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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BURLEY D. TOMPKINS,  
  
                                Plaintiff,  
  
                  v.  
  
UNION PACIFIC RAILROAD  
COMPANY,  
  
                                Defendant.

No. 2:12-cv-01481 JAM-GGH

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS**

This matter is before the Court on Defendant Union Pacific Railroad Company's ("Defendant") Motion to Dismiss the first and second causes of action (Doc. #7). Plaintiff Burley Tompkins ("Plaintiff") opposes the motion (Doc. #9).<sup>1</sup>

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for September 19, 2012.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 Plaintiff filed his complaint (Doc. #1) with this Court on  
3 June 1, 2012. Plaintiff alleges seven causes of action pursuant  
4 to the Federal Employers' Liability Act ("FELA"), 45 U.S.C. §§  
5 51-60: (1) negligence in 1998; (2) negligence-deprivation of  
6 medical care in 1998; (3) negligence in 2011; (4) violation of  
7 the Federal Safety Appliance Act, 49 U.S.C. §§ 20301-20306; (5)  
8 violation of the Federal Locomotive Inspection Act, 49 U.S.C. §§  
9 20701-20703; (6) Violation of Federal Safety Regulation, 49  
10 C.F.R. § 229.45; and (7) Violation of Federal Safety Regulation,  
11 49 C.F.R. § 229.13. As noted above, Defendant only challenges  
12 the first two claims in the instant motion.

13 A. First Cause of Action—Negligence in 1998

14 Plaintiff alleges that in or about August through October  
15 1998, he was working for Defendant at Defendant's Oroville yard  
16 near Oroville, California. During work, a trespasser startled  
17 him while he was releasing the handbrakes of an open-top gondola  
18 car. As a result, he fell from the railcar and sustained a back  
19 injury.

20 B. Second Cause of Action—Deprivation of Medical Care in  
21 1998

22 Plaintiff alleges that he attempted to timely report his  
23 injury to Defendant, but Defendant's manager harassed and  
24 intimidated him by threatening to terminate him if he made an  
25 on-duty injury claim. Defendant intended to discourage and  
26 prevent Plaintiff from timely filing an on-duty injury claim and  
27 from seeking proper medical treatment until the statute of  
28 limitations had run. Defendant also prevented Plaintiff from

1 seeking and receiving proper medical treatment from in or about  
2 August through October 1998 until about April 2010.

3 II. OPINION

4 A. Legal Standard

5 A party may move to dismiss an action for failure to state  
6 a claim upon which relief can be granted pursuant to Federal  
7 Rule of Civil Procedure 12(b)(6). In considering a motion to  
8 dismiss, the court must accept the allegations in the complaint  
9 as true and draw all reasonable inferences in favor of the  
10 plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974),  
11 overruled on other grounds by Davis v. Scherer, 468 U.S. 183  
12 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972). Assertions that  
13 are mere "legal conclusions," however, are not entitled to the  
14 assumption of truth. Ashcroft v. Iqbal, 556 U.S. 662, 678  
15 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555  
16 (2007)). To survive a motion to dismiss, a plaintiff needs to  
17 plead "enough facts to state a claim to relief that is plausible  
18 on its face." Twombly, 550 U.S. at 570. Dismissal is  
19 appropriate where the plaintiff fails to state a claim  
20 supportable by a cognizable legal theory. Balistreri v.  
21 Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990).

22 Upon granting a motion to dismiss for failure to state a  
23 claim, the court has discretion to allow leave to amend the  
24 complaint pursuant to Federal Rule of Civil Procedure 15(a).  
25 "Dismissal with prejudice and without leave to amend is not  
26 appropriate unless it is clear . . . that the complaint could  
27 not be saved by amendment." Eminence Capital, L.L.C. v. Aspeon,  
28 Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

1           B.    Discussion

2           Defendant moves to dismiss Plaintiff's first and second  
3 causes of action for failure to plead facts that demonstrate  
4 Plaintiff has satisfied the statute of limitations and for  
5 failure to state a claim pursuant to FEELA. Both parties agree  
6 that the injury alleged in Plaintiff's first and second causes  
7 of action occurred in 1998 and would be barred by the three-year  
8 statute of limitations unless an equitable doctrine applies.  
9 Plaintiff argues that the Defendant should be estopped from  
10 asserting the statute of limitations as a defense because  
11 Defendant engaged in improper behavior by threatening him with  
12 termination if he filed a claim. Defendant responds that one  
13 threat of termination is insufficient to estop Defendant from  
14 asserting the statute of limitations eleven years after the  
15 limitations period expired.

16           FEELA provides railroad employees with a private cause of  
17 action for job-related injuries caused by an employer's  
18 negligence. 45 U.S.C. §§ 51-60. The statute of limitations for  
19 FEELA claims is three years from the day the cause of action  
20 accrued. 45 U.S.C. § 56. The cause of action accrues when an  
21 employee knows or has reason to know of the injury and its  
22 cause. Frasure v. Union Pac. R. Co., 782 F. Supp. 477, 480  
23 (C.D. Cal. 1991) (collecting cases).

24           Nonetheless, this limitation period is flexible, and under  
25 appropriate circumstances, it may be extended beyond three years  
26 for equitable reasons. Burnett v. New York Cent. R. Co., 380  
27 U.S. 424, 427 (1965); Atkins v. Union Pac. R. Co., 685 F.2d  
28 1146, 1148 (9th Cir. 1982). The Ninth Circuit recognizes two

1 equitable doctrines: (1) equitable tolling and (2) equitable  
2 estoppel. See Naton v. Bank of California, 649 F.2d 691, 696  
3 (9th Cir. 1981).

4 1. Equitable Tolling

5 Equitable tolling “may be applied if, despite all due  
6 diligence, a plaintiff is unable to obtain vital information  
7 bearing on the existence of his claim.” Santa Maria v. Pac.  
8 Bell, 202 F.3d 1170, 1178 (9th Cir. 2000).

9 Defendant argues that equitable tolling does not apply.  
10 Plaintiff does not respond to this argument in his opposition.  
11 The Court finds that plaintiff has not pleaded facts to show  
12 that Plaintiff was unable to obtain vital information.  
13 Accordingly, equitable tolling is not applicable.

14 2. Equitable Estoppel

15 Equitable estoppel focuses on the defendant’s affirmative  
16 actions that prevent a plaintiff from filing a suit. Id. at  
17 1176 (citing Naton, 649 F.2d at 696). To determine whether  
18 equitable estoppel applies, courts consider several factors,  
19 such as whether the plaintiff actually relied on the defendant’s  
20 representations, whether such reliance was reasonable, whether  
21 there is evidence that the defendant’s purpose was improper,  
22 whether the defendant had actual or constructive knowledge that  
23 its conduct was deceptive, and whether the purposes of the  
24 statute of limitations have been satisfied. Naton, 649 F.2d at  
25 696 (citations omitted). To survive a motion to dismiss, the  
26 plaintiff must plead with particularity the conduct that gives  
27 rise to the estoppel. Guerrero v. Gates, 442 F.3d 697, 706 (9th  
28 Cir. 2003).

1 Plaintiff contends that threatening an employee with  
2 termination to prevent the employee from filing a suit under  
3 certain circumstances might be grounds for estoppel. See Longo  
4 v. Pittsburgh & L. E. R. Co., New York Cent. Sys., 355 F.2d 443,  
5 444 (3d Cir. 1966). In response, Defendant argues that  
6 Plaintiff has alleged insufficient facts to satisfy the  
7 equitable estoppel factors because Plaintiff waited eleven years  
8 after the expiration of the statute of limitations to file this  
9 suit even though Plaintiff was not harassed or threatened in  
10 those years.

11 Even if a threat of termination were enough for equitable  
12 estoppel to apply, it does not apply here because Plaintiff has  
13 not alleged sufficient facts to estop Defendant from asserting  
14 the statute of limitations as a defense eleven years after the  
15 statute of limitations expired. If a plaintiff allows a claim  
16 to remain dormant for years and does not allege that any  
17 misrepresentations, misunderstandings, or threats occurred in  
18 those years, equitable estoppel will not apply. Fletcher v.  
19 Union Pac. R. Co., 621 F.2d 902, 906 (8th Cir. 1980); Holifield  
20 v. Cities Serv. Tanker Corp., 421 F. Supp. 131, 137 (E.D. La.  
21 1976) aff'd, 552 F.2d 367 (5th Cir. 1977) (dismissing the  
22 plaintiff's claim because the plaintiff allowed it "to lay  
23 dormant for over four years without any taint of the defendant's  
24 alleged misrepresentation or his own misunderstanding concerning  
25 the injury"). In Fletcher, the Eighth Circuit affirmed that  
26 portion of the district court's opinion dismissing the  
27 plaintiff's FELA claim on timeliness grounds. 621 F.2d at 907.  
28 The plaintiff argued that equitable estoppel should apply

1 because the defendant's agents delayed his action due to their  
2 erroneous diagnoses of his injury. Id. at 906. In rejecting  
3 this argument and affirming the dismissal, the Eighth Circuit  
4 noted that "the railroad's misrepresentations will not estop it  
5 from asserting the statute of limitations where a substantial  
6 period of time supervened after expiration of the delay caused  
7 by the railroad." Id. (citing Holifield, 421 F. Supp. at 134).  
8 Accordingly, there was no equitable estoppel "simply because  
9 there was no misrepresentation within three years of filing  
10 suit." Id. at 907.

11 Fletcher is instructive in this case because Plaintiff has  
12 not alleged any facts showing that in the past eleven years,  
13 Defendant has harassed Plaintiff or intimidated him in order to  
14 discourage him from filing. Plaintiff has only alleged that  
15 Defendant's intent to discourage him from filing continued until  
16 the statute of limitations had run, which was in 2001.  
17 Plaintiff also alleges that Defendant prevented Plaintiff from  
18 seeking and receiving proper medical treatment until about April  
19 2010. However, Plaintiff does not allege in particularity any  
20 facts that show affirmative actions by Defendant, such as  
21 threats or misrepresentations, that occurred within the past  
22 eleven years. Therefore, Plaintiff has allowed his claim to  
23 remain dormant. Because a substantial period of time supervened  
24 after expiration of the delay caused by Defendant, Defendant is  
25 not estopped from using the statute of limitations as a defense.  
26 Plaintiff's first and second causes of action are therefore  
27 barred by FELA's three-year statute of limitations unless  
28 Plaintiff can allege facts to show affirmative actions by

1 Defendant within the past eleven years.

2 3. Failure to State a Claim under 49 C.F.R. § 225.33

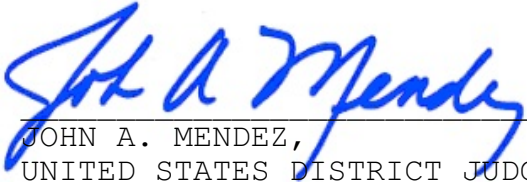
3 Defendant also argues that Plaintiff's second cause of  
4 action should be dismissed for failure to state a claim under 49  
5 C.F.R. § 225.33. The Court need not address this argument at  
6 this time.

7 III. ORDER

8 For the reasons set forth above, Defendant's Motion to  
9 Dismiss is GRANTED WITH LEAVE TO AMEND. Plaintiff's Amended  
10 Complaint must be filed within twenty (20) days from the date of  
11 this Order. If Plaintiff elects not to file an Amended  
12 Complaint, the case will proceed on the original Complaint  
13 without the first and second causes of action.

14 IT IS SO ORDERED.

15 Dated: October 1, 2012

  
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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE

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