

PROPOSED TENTATIVE

On March 13, 2024, plaintiff Jose Antonio Munoz Magana (hereafter, plaintiff), apparently in propria persona, filed a complaint on standard Judicial Council forms, naming Hector Ojeda as defendant (hereafter, defendant) and raising one cause of action for general negligence. According to the complaint, on August 25, 2020, plaintiff “was lawfully present at 716 Hawthorn Street, [] Santa Maria,” when defendant “attempted to demonstrate a maneuver Defendant [] uses at his job when working as a prison guard. Specifically, Defendant [] grabbed Plaintiff [] by his right leg and body slammed him into the sofa. As a direct and proximate result of the negligence and carelessness of Defendant[]. And each of them, Plaintiff [] sustained severe and permanent injuries and damages” Defendant has filed a demurrer, claiming the single cause of action is barred by the applicable statute of limitations, per Code of Civil Procedure section 335.1, which provides that a party has two years from the date of accrual to bring a personal injury lawsuit, and from the face of the pleading, the claim is time-barred. Plaintiff has not filed opposition, which as of this writing would be untimely, for defendant had nine (9) court days before the hearing to file opposition. (Code of Civ. Proc., § 1005, subd. (b).)

Code of Civil Procedures section 335.1 provides that a party has within “two years” to file an “action for assault, battery, or injury to, of the death of, an individual caused by the wrongful act or neglect of another.” This statute of limitations provision applies to ordinary negligence claims involving physical injury, as alleged here. (*So v. Shing* (2013) 212 Cal.App.4th 652, 662].) A “cause of action accrues for purposes of the statute of limitations, and the applicable limitations period begins to run, when the plaintiff has suffered damages from a wrongful act.” (*Lyles v. State of California* (2007) 153 Cal.App.4th 281, 286.) More specifically, the limitations period (i.e., the period in which a plaintiff must bring suit or be barred), runs from the moment a claim accrues. Traditionally, at common law, a cause of action accrues when it is complete with all of its elements – those elements being wrongdoing, harm, and causation. This is the “last element” accrual rule; the statute of limitations period thus ordinarily runs from the occurrence of the last element essential to the cause of action. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191-1192.) A demurrer based on the relevant statute of limitations bar is appropriate if the bar appears on the face of the complaint or from matters upon which the court may or must take judicial notice. (*Aaronoff v. Martinez-Senftner* (2006) 136 Cal.App.4th 910, 918.)

The court initially comments on defendant’s meet and confer efforts, as required per Code of Civil Procedure section 431.40, subdivision (a). The statute is clear – before filing a demurrer, “the demurring party shall meet and confer in person [], [by telephone, or by video conference with the party who filed the pleading” Pursuant to subdivision (b), the parties must “meet and confer at least 5 days before the date the responsive pleading is due. If the parties are not able to confer at least 5 days before the date the responsive pleading is due, the demurring party shall be granted an automatic 30-day extension of time within which to file a

responsive pleading. . . .” According to the declaration of defense attorney Mr. Colin Walshok, plaintiff filed the complaint on March 13, 2024; the complaint “did not list contact information for Plaintiff’s counsel” (this may be because plaintiff is acting in propria persona, who is located at 1709 Niles St. Bakersfield, CA, the address given by plaintiff on the complaint); according to Mr. Walshok, a “diligent search . . . did not yield further contact information.” Nevertheless, according to counsel, on “April 3, 2024” he sent plaintiff a certified letter requesting the availability of a meet and confer telephone call, with the letter sent in both English and Spanish. The letter was certified on April 3, 2024, meaning it likely was received no later than April 5 or 6, 2024. According to Mr. Walshok, “I have been unable to reach Plaintiff for a phone call, despite my several attempts.” The demurrer was filed on April 11, 2024. The court finds that these efforts, while perhaps involving a compressed timeframe, were reasonable. Defendant has satisfied its meet and confer obligations.

On the merits, the court sustains the demurrer. It seems evident from the face of the pleading that the cause of action accrued on August 25, 2020, as the wrongdoing, harm, and causation appear to have occurred on that date. Taking into account the impact of Emergency rule 9, which tolled the statutes of limitations for civil causes of action from April 6, 2020 to October 1, 2020 (see, e.g. *Roe v. Doe* (2023) 98 Cal.App.5th 965, 970), plaintiff, who would have had until August 25, 2022, had instead until October 2, 2022 to file the complaint. The complaint was filed on March 13, 2024.

The court’s inquiry is not concluded. It is plaintiff’s burden to plead and prove an equitable exception when there is a facial statute of limitations bar in the complaint, such as the discovery rule, equitable tolling (such as estoppel), the doctrine of fraudulent concealment, the continuing violation doctrine, or the theory of continuous accrual. (*Aryeh, supra*, 55 Cal.4th at p. 1192.) As an example, the high court in *Fox v. Ethicon, Inc.* (2005) 35 Cal.4th 797 observed that in “order to rely on the discovery rule for delayed accrual of a cause of action, ‘[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. [Citation.] In assessing the sufficiency of the allegations of delayed discover, the court places the burden on plaintiff to ‘show diligence’; conclusory allegations will not withstand demurrer.” (*Id.* at p. 808.)

The court acknowledges no opposition has been filed. Nevertheless, out of an abundance of caution (and as a matter of fairness), the court will afford plaintiff one opportunity to attempt to plead an exception to the two-year statute of limitations that otherwise appears from the face of the complaint. Plaintiff has 30 days from today’s hearing date (June 5, 2024) to file an amended pleading.

The parties are ordered to appear at the hearing either in person or by Zoom. Defendant is ordered to send notice of the court’s ruling to plaintiff should plaintiff fail to appear at the hearing today.

