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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FORREST WAYNE HODGE,

Plaintiff,

v.

SUNSET SCAVENGER COMPANY, et al.,

Defendants.

No. C 12-1852 PJH

**ORDER RE MOTION TO DISMISS
THIRD CAUSE OF ACTION**

Defendant Sunset Scavenger Company’s motion to dismiss came on for hearing before this court on June 20, 2012. Plaintiff Forest Wayne Hodge (“plaintiff”) appeared through his counsel, Dow Patten. Defendant Sunset Scavenger Company (“defendant”) appeared through its counsel, Soo Cho. Having read the papers filed in conjunction with the motion and carefully considered the arguments and the relevant legal authority, and good cause appearing, the court hereby DENIES defendant’s motion to dismiss plaintiff’s third cause of action to the extent that it seeks dismissal without leave to amend, but GRANTS defendant’s motion to dismiss with leave to amend, for the reasons stated at the hearing, and summarized as follows.

Defendant moved to dismiss plaintiff’s third cause of action (for wrongful termination in violation of public policy) without leave to amend, as barred by California’s two-year statute of limitations. The court does not find persuasive defendant’s argument that equitable tolling does not apply in this case as a matter of law, and declines to find that plaintiff’s third cause of action is time-barred. However, the court does find that plaintiff’s first amended complaint lacks detail as to the factual basis for the application of equitable tolling, and thus dismisses the third cause of action with leave to amend to cure that deficiency. No additional claims or parties may be added without leave of court. The

1 second amended complaint shall be filed by July 11, 2012, and defendant shall file its
2 answer by August 1, 2012.

3 **IT IS SO ORDERED.**

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5 Dated: June 22, 2012

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PHYLLIS J. HAMILTON
United States District Judge

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