

1 the prison mail system on that date. See doc. #31 Ex. B. As a pro se prisoner, Plaintiff is
2 entitled to the “mailbox rule,” which dictates that the statutory filing date is the date a
3 document was presented to prison authorities for mailing to the court and not the date it was
4 received. See *Houston v. Lack*, 487 U.S. 266, 276 (1988).² Under this rule, Plaintiff’s
5 amended complaint is timely filed. Plaintiff’s motion to dismiss the entire complaint on
6 timeliness grounds is **DENIED**.

7
8 **B. Statute Of Limitations**

9 In the August 24, 2010 Order, the Court instructed, “No further motions to dismiss
10 based on statute of limitations may be made by Defendant.” (Order at 4) Nevertheless,
11 Defendant now argues that the statute of limitations bars Plaintiff’s FLSA and UCL claims
12 and that equitable tolling is not available. (Mem. at 2-3)

13 Pursuant to the August 24, 2010 order, these arguments are clearly not appropriate
14 in a motion to dismiss and will not be considered at this time. As stated before, “any statute-
15 of-limitations defense should be raised in a motion for summary judgment.” (Order at 5)

16
17 **C. Failure To State A Claim**

18 1. UCL Claims

19 Defendant seeks dismissal of Plaintiff’s UCL claims on three grounds. First,
20 Defendant claims confusion as to whether Plaintiff is suing under California’s Unfair
21 Competition Law or the Unfair Practices Act and states that it will “base its argument on the
22 Unfair Practices Act.” (Mem. at 5) Paragraph 40 of the FAC reads, “Plaintiff alleges that
23 California Business and Profession Code §§ 17000 et seq. to 17200 et seq states ‘unfair
24 competition shall mean and include unlawful, unfair or fraudulent business practices.’” This
25 is a quote from § 17200 of the UCL. Although pro se Plaintiff may not have cited the
26 intended statute with exact precision, it is clear that Plaintiff is bringing claims under the UCL

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28 ² Contrary to Defendant’s position, this rule does not apply only to documents filed pursuant to Fed. R. App. P. 4(c). *C.f. Douglas v. Noelle*, 567 F.3d 1103, 1106 (9th Cir. 2009).

1 and not under the Unfair Practices Act.

2 Next, Defendant argues that because “the only claims which survive the statute of
3 limitations is Plaintiff’s UCL claims which accrued between July 23, 2005 and July 29, 2005”
4 and “Plaintiff has failed to plead any damages specific to this 6 day period”, Plaintiff failed to
5 plead enough facts to state a claim. (Mem. at 5) As discussed above, the Court will not
6 address Defendant’s statute of limitations arguments at this stage of proceedings. If
7 Defendant is ultimately successful in these arguments, then Plaintiff will have to put forth
8 evidence of any damages accrued during this six-day period.

9 Finally, Defendant asserts, “Plaintiff also requests compensatory relief, however
10 monetary relief beyond restitution is may [sic] not be recovered under a UCL claim.” (Mem.
11 at 6) The Court has already held that “[r]estitution is the sole form of monetary relief
12 available under the UCL.” (Order at 7) Plaintiff acknowledges this holding and contends that
13 the compensatory damages sought are not in reference to the UCL claims. (Opp. at 6) To
14 the extent Plaintiff’s prayer for restitutionary damages are for withheld wages to which
15 Plaintiff has an ownership interest, these wages are recoverable under the UCL. See *Korea*
16 *Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1149 (2003). For these reasons,
17 dismissal of Plaintiff’s UCL claims is not appropriate at this time.

18
19 2. Negligence Claim

20 Defendant has two arguments for dismissal of Plaintiff’s negligence claim. First,
21 Defendant asserts that the Workers’ Compensation Act preempts Plaintiff’s claim for
22 negligence. Previously, the Court ruled that physical injuries caused by employer negligence
23 or without employer fault are exclusively compensated under the workers’ compensation
24 system. Order at 6. However, upon reconsideration, this rule does not apply when an
25 employer fails to secure workers’ compensation coverage. See Cal Lab Code § 3706 (“If any
26 employer fails to secure the payment of compensation, any injured employee or his
27 dependents may bring an action at law against such employer for damages, as if this division
28 did not apply.”). Plaintiff alleges – and Defendant does not contest – that Defendant failed

1 obtain the requisite workers' compensation. (Compl. ¶ 30; Compl. Ex. B (letter from the
2 Workers' Compensation Insurance Rating Bureau of California stating that there is no
3 evidence that Defendant had secured coverage during the time period at issue)) Plaintiff has
4 met his burden to "establish that [Defendant] failed "to secure the payment of compensation"
5 as required under the Act," and therefore, Plaintiff's negligence claims are not preempted by
6 the Workers' Compensation Act. *Rymer v. Hagler*, 211 Cal. App. 3d 1171, 1178 (5th Dist.
7 1989). If Defendant has evidence that it had, in fact, secured workers' compensation
8 coverage at the time of Plaintiff's alleged injuries, it may reassert its preemption argument
9 in a motion for summary judgment.

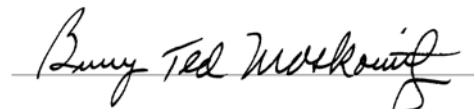
10 Next, Defendant argues that "Plaintiff fails to plead how Defendant's alleged failure
11 to obtain workers' compensation insurance caused Plaintiff to incur medical expenses."
12 Because Plaintiff is not preempted from alleging negligence for his physical injuries alone,
13 the allegation that his injury caused him to incur medical expenses is sufficient to establish
14 causation.

15 16 II. CONCLUSION

17 Defendant's motion to dismiss the FAC is **DENIED**. Defendant's arguments based
18 on the statute of limitations were improperly raised. Pursuant to the August 24, 2010
19 Order, Defendant may raise statute of limitations defenses in a motion for summary
20 judgment.

21 The Court reconsiders its prior holding that the Workers' Compensation Act
22 preempts Plaintiff's negligence claim for his physical injuries. Plaintiff has alleged
23 sufficient facts to show that Defendant had failed "to secure the payment of
24 compensation" as required by the Act, and thus, Plaintiff's negligence claims are not
25 preempted.

26 **IT IS SO ORDERED.**
27 DATED: May 18, 2011

28 
Honorable Barry Ted Moskowitz
United States District Judge