

The demurrer as to the first and second causes of action to the Amended Complaint filed July 27, 2023 is sustained with leave to amend. The listed third cause of action labeled “Equitable Tolling” is not a separate cause of action but an equitable doctrine and the allegations regarding the basis for the court to apply the doctrine of equitable tolling to the stated two causes of action should be incorporated into those causes of action.

The statute of limitations set forth in Code of Civil Procedure, Section 335.1 is subject to equitable tolling. The issue in this instant matter is whether plaintiff has and/or will be able to state sufficient allegations to survive the demurrer stage.

The parties should review and then meet and confer on the relatively recent California State Supreme Court decision setting forth the parameters of the equitable tolling doctrine in *Saint Francis Memorial Hospital v. State Department of Public Health* (2020) 9 Cal. 5<sup>th</sup> 710 (*St. Francis I*). In *Saint Francis I*, the trial court sustained a demurrer without leave to amend, concluding in that case that the writ of administrative mandamus was time- barred and that equitable tolling did not apply. The Appellate Court affirmed the trial court’s ruling. The Supreme Court granted review and ultimately reversed the Appellate Court. *St. Francis I* explained at page 275 that the equitable tolling doctrine when three elements are properly plead and ultimately proven by the plaintiff: (1) timely notice to the defendant during the statute of limitations of the intent to litigate; (2) lack of prejudice to the defendant and (3) reasonable and good faith conduct on the part of the plaintiff (and invariably, plaintiff’s counsel).

Element three is often the most difficult to plead and prove, it requires that plaintiff’s conduct be both objectively reasonable and subjectively in good faith, See *St. Francis I* at page 278- 279. “A party seeking equitable tolling must satisfy a similar standard akin to ineffective assistance of counsel, it must demonstrate the that its late filing was objectively reasonable under the circumstances and was in subjective good faith – an honest mistake or instead motivated by a dishonest purpose.” The Court went on at page 730 to limit the extent of the doctrine to ‘only carefully considered situations to prevent the unjust technical forfeiture of causes of action. *It does not, as courts explained,*

*extend to garden variety claim(s) of excusable neglect* (emphasis added) associated with Code of Civil Procedure, section 473 motions to set aside claims. Upon the issuance of *St. Francis I* and the remand back, the Appellate Court issued *Saint Francis II, Saint Francis Memorial Hospital v. State Department of Public Health* (2021) 59 Cal. App. 5<sup>th</sup> 965.

In the final analysis and determination of whether the ‘good faith’ mistake was also ‘objectively reasonable’ the Court in *Francis II* found it was not because, ‘figuring out the correct deadline was a relatively simple matter of reading the decision and the applicable statutes, and the fact that two attorneys failed to pay close attention does not seem to make the mistake any more reasonable.’ This finding is consistent with the admonition in *St. Francis I*, to not allow the equitable tolling doctrine to become a ‘cure-all’ for common place mistakes.

With the guidance contained in the *St. Francis I and II* decisions, the demurrer is sustained with leave to amend to permit Plaintiff to set forth allegations which may satisfy the elements to establish ‘equitable tolling.’ At this point forward, Plaintiff will need to address the substance contained in Defendant’s opposition to demurrer which suggest Plaintiff was or should have been on notice that March 13, 2021 – and not two days later – was the date of the accident. Meanwhile, Defense needs to acknowledge and contend with Plaintiff’s Exhibit 6 to the opposition – the late sent denial letter from both the Plaintiff’s UIM carrier who is also the insurance carrier for Defense in this case, listing March 15, 2021 as the accident date. Counsel will need to meet and confer before another setting forth in another round of motions on the pleadings.

Plaintiff is provided until December 8, 2023 to file a Second Amended Complaint.