

Tentative Rulings for June 4, 2025  
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.

---

(Tentative Rulings begin at the next page)

## **Tentative Rulings for Department 403**

Begin at the next page

(36)

**Tentative Ruling**

Re: ***Akande, et al. v. State Center Community College District, et al.***

Superior Court Case No. 23CECG00212

Hearing Date: June 4, 2025 (Dept. 403)

Motion: by Defendants Demurring to the First Amended Complaint

**If oral argument is timely requested, it will be entertained on  
Thursday, June 5, 2025, at 3:30 p.m. in Department 403.**

**Tentative Ruling:**

To sustain the demurrer to each cause of action, with leave to amend, for failure to state facts sufficient to state a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

Each request for judicial notice is granted. (Evid. Code, § 452, subd. (d).)

Plaintiffs are granted 20 days' leave to file the second amended complaint. The time to file the second amended complaint will run from service by the clerk of the minute order. All new allegations in the second amended complaint are to be set in **boldface** type.

**Explanation:**

Defendants demur to the First Amended Complaint ("FAC") on the ground that the first four causes of action are barred by the doctrine of res judicata and the entire action is time barred by the applicable statute of limitations. Additionally, defendants argue that Fresno City College should be dismissed from the action, as it is not a separate legal entity.

Res Judicata

"‘Res judicata’ describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, ‘precludes relitigation of issues argued and decided in prior proceedings. [Citation.] Under the doctrine of res judicata, if a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause of action.’ (Mycogen Corp. v. Monsanto Co. (2002) 28 Cal.4th 888, 896–897.)

"‘[T]he doctrine of res judicata gives certain conclusive effect to a former judgment in subsequent litigation involving the same controversy.’ [Citation.] The doctrine ‘has a double aspect.’ [Citation.] ‘In its primary aspect,’ commonly known as claim preclusion, it ‘operates as a bar to the maintenance of a second suit between the

same parties on the same cause of action. [Citation.]' [Citation.] 'In its secondary aspect,' commonly known as collateral estoppel, '[t]he prior judgment ... "operates" ' in 'a second suit ... based on a different cause of action ... "as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action." [Citation.]' [Citation.] 'The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]' " (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797, citations omitted.)

Although plaintiffs to do not address defendants' res judicata argument in their opposition, on demurrer, defendants have the burden of establishing that the operative complaint fails to state a claim. In other words, defendants have the burden of establishing each element of the doctrine of res judicata. Here, defendants have established the first and third elements by showing that the claims raised in the present action are identical to those raised in a previous case, *Thomas Akande, et al. v. State Center Community College District, et al.*, Fresno Superior Court Case No. 18CECG03683, and both cases involve the same parties. (See Request for Judicial Notice ("RJN"), Exs. A, B.)

However, defendants have not shown that the prior proceeding resulted in a *final judgment on the merits*, since it does not appear that the issues in the instant action were actually litigated and determined in the first action. As defendants provide, the prior proceeding was dismissed with prejudice for failing to serve the complaint within the three-year time frame under Code of Civil Procedure section 583.250, subdivision (a). Although neither party provides any authority on the issue of whether a dismissal for lack of prosecution constitutes a final judgment on the merits in the context of the doctrine of res judicata, it is well established that it does not. (*Gonsalves v. Bank of America Nat. Trust & Savings Ass'n* (1940) 16 Cal.2d 169; see also *Atchison, T. & S. F. Ry Co. v. Rollaway Window Screen Co.* (1951) 101 Cal.App.2d 763 [finding a judgment of dismissal under Code of Civil Procedure section 583.250 not to be a judgment on the merits and res judicata to be inapplicable, and unless barred by statute of limitations, the cause of action still persists].

Accordingly, defendants have not shown that the doctrine of res judicata applies in this case.

#### Statute of Limitations

Defendants argue that all of plaintiffs' causes of action are subject to either a two- or three-year statute of limitations, and thus, plaintiffs' cannot seek relief for any acts occurring before September 2020. Plaintiffs argue that the limitations period should be equitably tolled for the time they spent pursuing administrative relief. The FAC alleges that they pursued a complaint with the Civil Rights Department ("CRD"), previously known as the California Department of Fair Employment and Housing, between November 28, 2018 and January 21, 2021. (FAC, ¶¶ 22-25.) On January 21, 2021, the CRD notified plaintiffs that it was closing the matter and sent a Notice of Case Closure to each plaintiff, notifying

plaintiffs that they had 24 months to file a civil action following the conclusion of the CRD's administrative processes. (FAC, ¶ 25, Ex. D.)

Plaintiffs have asserted both state and federal claims stemming from defendants' alleged disability discrimination and civil rights violations under Civil Code section 54, Title III of the Americans with Disabilities Act, 42 United States Code section 12101 et seq. ("ADA"), and Section 504 of the Rehabilitation Act, 29 United States Code section 794 et seq. ("Section 504")

None of these statutes contain a specific limitations period applicable to claims brought under those statutes. Various statutes of limitation may be applicable as courts interpreting these statutes must borrow statutes of limitations from other laws. Many courts have held that a claim for discrimination under the ADA and Section 504 are best characterized as claims for personal injury, and thus is governed by the most appropriate or analogous state statute of limitations applicable to personal injury actions, which would provide a two-year limitations period under Code of Civil Procedure section 335.1. (See, e.g., *Pickern v. Holiday Quality Foods Inc.* (9th Cir. 2002) 293 F.3d 1133, 1137, fn. 2, and cases cited therein.) Similarly, courts generally apply the forum state's personal injury statute of limitations to Section 504 claims. (*Daviton v. Columbia/HCA Healthcare Corp.* (9th Cir. 2001) 241 F.3d 1131, 1135.) Other courts have held that the applicable statute of limitations is the Code of Civil Procedure section 338, subdivision (a), which provides a three-year limitations period for "[a]n action upon a liability created by statute." (*Sharkey v. O'Neal* (9th Cir. 2015) 778 F.3d 767, 770.) However, as noted in *Estate of Stern v. Tuscan Retreat, Inc.* (9th Cir. 2018) 725 Fed.Appx. 518, 216, "[w]e have not decided the limitations period for Title III claims" in California, but "the only conceivable options" are two or three years. . ." This court sees no need to contribute to the ongoing discourse as to the appropriate statute of limitations because in this case, regardless of which statute of limitations applies, plaintiffs' complaint is barred by the statute of limitations unless the FAC alleges facts supporting a theory of equitable tolling, which is discussed below.

Plaintiffs contend that their claims were mandatorily tolled pursuant to statute and discretionarily tolled in equity while they were pursuing administrative remedies with the CRD. However, plaintiffs present no authority to support their legal conclusion that their claims are mandatorily tolled. Although Civil Code section 52, subdivision (f) and Civil Code sections 54.3 provide that aggrieved persons under that title *may also* file a verified complaint with the CRD, there is nothing to suggest that plaintiffs are required to exhaust the administrative process when seeking ADA and Section 504 claims. Plaintiffs also fail to provide any authority which indicates that equitable tolling is required where exhaustion of administrative procedures is not mandatory.

Nonetheless, "[a]long with the limitations period, the court borrows the state's equitable tolling rules, absent a reason not to do so." (*Daviton, supra*, 241 F.3d at p. 1135.) "Equitable tolling is a 'judicially created, nonstatutory doctrine' that 'suspend[s] or extend[s] a statute of limitations as necessary to ensure fundamental practicality and fairness.'" [Citation.] The doctrine applies 'occasionally and in special situations' to 'soften the harsh impact of technical rules which might otherwise prevent a good faith litigant from having a day in court.' [Citation.] Courts draw authority to toll a filing deadline from their inherent equitable powers—not from what the Legislature has declared in any particular statute. [Citation.] For that reason, we presume that statutory

deadlines are subject to equitable tolling." (*Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710, 719-720.)

In California, the "long settled rule [is] that whenever exhaustion of administrative remedies is a prerequisite to a civil action[,] the running of the limitations period is suspended during the administrative proceedings." (*Addison v. State of California* (1978) 21 Cal.3d 313, 318 citing *Dillon v. Board of Pensions Commrs.* (1941) 18 Cal.2d 427.) The Court may also apply equitable tolling even where exhaustion of administrative procedures is non-mandatory. (*McDonald v. Antelope Valley Cmty. Coll. Dist.* (2008) 45 Cal.4th 88, 101.) "[R]egardless of whether the exhaustion of one remedy is a prerequisite to the pursuit of another, if the defendant is not prejudiced thereby, the running of the limitations is tolled when an injured person has several legal remedies and, reasonably and in good faith, pursued one." (*Addison, supra*, 21 Cal.3d at p. 318; see also *McDonald, supra*, 45 Cal.4th at p. 101 ["[t]he exhaustion of administrative remedies will suspend the statute of limitations even though no statute makes it a condition of the right to sue."].)

The California Supreme Court has outlined three requisite elements: "the doctrine of equitable tolling requires timely notice, and lack of prejudice, to the defendant, and reasonable and good faith conduct on the part of the plaintiff." (*Addison, supra*, at p. 319.)

Here, it is alleged that plaintiffs filed their claims with the CRD on November 28, 2018. Since plaintiffs' claim for administrative relief was filed within the statutory period (regardless of whether it was a two- or three-year limitation), plaintiffs have alleged that timely notice of their claims were provided to defendants. Additionally, there are sufficient facts alleged to establish that the claims filed with the CRD are similar enough to preclude prejudice to defendants.

Regarding the third element of reasonableness and good faith, this element encompasses "two distinct requirements: [a] plaintiff's conduct must be objectively reasonable and subjectively in good faith." (*Saint Francis Mem. Hosp. v. State Dept. of Pub. Health* (2020) 9 Cal.5th 710, 729.) "An analysis of reasonableness focuses not on a party's intentions or the motives behind a party's actions, but instead on whether that party's actions were fair, proper, and sensible in light of the circumstances." (*Ibid.*) "A party seeking equitable tolling must ... demonstrate that its late filing was objectively reasonable under the circumstances." (*Ibid.*) Notably, the assessment of these factors will almost certainly require a resolution of factual disputes—i.e., facts that are not alleged in the pleadings and are not judicially noticeable. It would appear that the "fact-intensive test for equitable tolling is more appropriately applied at the summary judgment or trial stage of litigation." (*Cervantes v. City of San Diego* (9th Cir. 1993) 5 F.3d 1273, 1276.) Nonetheless, the complaint must at least allege facts which could support a conclusion that plaintiffs' untimely filing was reasonable. Similarly, the complaint must also allege facts which would answer the question of whether plaintiffs acted in good faith, that is, with a "state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, ... being faithful to one's duty or obligation." (*Saint Francis Mem. Hosp. v. State Dept. of Pub. Health* (2020) 9 Cal.5th 710, 729.)

Here, plaintiffs allege that they filed a government torts claim on or about March 1, 2018. They also filed a timely civil suit on October 2, 2018. Plaintiffs also filed claims with

the CRD on November 28, 2018. (FAC, ¶¶ 21-22.) On January 21, 2021, plaintiffs were notified of CRD's closure of their case and were served with letters indicating that plaintiffs had 24 months to file a civil action following the conclusion of the CRD's administrative processes. (FAC, ¶ 25.) On October 20, 2022, this Court granted defendants' motion to dismiss the civil suit, filed on October 2, 2018, for failure to serve the summons and complaint for a period of three years pursuant to Code of civil procedure section 583.250, subdivision (a). (RJN, Ex. D.) Following the dismissal of the first civil suit and relying on the CRD's letters, plaintiffs filed the instant second civil suit on January 18, 2023. (FAC, ¶ 25-26.)

While plaintiffs' actions could be liberally construed to have been in good faith, since there is an absence of allegations indicating any bad faith, there are no allegations indicating the plaintiffs' reasonableness in failing to serve the summons and complaint of the October 2, 2018 civil suit following the conclusion of the CRD's administrative process on January 21, 2021. Even if plaintiffs were relying on the timeline provided by the CRD case closure letters, there are no allegations indicating that it was sensible for plaintiffs to not prosecute their then-existing civil suit, which was not statutorily time-barred, and instead, to allow that suit to be dismissed for lack of prosecution and then file a new suit on the same claims.

Accordingly, the demurrer to the entire FAC is sustained, with leave to amend.

Fresno City College as a Party

Defendants further request the court to dismiss Fresno City College as a party to this action, because it is not a separate legal entity. However, defendants base this information on facts that are not pled or judicially noticeable which are inappropriate on demurrer. Therefore, this request is not considered herein.

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:** Img **on** 6-2-25.  
(Judge's initials) (Date)