

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 4 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ANA ESPERIAS,

Plaintiff - Appellant,

v.

C.R. BARD, INC., a foreign corporation;
BARD PERIPHERAL VASCULAR, INC.,
an Arizona corporation,

Defendants - Appellees,

and

DOES, 1 through 10 inclusive,

Defendant.

No. 25-2701

D.C. No.

2:23-cv-07857-MWF-MAA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Argued and Submitted June 25, 2026
Pasadena, California

Before: FRIEDLAND, FORREST, and TUNG, Circuit Judges.
Dissent by Judge TUNG,

In this products liability action, Plaintiff Ana Esperias appeals the district

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

court’s order granting summary judgment to Defendants C.R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively, “Bard”). Esperias alleges that she was injured by a medical device that was designed, manufactured, and sold by Bard known as an inferior vena cava (“IVC”) filter. The district court concluded that Esperias’s claims were barred by the applicable two-year statute of limitations. Cal. Civ. Proc. Code § 335.1. We have jurisdiction under 28 U.S.C. § 1291. Reviewing de novo, *see AliveCor, Inc. v. Apple Inc.*, 163 F.4th 1259, 1264 (9th Cir. 2026), we affirm.

Under California law, the general rule is that the limitations period begins when the plaintiff has “a *suspicion* of wrongdoing, coupled with a knowledge of the harm and its cause.” *Jolly v. Eli Lilly & Co.*, 44 Cal. 3d 1103, 1112 (1988). “An important exception to the general rule of accrual is the discovery rule, which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.” *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 807 (2005) (citation modified). Accordingly, if a plaintiff has no reason to suspect “wrongdoing,” the limitations period will be tolled until she discovers or has reason to discover it. *Jolly*, 44 Cal. 3d at 1112.

“Wrongdoing,” however, has its “lay” meaning—it does not refer to conduct that is wrong under the law. *Id.* at 1110 n.7. In other words, a suspicion of “wrongdoing” means a suspicion that “someone has done something wrong” to

cause one’s injury, as opposed to a natural or other innocent cause. *Id.* at 1110.

The corollary of that principle is that a plaintiff’s failure to recognize that the defendant’s conduct was *legally* wrong does not toll the limitations period. *See id.* at 1113 (“[I]t is the discovery of facts, not their legal significance, that starts the statute [of limitations].”).

Here, Esperias filed suit in 2023, alleging that her IVC filter had “migrated from its original position” and that the filter’s tines had “perforated” her IVC and other organs. Yet Esperias had notice of that injury by 2020 at the latest, when one of her doctors informed her that her filter was “malposition[ed]” and that its “tines [were] protruding from her IVC and going into/near” her other organs. Because Esperias knew in 2020 of the precise injury she now alleges in her Complaint, the limitations period commenced at that time, making her claims untimely.

We are unpersuaded by Esperias’s contrary arguments. Esperias first argues that, under the discovery rule, the limitations period did not begin to run in 2020 because she lacked knowledge of Bard’s “wrongdoing.” On Esperias’s telling, she did not discover that Bard had created a “defective” product until late 2022, when she learned from an “IVC litigation commercial” that other plaintiffs were suing Bard for the “same” injury. But under California law, a suspicion of “wrongful” conduct does not mean a suspicion that the defendant has engaged in *unlawful* conduct—it refers to a suspicion that one’s personal injury was caused by

“someone . . . do[ing] something wrong.” *Id.* at 1110. When Esperias learned of her injury in 2020, it should have been apparent to her that Bard’s conduct in manufacturing the filter was a potential cause, because the filter created by Bard was the problem. There was no evidence at the time that the filter’s malposition was caused by anyone else or that some other innocent cause was at play. Esperias’s argument is essentially that she did not realize that Bard’s conduct may have been unlawful, but her failure to recognize the “legal significance” of the filter’s alleged defect did not toll the statute of limitations under the discovery rule. *Id.* at 1113.

Esperias also suggests that her doctor’s statements in 2020 did not place her on notice of her injury because her doctor only “indicate[d] possible future harm, not an existing injury or malfunction.” That argument also fails. Esperias’s doctor informed her of the filter’s malposition and that its tines had perforated her IVC. Esperias does not allege that the condition of her filter has changed in the meantime, so if she did not have an existing injury back then, she remains uninjured now. Alternatively, to the extent Esperias’s theory is that the risk of future harm is itself an injury, she was concededly aware of that injury in 2020.

Next, Esperias argues that she lacked “notice of injury” in 2020 because during a separate appointment, a specialist informed her that her filter’s malfunction was “not . . . uncommon” and that she was “asymptomatic.” But

whether an injury is common has nothing to do with the statute of limitations. And even if we were to construe that doctor's statement as informing her that she was not injured at all, our conclusion would not change, because the statute of limitations does not require the plaintiff to be certain of her injury. Under California law, "plaintiffs are charged with presumptive knowledge of an injury if they have information of circumstances to put them *on inquiry* or if they have *the opportunity to obtain knowledge* from sources open to their investigation." *Fox*, 35 Cal. 4th at 807-08 (citation modified). Receiving conflicting information from different doctors is simply a reason to inquire further. *See Norgart v. Upjohn Co.*, 21 Cal. 4th 383, 398 (1999) (holding that a plaintiff is deemed to have inquiry notice of an injury "when he has reason at least to suspect a factual basis for [it]").

Finally, at oral argument, Esperias suggested that she had been experiencing gastrointestinal issues, which she did not realize were caused by her malpositioned filter until 2022. That argument is unavailing for several reasons. Esperias did not allege any gastrointestinal injuries in her complaint, nor did she advance any argument about it in her opening brief. *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 782 n.9 (9th Cir. 2022) ("Normally, arguments not raised in an opening brief are forfeited."). And there is no evidence in the summary judgment

record that the filter was a cause of her gastrointestinal symptoms.¹

AFFIRMED.

¹ In addition to arguing that Esperias forfeited the argument that her gastrointestinal injury was a distinct injury with its own limitations period, Bard argues that her claims regarding that injury would still be untimely under *Soliman v. Philip Morris Inc.*, 311 F.3d 966 (9th Cir. 2002). There, we held that when a plaintiff alleges “a number of significant injuries” from a product, “[t]he injury he should have known about first is the one that starts the statute of limitations.” *Id.* at 972. The California Supreme Court has since undercut that holding, however, explaining that, in such a situation, “when a later-discovered disease is separate and distinct from an earlier-discovered disease, the earlier disease does not trigger the statute of limitations for a lawsuit based on the later disease.” *Poosh v. Philip Morris USA, Inc.*, 51 Cal. 4th 788, 792 (2011). To the extent our circuit’s prior cases are inconsistent with *Poosh*, we do not follow them. *See Miller v. Gammie*, 335 F.3d 889, 893, 900 (9th Cir. 2003) (en banc) (explaining that a three-judge panel can depart from circuit precedent on a state law issue if an intervening state supreme court opinion is “clearly irreconcilable” with that precedent).

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Esperias v. C.R. Bard, Case No. 25-2701MOLLY C. DWYER, CLERK
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TUNG, Circuit Judge, dissenting:

What a difference a panel composition can make. Just last year, in a nearly identical case, we *reversed* summary judgment for the same defendant by the same district court on the same issue; today, in a bout of whiplash, we *affirm*. While one plaintiff (Craig Bennett) gets to proceed with the case against the defendant company for the sale of a defective medical device, another plaintiff (Ana Esperias) does not.

Mr. Bennett, we held, raised a genuine issue of material fact as to whether he was put on “inquiry notice” of the defect to trigger the statute of limitations; he was told that the product may be associated with perforations and his doctors were aware that the product was causing various medical problems, but we held that viewing the facts in the light most favorable to Mr. Bennett, the record supported a reasonable inference that Mr. Bennett could have believed that those symptoms were “the result of potential complications that were *not caused by a design defect*” but by some other, non-wrongful explanation. *Bennett v. C.R. Bard, Inc.*, No. 24-2471, 2025 WL 1132825, at *1–2 (Apr. 17, 2025) (emphasis added).

Ms. Esperias appears to have more sympathetic facts, yet today we bar her from proceeding *as a matter of law*, while allowing Mr. Bennett to prove his case before a jury. I do not quibble with the majority’s articulation of the legal standard: When a party suspects *wrongdoing* by the company—whether he suspects the

wrongdoing violated some law or not—the party would be on notice, triggering the statute of limitations. The question here is whether Ms. Esperias should be deemed, as a matter of law, to have been on notice before her statute of limitations ran.

Just like our earlier decision in *Bennett*, the answer should have been no. It is true that one doctor (Dr. Tobey) expressed to Ms. Esperias a concern about the “malposition” of the product “and potential for harm or injury.” 2–ER–304. The majority says that Ms. Esperias was on inquiry notice then. But it is also true that Dr. Tobey claimed to lack the requisite expertise and so referred Ms. Esperias to a “specialist” in filters. 2–ER–263–64. That specialist (Dr. Farley) offered Ms. Esperias a very different diagnosis: according to Dr. Farley, what happened to Ms. Esperias was “not an uncommon event,” she was “asymptomatic,” and the product was “approved for lifetime placement and removal [was] not required.” 2–ER–310. In light of this, a jury could conclude that Ms. Esperias was given reassurance from a specialist that she needn’t worry about the mispositioning of the filter and that there was no wrongdoing. At least, the issue seems close enough, such that we should not have decided the case against Ms. Esperias *summarily*.

For this reason, I would have reversed the district court’s grant of summary judgment, just as we had done in *Bennett*. Of course, the majority is not *bound* by *Bennett*, since the case was not published. But *Bennett* was correctly decided, and

following it here would have avoided the starkly disparate treatment we now give to two different plaintiffs in nearly identical circumstances. I respectfully dissent.