

(41)

Tentative Ruling

Re: ***Izetta Thompson v. Fresno Community Hospital and Medical Center***
Superior Court Case No. 24CECG03912

Hearing Date: April 29, 2026 (Dept. 403)

Motion: By Defendant Fresno Community Hospital and Medical Center dba Clovis Community Medical Center (CCMC) for Summary Judgment or Summary Adjudication

Tentative Ruling:

To grant defendant's motion for summary judgment. Defendant is directed to submit to this court, within five days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

This litigation addresses the wrongful death of Diana Bucher (decedent), brought by decedent's self-represented daughter, Izetta Thompson (Plaintiff). Plaintiff alleges decedent's passing on April 8, 2022, was the result of negligent medical care provided by defendant Fresno Community Hospital and Medical Center dba Clovis Community Medical Center (CCMC, erroneously sued as Clovis Community Regional Medical Center). CCMC now moves for summary judgment or summary adjudication, contending: (1) the treatment rendered to decedent met the applicable standard of care; (2) no act or omission caused or contributed to decedent's death; and (3) both causes of action of the operative fourth amended complaint are time-barred by the applicable statute of limitations.

Allegations of the Operative Complaint

Plaintiff's fourth amended complaint has two causes of action against CCMC. In the first cause of action for negligence and malpractice, Plaintiff alleges CCMC negligently failed to exercise the proper degree of knowledge, skill, and competence in caring for decedent, which led to her passing away on April 8, 2022. In the second cause of action, Plaintiff alleges CCMC violated the Emergency Medical Treatment and Active Labor Act (EMTALA), which was enacted to prevent hospitals from "dumping" patients lacking medical insurance.

Law Governing Summary Judgment

CCMC now moves for summary judgment. A trial court shall grant summary judgment if there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., §437c, subd. (c).) In determining a motion for summary judgment, the court views the evidence in the light most favorable

to the opposing party, liberally construing the opposing party's evidence and strictly scrutinizing the moving party's evidence. The court does not weigh evidence or inferences. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 856 (*Aguilar*).)

A defendant moving for summary judgment must show either that the plaintiff cannot establish one or more elements of a cause of action or that it has a complete defense. (*Aguilar*, *supra*, 25 Cal.4th at p. 856; Code Civ. Proc., § 437c, subd. (p)(2).) If the defendant makes such a showing, the burden shifts to the plaintiff to present evidence to show there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2).) There is a triable issue if the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the plaintiff. (*Aguilar*, *supra*, 25 Cal.4th at p. 850.) Doubts as to whether there is a triable issue of fact are resolved in favor of the opposing party. (*Ingham v. Luxor Cab Co.* (2001) 93 Cal.App.4th 1045, 1049.)

CCMC Meets Its Initial Burden of Proof

Statute of Limitations

CCMC moves for summary judgment on the grounds that this action was untimely filed because Plaintiff's two causes of action are barred by the applicable statute of limitations. For her medical malpractice claim, the limitations period is "one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury[.]" (Code Civ. Proc., § 340.5.) The one-year period is based on the knowledge of facts rather than the discovery of a legal theory. "If plaintiff believes because of injuries she has suffered that someone has done something wrong, such a fact is sufficient to alert a plaintiff 'to the necessity for investigation and pursuit of her remedies.' (*Sanchez v. South Hoover Hospital*, [1976] 18 Cal.3d [93], 102; [citation].)" (*Graham v. Hansen* (1982) 128 Cal.App.3d 965, 972–973 [in medical malpractice action affirming trial court's granting of motion for summary judgment based on plaintiff's failure to file action within applicable one-year limitation period].)

Here, decedent died on April 8, 2022 (Fact No. 16), and Plaintiff filed her original complaint on September 11, 2024 (Fact No. 19). "In 2022, and within months of the death of [decedent] on April 8, 2022, Plaintiff contacted CCMC to express her concern/belief that [decedent's] death was the result of neglect by her doctors." (Fact No. 17.) Plaintiff also made a demand for $1.1 million in 2022. (Fact No. 18.) Thus, CCMC meets its burden to show Plaintiff filed her original complaint long after the applicable one-year statute of limitation expired. Therefore, CCMC is entitled to summary adjudication on the first cause of action because it is time-barred.

For Plaintiff's second cause of action, a violation of EMTALA must be brought within two years of the date of the alleged violation. (42 U.S.C. § 1395dd(d)(2)(C).) Plaintiff alleges decedent was a patient in CCMC's emergency room on March 25-26, 2022. (Fact No. 42.) The deadline for Plaintiff to file her EMTALA complaint was March 26, 2024, at the latest, which Plaintiff failed to do. Summary judgment is appropriate when the plaintiff institutes an action for an alleged EMTALA violation beyond the two-year period. Therefore, CCMC is entitled to summary adjudication on the second cause of action because it is also time-barred. (*Monrouzeau v. Asociacion del Maestro* (D.P.R. 2005) 354 F.Supp.2d 115, 119 [granting summary judgment where plaintiff filed EMTALA action

beyond two-year period, and noting under strict construction of federal statute of limitations legislation, no tolling or other exceptions allowed unless unequivocally authorized by federal law].)

Thus, CCMC meets its burden to make a prima facie showing that there is no triable issue of material fact on the issue of the statute of limitations and it is entitled to summary judgment as a matter of law on the operative fourth amended complaint. The burden then shifts to Plaintiff to raise a triable issue of fact on the statute of limitations.[3]

Plaintiff Fails to Raise a Triable Issue of Material Fact

A party opposing summary judgment must present admissible evidence, including "declarations, admissions, answers to interrogatories, deposition, and matters of which judicial notice" must or may "be taken." (*Aguilar, supra,* 25 Cal.4th at p. 843, quoting Code Civ. Proc., § 437c, subd. (b).) By filing no opposition, Plaintiff fails to do so.

Request for Judicial Notice

The court grants CCMC's request for judicial notice of the pleadings and proofs of service specified in its request.

Conclusion

The court finds CCMC meets its burden to show Plaintiff's two causes of action against CCMC are time-barred. The burden then shifts to Plaintiff to raise a triable issue of material fact, which she fails to do. Therefore, the court grants CCMC's motion for summary judgment.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: lmg on 4-28-26.
(Judge's initials) (Date)

[3] Because Plaintiff's causes of action are completely barred by the applicable the statute of limitations, the court need not address CCMC's additional grounds for summary judgment.