

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LORI A. MENDEZ,
Plaintiff,
v.
BANK OF AMERICA, N.A.,
Defendant.

Case No. 1:17-cv-01509-LJO-SAB
ORDER RE MARCH 21, 2018 HEARING

Plaintiff Lori A. Mendez filed this action against Defendant Bank of America, N.A. on November 9, 2017. Currently pending before the Court is Defendant’s motion to dismiss which was referred to the undersigned for findings and recommendations. A hearing on the motion is set for March 21, 2018 at 3:30 p.m. in Courtroom 9.

The Court required the parties to submit supplemental briefing regarding whether American Pipe¹ tolling would apply to the claims in this action under California law. The parties both argued that American Pipe would apply to the claims. However, in Clemens v. DaimlerChrysler Corp., 534 F.3d 1017 (9th Cir. 2008), the Ninth Circuit held that “[t]he rule of American Pipe—which allows tolling within the federal court system in federal question class actions—does not mandate cross-jurisdictional tolling as a matter of state procedure.” Id. at 1025. Therefore, the Ninth Circuit found that the filing of a class action in another jurisdiction

¹ American Pipe and Construction Co. et al., v. Utah, 414 U.S. 538 (1974).

1 did not toll the statute of limitations on the plaintiff's fraud claim under California law. Id. The
2 Ninth Circuit has since held that Clement forecloses the application of American Pipe to
3 California state law claims filed in federal court, but does not reject application of California's
4 equitable tolling doctrine. Hatfield v. Halifax PLC, 564 F.3d 1177, 1188 (9th Cir. 2009).
5 Accordingly, in considering whether the class action filed in George v. Urban Settlement
6 Services, No. 1:13-cv-01819-PAB-KLM (D.Colo.), the Court is to apply California's equitable
7 tolling doctrine, not American Pipe tolling. Hatfield, 564 F.3d at 1190; Centaur Classic
8 Convertible Arbitrage Fund Ltd., 878 F.Supp.2d at 1017.

9 The California Supreme Court has held that the application of the equitable tolling
10 doctrine "requires timely notice, and lack of prejudice, to the defendant, and reasonable and good
11 faith conduct on the part of the plaintiff." Addison v. State of California, 21 Cal.3d 313, 319
12 (1978). California applies equitable tolling where the injured individual has several legal
13 remedies and reasonably and in good faith pursues one. McDonald v. Antelope Valley Cmty.
14 Coll. Dist., 45 Cal.4th 88, 100 (2008). A plaintiff who wishes to pursue a claim based on
15 equitable tolling under California law must have actually relied on the use of some other legal
16 mechanism to vindicate her rights. Hendrix v. Novartis Pharm. Corp., 975 F.Supp.2d 1100, 1114
17 (C.D. Cal. 2013), aff'd, 647 F. App'x 749 (9th Cir. 2016) (citing Addison, 21 Cal.3d at 317 and
18 McDonald, 45 Cal.4th at 100).

19 Accordingly, the parties shall be prepared to address at the March 21, 2018 hearing
20 whether Plaintiff's conduct in filing this action would be considered reasonable and good faith in
21 applying California's equitable tolling doctrine.

22
23
24 IT IS SO ORDERED.

25 Dated: March 19, 2018


UNITED STATES MAGISTRATE JUDGE