

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA**

**John Malaspina v. American Airlines, Inc.**

Malaspina v. American Airlines, Inc., No. 25-cv-05411-JSC (N.D. Cal. Oct. 31, 2025) · No. 25-cv-05411-JSC ·  
Decided October 31, 2025

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**OPINION**

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7  
JOHN MALASPINA, Case No. 25-cv-05411-JSC 8 Plaintiff, ORDER RE: DEFENDANT’S  
MOTION 9 v. TO DISMISS 10 AMERICAN AIRLINES, INC., Re: Dkt. Nos. 16, 18, 20  
Defendant. 11 12 13 John Malaspina sues American Airlines, Inc. for damages arising from  
American’s “100% healed” 14 policy and termination of Malaspina’s employment.

Plaintiff brings claims under the Americans with 15 Disabilities Act (“ADA”), the California Fair  
Employment and Housing Act (“FEHA”), and California 16 Labor Code § 1102.5. (Dkt. No. 1-  
2.)<sup>1</sup> Currently pending before the Court is Defendant’s motion to 17 dismiss all claims. (Dkt. No.  
16.)

After carefully considering the arguments and briefing 18 submitted, the Court concludes oral  
argument is unnecessary, see Civ. L.R. 7-1(b), and GRANTS 19 Defendant’s motion to dismiss  
with leave to amend. 20 BACKGROUND 21 A. First Amended Complaint Allegations 22  
Defendant employed Plaintiff from 2007 to 2023. (Dkt. No 1-2 ¶ 8.)

In 2008, during his 23 employment as a Fleet Service Clerk and Ramp Agent, Plaintiff suffered a  
traumatic brain injury while 24 operating a company vehicle. (Id. ¶¶ 16, 23.) Plaintiff was placed  
on work restrictions by a medical 25 provider, and, after being out of work for several weeks, was  
allowed to return to work and assigned to 26 Cabin Crew because of an accommodation.

(Id. ¶ 23.) In or around 2008 to 2009, Defendant directed 27 1 Plaintiff to return to his original  
position as a Fleet Service Clerk and Ramp Agent. (Id. ¶ 24.) Defendant 2 denied Plaintiff’s  
request to be placed in a different position, and, in 2009, Plaintiff was laid off. (Id. ¶ 25.) 3 In  
2010, Plaintiff requested to transfer to a position in the Admirals Club but was not selected.

(Id. ¶ 26.) 4 Plaintiff alleges “similarly situated employees who were also laid off, were reinstated  
to their positions, 5 however, Plaintiff was not reinstated due to his disability and American  
Airlines’ unlawful reliance on its 6 past or present 100% healed policy.” (Id. ¶ 27.) 7 In 2015,  
Defendant asked Plaintiff to return to work so long as he received a medical evaluation 8  
confirming he was okay to return.

(Id. ¶ 28.) In December 2015, a medical provider for Defendant 9 informed Plaintiff he could not return to work until he was 100% healed from his injury. (Id.) From 2016 10 to 2018, Plaintiff provided Defendant with medical updates and requested accommodations so he could 11 return to work, and in 2018, Plaintiff was released from medical care. (Id. ¶ 30.) Plaintiff was never given 12 accommodations or reinstated.

(Id.) Plaintiff alleges, during all relevant times, he “complained to 13 Defendant that he was being denied reasonable accommodation despite other workers in a similar situation 14 receiving accommodations.” (Id. ¶ 31.) 15 On August 10, 2021, Plaintiff told Faith Ikeda, a manager at American Airlines, that he felt he was 16 being discriminated against because he was disabled and again asked for accommodations.

(Id. ¶ 32.) His 17 request was denied. (Id.) On April 21, 2022, Defendant terminated Plaintiff’s employment. (Id. ¶ 34.) 18 Plaintiff alleges he “repeatedly complained that he was being illegally denied accommodation and 19 reinstatement” during all relevant times. (Id. ¶ 36.) 20 B. Procedural Background 21 After his termination, Plaintiff filed a charge of discrimination with the California Civil Rights 22 Department (“CRD”) which dual filed his complaint with the U.S. Equal Employment Opportunity 23 Commission (“EEOC”).

(Dkt. No. 17-1 at 5.) On May 19, 2023, the CRD issued Plaintiff a right-to-sue 24 notice. (Dkt. No. 1-2 ¶ 15.) And on June 9, 2023, the EEOC issued Plaintiff a right-to-sue notice. (Id.) 25 Plaintiff filed suit in the San Mateo Superior Court on April 15, 2025. (Dkt. No. 1-1.) Plaintiff then filed 26 the First Amended Complaint. (Dkt. No. 1-2.) Two months later, Defendant removed the case to federal 27 court based on federal question and diversity jurisdiction.

(Dkt. No. 1) 1 discrimination (first cause of action), denial of reasonable accommodation (second cause of action), and 2 retaliation and interference (third cause of action). (Dkt. No. 1-2 ¶¶ 40-66.) Plaintiff also brings four 3 claims under FEHA for disability discrimination (fourth cause of action), failure to accommodate disability 4 (fifth cause of action), failure to engage in the interactive process (sixth cause of action), and retaliation 5 (seventh cause of action).

(Id. ¶¶ 67-113.) Lastly, Plaintiff brings a whistleblower retaliation claim under 6 California Labor Code § 1102.5 (eighth cause of action). (Id. ¶¶ 114-124.) 7 C. Incorporation by Reference 8 A document may be incorporated by reference into a complaint “if the plaintiff refers extensively 9 to the document or the document forms the basis of the plaintiff’s claim.” *United States v. Ritchie*, 342 10 F.3d 903, 908 (9th Cir.

2003). “Once a document is deemed incorporated by reference, the entire 11 document is assumed to be true for purposes of a motion to dismiss, and both parties—and the Court—are 12 free to refer to any of its contents.” *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1058 n.10 (9th Cir. 13

2014) (citation and quotation marks omitted). Plaintiff refers to several documents throughout his 14 complaint, including Plaintiff's dual-filed EEOC and CRD complaint (Dkt.

No. 17-1), Plaintiff's CRD 15 notice of case closure and right-to-sue letter (Dkt. No. 17-2), Plaintiff's EEOC determination and notice of 16 rights letter (Dkt. No. 17-3), the complaint in *White v. American Airlines, Inc.*, Case No. 5:23-cv-01164 17 (W.D. Tex. Sept. 18, 2023) (Dkt. No. 17-4), and the District of Arizona's order granting the consent decree, 18 entering final judgment, and terminating the case in *Equal Emp.*

*Opportunity Comm'n v. American 19 Airlines, Inc. & Envoy Air Inc.*, No. 2:17-cv-04059-SPL (D. Ariz.) (Dkt. No. 17-6). The complaint 20 "necessarily relies" on these documents in alleging entitlement to tolling, and the parties do not dispute 21 their authenticity. *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010). So, the Court 22 incorporates these documents by reference.

23 LEGAL STANDARD 24 A complaint should be dismissed under Rule 12(b)(6) if it lacks sufficient facts to "state a claim to 25 relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation marks and 26 citations omitted). A claim is facially plausible when it "pleads factual content that allows the court to 27 draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* In considering a 1 pleadings in the light most favorable to the nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins.*

2 Co., 519 F.3d 1025, 1031 (9th Cir. 2008). 3 A claim may be dismissed as untimely pursuant to a 12(b)(6) motion "only when the running of the 4 statute [of limitations] is apparent on the face of the complaint." *U.S. ex rel. Air Control Techs., Inc. v. Pre 5 Con Indus., Inc.*, 720 F.3d 1174, 1178 (9th Cir. 2013) (quoting *Von Saher v. Norton Simon Museum of Art 6 at Pasadena*, 592 F.3d 954, 969 (9th Cir.

2010)). The statute of limitations is an affirmative defense; 7 therefore, Defendant has the burden of establishing Plaintiff's claims are time-barred. *Payan v. Aramark 8 Mgmt. Servs. Ltd. P'ship*, 495 F.3d 1119, 1122 (9th Cir. 2007). 9 DISCUSSION 10 Defendant moves to dismiss all causes of action as time-barred and also moves to dismiss the 11 seventh and eighth causes of action for failure to state a claim.

12 I. Statute of Limitations: ADA and FEHA Claims 13 A. ADA 14 Once the EEOC dismisses a charge and issues a right-to-sue notice, a plaintiff must file his civil 15 action asserting claims under the ADA within 90 days. See 42 U.S.C. § 2000e-5(f)(1) ("[W]ithin ninety 16 days after the giving of... notice [of the right to sue,] a civil action may be brought against the respondent 17 named in the charge[.]").

The 90-day period begins on "the date on which a right-to-sue notice letter 18 arrived at the claimant's address of record"—presumed to be three days after issuance if not otherwise 19

known. Payan, 495 F.3d at 1122. An action not filed within 90 days is time-barred. Id. at 1121. 20 Plaintiff does not dispute his failure to file his ADA claims within 90 days of receiving notice.

The 21 EEOC issued the right-to-sue notice on June 9, 2023, such that Plaintiff had until September 11, 2023, at 22 the latest, to bring his ADA claims, but he did not file this action until April 15, 2025, nearly a year and a 23 half after the deadline had passed. (Dkt. No. 1-2 ¶ 15; Dkt. No. 1-1.) Defendant has thus met its burden in 24 establishing Plaintiff's ADA claims are time-barred.

25 B. FEHA 26 Under FEHA, a plaintiff must exhaust his administrative remedies by filing an administrative 27 complaint with the CRD and obtaining a right-to-sue notice. Cal. Gov't Code §§ 12960, 12965(b); Romano 1 v. Rockwell Int'l, Inc., 14 Cal.4th 479, 492 (1996). Following the CRD issuing a right-to-sue notice, a 2 plaintiff has one year to file a civil action based on the claims in their administrative complaint.

Cal. Gov't 3 Code § 12960(f)(1)(B). On May 19, 2023, the CRD issued a notice to Plaintiff informing him the CRD had 4 closed his case and of his right-to-sue, beginning the one-year statute of limitations on his FEHA claims. 5 (Dkt. No. 1-2 ¶ 15; Dkt. No. 17-2 at 2.)

Because Plaintiff dual filed his complaint with the EEOC, the 6 CRD's notice also informed Plaintiff that his right-to-sue may be tolled during the pendency of the EEOC's 7 review. (Dkt. No. 17-2 at 2.) Assuming the EEOC's review tolled the limitations period, Plaintiff had until 8 June 9, 2024, one year from the EEOC's issuance of Plaintiff's right-to-sue notice, to bring his claims 9 under FEHA.

Yet, Plaintiff did not file this action until April 15, 2025, ten months after the deadline had 10 passed. (Dkt. No. 1-1.) 11 Plaintiff insists he had four years from his termination to file suit, arguing the three-year deadline 12 to bring an administrative complaint should be added to the one-year deadline for bringing an action 13 following the issuance of a right-to-sue.

However, the only case Plaintiff cites contradicts his position. See 14 Hall v. Goodwill Indus. of S. Cal., 193 Cal. App. 4th 718, 730 (2011) ("The FEHA's one-year limitations 15 period began to run as of the date of the right-to-sue notice issued to Hall, December 24, 2004.").

Because 16 there is no legal support for Plaintiff's contention he had four years to file this action following the issuance 17 of the right-to-sue, and there is no dispute this action was filed more than one year after the issuance of the 18 right-to-sue, Plaintiff's FEHA claims are untimely. Defendant has therefore met its burden in establishing 19 Plaintiff's FEHA claims are time-barred.

20 II. Statute of Limitations: Labor Code § 1102.5 Claim 21 Defendant next asserts Plaintiff's whistleblower retaliation claim under California Labor Code § 22 1102.5, is also time-barred. Since § 1102.5 "does not provide its own statute of limitations," the Court 23 looks to the statute

of limitations generally applicable under state law. *Newton v. Bank of Am.*, No. CV 16- 24 09581-AB (RAOx), 2018 WL 6219946, at \*3 (C.D.

Cal. Jan. 18, 2018). Under California Code of Civil Procedure § 340(a), a one-year statute of limitations applies to “[a]n action upon a statute for a penalty,” 26 while, under § 338(a), a three-year statute of limitations applies to “[a]n action upon a liability created by 27 statute, other than a penalty or forfeiture. Cal. Civ. Proc. Code §§ 338(a), 340(a). “California courts and 1 § 1102.5.2 *Khan v. SAP Labs, LLC*, No. 18-CV-07490-BLF, 2019 WL 5697928, at \*13 (N.D.

Cal. Nov. 4, 2 2019). 3 The remedies for a violation of § 1102.5 include a civil penalty and damages. Section 1102.5(f) 4 provides for a civil penalty. Cal. Labor Code § 1102.5(f) (“In addition to other remedies available, an 5 employer is liable for a civil penalty ... for each violation.”). A plaintiff may also seek damages pursuant 6 to Cal. Labor Code § 1105.

Cal. Labor Code § 1105 (“Nothing in this chapter shall prevent the injured 7 employee from recovering damages from his employer for injury suffered through a violation of this 8 chapter.”); *Taswell v. Regents of Univ. of Cal.*, 23 Cal. App. 5th 343, 361 (2018) (“Labor Code section 9 1105 creates a private right of action for damages for violation of section 1102.5.”).

It is undisputed a 10 claim for a civil penalty under § 1102.5(f) is subject to a one-year statute of limitations under § 340(a). But 11 Plaintiff is not requesting a civil penalty under § 1102.5(f); so, the question is whether the § 340(a) one- 12 year limitations period applies to a damages claim just because the statute also includes a civil penalty.

The 13 California intermediate appellate courts have held it does not. 14 In *G.H.I.I. v. MTS, Inc.*, 147 Cal. App. 3d 256, 276-78 (1983), the court analyzed whether § 340(a) 15 applied to the Unfair Practices Act which provided for recovery of actual damages (Bus. & Prof. Code § 16 17070) and treble damages (Bus. & Prof. Code § 17082). While the plaintiffs conceded the treble damages 17 were penal in nature, they asked the court “to apply a two-fold statute of limitations in the present case: the 18 one-year period to the claim for treble damages, and the three-year period to the recovery of actual 19 damages.” *Id.* at 278.

The court agreed, reasoning the claims for treble and actual damages were “based 20 upon separate statutes contained within the same act,” and the actual damages were not a penalty. *Id.* at 21 279; see also *Menefee v. Ostawari*, 228 Cal. App. 3d 239, 243 (1991) (agreeing with the reasoning in 22 *G.H.I.I.* that when “[c]ertain statutory schemes contain separate, independent statutory provisions for 23 recovery of actual damages and treble damages... a claim for actual damages under one statute will be 24 governed by a different statute of limitations than section 340, subdivision 1, which will govern the claim 25 for treble damages.”).

In *Hypertouch, Inc. v. ValueClick, Inc.*, 192 Cal. App. 4th 805, 840-41 (2011), the 26 27 2 The Court is not aware of any published decision from a California state court discussing which statute

of 1 court again addressed a statutory scheme, Cal. Bus. & Prof. Code § 17529.5, which contained independent 2 provisions for recovery of actual damages (subdivision (b)(1)(B)(i)) and statutory damages (subdivision 3 (b)(1)(B)(ii)).

There, too, the court applied a “two-fold statute of limitations” in which the claim for actual 4 damages was subject to a three-year limitations period while a claim for liquidated damages, which are 5 penal in nature, was subject to a one-year limitations period. *Id.* at 842-43. 6 “Where an intermediate appellate state court rests its considered judgment upon the rule of law 7 which it announces, that is a datum for ascertaining state law which is not to be disregarded by a federal 8 court unless it is convinced by other persuasive data that the highest court of the state would decide 9 otherwise.” *West v. Am.*

*Tel. & Tel. Co.*, 311 U.S. 223, 237 (1940); see also *AGK Sierra De Montserrat*, 10 L.P. v. Comerica Bank, 109 F.4th 1132, 1136 (9th Cir. 2024) (“In the absence of a pronouncement by the 11 highest court of a state, the federal courts must follow the decision of the intermediate appellate courts of 12 the state unless there is convincing evidence that the highest court of the state would decide differently.”) 13 (cleaned up).

Defendant has not addressed these decisions, let alone convinced the Court the California 14 Supreme Court would decide otherwise. So, the Court applies the law as set forth by these California 15 appellate decisions. 16 The California Labor Code “provides independent statutory provisions” for recovery of damages 17 under § 1105 and civil penalties under 1102.5(f).

Cal. Labor Code §§ 1102.5(f), 1105; see *Menefee*, 228 18 Cal. App. 3d at 243. So, “[b]ased on the holdings in *G.H.I.I.* and *Menefee*, we must independently assess 19 the appropriate statute of limitations applicable” to a claim for damages under § 1105 and a claim for 20 penalties under § 1102.5(f). See *Hypertouch*, 192 Cal. App. 4th at 842.

As Plaintiff’s claim for damages is 21 “not in the nature of a ‘penalty or forfeiture,’” § 338(a) controls and a three-year statute of limitations 22 applies. Cal. Civ. Proc. Code §§ 338(a), 340(a). 23 Plaintiff therefore had three years from his termination on April 21, 2022 to bring a § 1102.5 24 damages claim.

Because Plaintiff filed suit on April 15, 2025, within the three-year window, Defendant 25 has not shown his claim is untimely. Defendant’s motion to dismiss Plaintiff’s § 1102.5 claim as being 26 time-barred is therefore denied.

The Court notes that on October 24, 2025, the Ninth Circuit heard oral 27 argument in *Lokker v. Walmart Inc., et al.*, No. 24-3445 (9th Cir.) on the precise issue presented here. 1 Defendant may move for reconsideration. 2 III. Equitable Tolling 3 A. Equitable Tolling at the Pleading Stage 4 First, despite Plaintiff’s assertion otherwise, courts can resolve equitable tolling at the pleading 5 stage.

See *Johnson v. Lucent Techs. Inc.*, 653 F.3d 1000, 1010 (9th Cir. 2011), as amended (Aug. 19, 2011) 6 (holding the district court did not abuse its discretion in rejecting an equitable tolling argument at the 7 motion to dismiss phase); *Lacayo v. Donahoe*, No. 14-CV-04077-JSC, 2015 WL 993448, at \*1, 10 (N.D. 8 Cal. Mar. 4, 2015) (finding equitable tolling was not warranted at the pleading stage and, as a result, 9 granting the defendant's motion to dismiss).

While equitable tolling determinations are fact dependent, 10 “[c]onclusory allegations and unwarranted inferences ... are insufficient to defeat a motion to dismiss.” 11 *Lucent Techs.*, 653 F.3d at 1010. Plaintiff's allegations do not support an inference he is entitled to 12 equitable tolling for the reasons set forth below. 13 B. Equitable Tolling for Federal Claims 14 Courts apply equitable tolling sparingly.

*Nelmida v. Shelly Eurocars, Inc.*, 112 F.3d 380, 384 (9th 15 Cir. 1997). Nevertheless, equitable tolling applies “when extraordinary circumstances beyond the 16 plaintiff's control made it impossible to file a claim on time.” *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th 17 Cir. 1999), as amended (Mar. 22, 1999). Mental incompetence may be such an extraordinary circumstance.

18 *Lucent Techs.*, 653 F.3d at 1010. Courts apply a two-part test to assess whether alleged mental 19 incompetence may equitably toll deadlines. *Id.* First, a plaintiff “must show his mental impairment was an 20 ‘extraordinary circumstance’ beyond his control.” *Id.* Namely, the “impairment was so severe that either 21 ‘(a) plaintiff was unable rationally or factually to personally understand the need to timely file, or (b) 22 plaintiff's mental state rendered him unable personally to prepare [a complaint] and effectuate its filing.’” 23 *Id.* (quoting *Bills v. Clark*, 628 F.3d 1092, 1099-1100 (9th Cir.

2010)). Second, the plaintiff “must show 24 diligence in pursuing the claims to the extent he could understand them, but that the mental impairment 25 made it impossible to meet the filing deadline under the totality of the circumstances.” *Id.* 26 Plaintiff's First Amended Complaint fails to plead sufficient facts to meet either requirement.

First, 27 Plaintiff has not sufficiently alleged his mental impairment was an “extraordinary circumstance.” See 1 light and sound, memory loss, emotional dysregulation, and difficulty completing routine tasks such as 2 timely paperwork,” even causing him to miss medical appointments. (Dkt. No. 1-2 ¶¶ 16-17.) Plaintiff 3 further alleges these deficits rendered him “incapable of understanding, processing, or managing legal 4 matters, including his right-to-sue letter issued by the Civil Rights Department,” thus preventing him from 5 comprehending and acting timely on his legal claims.

(*Id.*) Plaintiff insists this entitles him to equitable 6 tolling of the applicable statutes of limitations because he lacked the “legal capacity to timely act on his 7 rights.” (*Id.*) 8 However, the First Amended Complaint lacks specific allegations as to Plaintiff's incapacity during 9 the relevant

period—after he received his right-to-sue notices. It is not sufficient to merely list medical 10 conditions, physical or psychiatric, and allege these conditions rendered the plaintiff unable to timely file.

11 See *Kuklok v. United States Dep’t of Veterans Affs.*, No. 19-CV-02958-DMR, 2020 WL 4051561, at \*5 12 (N.D. Cal. July 20, 2020), *aff’d sub nom. Kuklok v. U.S. Dep’t of Veterans Affs.*, No. 21-15105, 2022 WL 13 256361 (9th Cir. Jan. 26, 2022).

In *Kuklok*, for example, the plaintiff suffered from “at least ten serious 14 medical conditions, including squamous cell carcinoma and depressive disorder.” *Id.* (cleaned up). 15 Although the plaintiff alleged these conditions made “it extremely difficult, if not impossible, to discover, 16 prepare, and file actions against Defendant,” the court concluded these conclusory allegations “fail[ed] to 17 provide any meaningful detail” as to how the plaintiff’s medical conditions prevented timely filing of the 18 lawsuit.

*Id.* Same here. In two paragraphs, Plaintiff alleges his injury rendered him unable to assert a 19 timely claim. (Dkt. No. 1-2 ¶¶ 16-17.) But while Plaintiff alleges his injury made it difficult for him to 20 “complete routine tasks such as timely paperwork,” he does not allege facts which plausibly support 21 inferring his injury prevented him from filing this lawsuit, especially since that very same injury did not 22 preclude him from obtaining right-to-sue letters.

23 Although the Court need not reach the second requirement, Plaintiff also does not allege facts 24 sufficient to support a plausible inference he acted diligently. Plaintiff argues his diligence in asserting his 25 rights with his employer and the appropriate administrative agencies suffices. Not so. Plaintiff’s diligence 26 in filing an administrative complaint with the EEOC does not give rise to a plausible inference Plaintiff 27 acted diligently during the subsequent limitations period.

This is particularly true given Plaintiff missed the 1 his claims in the interim. And, Plaintiff fails to allege facts showing his “mental impairment made it 2 impossible to meet the filing deadline under the totality of the circumstances.” See *Lucent Techs.*, 653 F.3d 3 at 1010. 4 Accordingly, Plaintiff’s allegations do not raise a plausible inference his brain injury entitles him to 5 equitable tolling on his ADA claims.

6 C. FEHA 7 Plaintiff’s equitable tolling argument for his state law claims fares no better. Under California law, 8 “application of the doctrine of equitable tolling requires timely notice, and lack of prejudice, to the 9 defendant, and reasonable and good faith conduct on the part of the plaintiff.” *Addison v. State of Cal.*, 21 10 Cal. 3d 313, 319 (1978).

Defendant does not challenge whether Plaintiff met the first two requirements. 11 The parties only dispute whether Plaintiff exhibited “reasonable and good faith conduct.” See *Addison*, 21 12 Cal. 3d at 319. 13 Plaintiff has not pled sufficient facts to raise a plausible inference he engaged in “reasonable and 14 good faith conduct.” See *id.* Once again, Plaintiff only points to his diligent



pursuit of administrative 15 remedies and consistent engagement with his employer regarding his disability and desire to return to work, 16 all of which predated the beginning of the relevant limitations period.

Plaintiff does not plead any facts that 17 explain the ten-month delay in pursuing his FEHA claims or show he engaged in any reasonable and good 18 faith conduct during this period. Indeed, the length of the delay alone suggests unreasonable conduct. 19 *Darnaa, LLC v. Google, Inc.*, No. 15-CV-03221-RMW, 2016 WL 6540452, at \*5 (N.D. Cal. Nov. 2, 2016) 20 (“[T]he length of plaintiff’s [ten month] delay suggests unreasonable conduct.”).

Plaintiff’s only 21 explanation is that the delay was a direct result of his cognitive and neurological impairment. (Dkt. No. 1-2 22 ¶¶ 16-17.) But he does not plead facts plausibly supporting this conclusion. 23 Further, Plaintiff’s reliance on Hall is misplaced. See *Hall v. Goodwill Indus. of S. Cal.*, 193 Cal. 24 App. 4th 718, 730-31 (2011). Plaintiff argues the Hall court “acknowledged that a letter and information 25 from a rehabilitation center indicating it prevented contact with the outside community may be sufficient 26 evidence to support an equitable tolling argument.” (Dkt.

No. 18 at 6.) Plaintiff asserts a letter and 27 information provided by his doctor discussing his impairment, neither of which are alleged in the First 1 whether the letter from the rehabilitation center could be sufficient, it was determining whether the letter 2 from the rehabilitation center was new evidence that warranted a new trial. See 193 Cal. App. 4th at 730- 3 31.

The court did not make any determination as to equitable tolling because “[e]ven if this evidence was 4 sufficient to support an equitable tolling argument, it was not newly discovered.” *Id.* at 731. 5 Accordingly, Plaintiff’s allegations do not raise a plausible inference his brain injury entitles him to 6 equitable tolling on his FEHA claims. 7 *IV. White v. American Airlines, Inc. and EEOC v. American Airlines, Inc.* 8 A. *White v. American Airlines, Inc.* 9 On September 18, 2023, a class action, *White v. American Airlines, Inc.*, was filed in the Western 10 District of Texas “on behalf of disabled employees subjected to Defendant’s unlawful failure to 11 accommodate, refusal to engage in the interactive process, and enforcement of its de facto ‘100% healed’ 12 policy.” Civil Action No. 5:23-cv-01164 (W.D.

Tex.); (Dkt. No. 1-2 ¶ 20; Dkt. No. 17-4.) Plaintiff 13 contends his claims in this case were tolled while *White* was pending. 14 As an initial matter, the *White* action cannot toll the statute of limitations on Plaintiff’s state law 15 claims.

The *White* action is a putative class action that brings claims under federal law, 42 U.S.C. §§ 16 12112(a) and (b)(5)(A). (Dkt. No. 17-4 at 12.) California does not recognize cross-jurisdictional tolling. 17 See *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1025 (9th Cir. 2008) (declining to toll California 18 state law claims by the filing of an Illinois class action because “[t]he

California Supreme Court has not adopted such cross-jurisdictional tolling”); see also *Centaur Classic Convertible Arbitrage Fund Ltd. v. Countrywide Fin.*

*Corp.*, 878 F. Supp. 2d 1009, 1017 (C.D. Cal. 2011) (“California does not recognize cross-jurisdictional tolling.”). Plaintiff does not dispute this lack of cross-jurisdictional tolling. As for Plaintiff’s ADA claims, the White action is still not a sufficient basis for tolling the limitations period. “[C]ommencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action.” *Am.*

*Pipe & Const. Co. v. Utah*, 414 U.S. 538, 554 (1974). However, by the time the White action commenced on September 18, 2023, the statute of limitations for Plaintiff’s ADA claims had already run. (See Dkt. No. 17-4.)

The deadline for Plaintiff to file his claims was September 11, 2023, seven days discussed above, Plaintiff does not allege sufficient facts to justify equitable tolling. *B. EEOC v. American Airlines, Inc.* Defendant was also involved in class action litigation brought by the EEOC. *EEOC v. American Airlines, Inc., et al.*, No. CV-17-04059-PHX-SPL (D. Ariz.); (Dkt.

No. 1-2 ¶ 18; Dkt. No. 17-6.) That case resulted in a consent decree requiring Defendant to identify and notify all individuals potentially aggrieved by the challenged practices and to ensure their inclusion in the class-wide remedial process. (Dkt. No. 1-2 ¶ 19.)

The decree was filed on November 3, 2017, and on November 16, 2017, the case was terminated. (Dkt. No. 17-6.) Yet, Plaintiff was not terminated until April 21, 2022, almost five years later. (Dkt. No. 9 1-2 ¶ 34.) Plaintiff concedes the EEOC consent decree does not provide a basis for statutory tolling because Plaintiff was not a party to that case or in the relief group covered by the decree.

Plaintiff nevertheless contends the EEOC action put Defendant on notice of Plaintiff’s challenge to the “100% healed policy” and undermines any claim of prejudice by Defendant. Even so, notice and lack of prejudice are not at issue here. \*\*\* For these reasons, the Court dismiss Plaintiff’s ADA and FEHA claims as time-barred. Plaintiff’s whistleblower retaliation claim under California Labor Code § 1102.5, however, on this record is timely.

V. Retaliation Claims under FEHA and California Labor Code § 1102.5 Defendant also contends Plaintiff does not plausibly allege his state law retaliation claims. To establish a prima facie case of retaliation under FEHA or California Labor Code § 1102.5, a plaintiff must allege facts showing “(1) that he engaged in protected activity, (2) that he was thereafter subjected to an adverse employment action by his employer, and (3) that there was a causal link between the protected activity and the adverse employment action.” *Somers v. Digital Realty Tr.*

Inc., No. 14-CV-05180-EMC, 23 2018 WL 3730469, at \*14 (N.D. Cal. Aug. 6, 2018); Yanowitz v. L’Oreal USA, Inc., 36 Cal. 4th 1028, 1042 24 (2005). The parties only dispute whether Plaintiff adequately alleges facts showing a causal link between 25 the protected act and the employment termination. 26 Plaintiff does not sufficiently allege facts supporting a causal link based on temporal proximity or a 27 pattern of antagonism.

Plaintiff alleges on August 10, 2021, after several years of Defendant denying his 1 disabled. (Dkt. No. 1-2 ¶¶ 30, 32.) Eight months later, on April 21, 2022, Defendant terminated Plaintiff’s 2 employment. (Dkt. No. 1-2 ¶ 32.) 3 For temporal proximity to be “sufficient evidence of causality to establish a prima facie case” the 4 proximity “must be very close.” *Arteaga v. Brink’s, Inc.*, 163 Cal. App.

4th 327, 354 (2008); see also 5 *Loggins v. Kaiser Permanente Int’l.*, 151 Cal. App. 4th 1102, 1110 n.6 (2007) (noting “to permit the 6 inference of a causal nexus ... the case law suggests the employer’s action must follow ‘within a relatively 7 short time’ and the plaintiff cited “no case holding that a nine-month hiatus between protected conduct 8 qualifies as a ‘relatively short time’”).

Drawing all inferences in Plaintiff’s favor, the gap is “too great” to 9 permit an inference Plaintiff’s complaint in August caused his termination eight months later. See 10 *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1035 (9th Cir. 2006) (concluding an eight-month 11 gap between an employee’s complaint and termination was “too great to support an inference that [the 12 plaintiff’s] complaints caused his termination”); cf. *Yartzoff v. Thomas*, 809 F.2d 1371, 1375-76 (9th Cir.

13 1987) (determining causation to be sufficiently alleged when the transfer of job duties began less than three 14 months after the plaintiff filed his first administrative complaint and his supervisors issued sub-average 15 performance ratings two weeks after the civil rights office investigated the charges). 16 Plaintiff contends the absence of temporal proximity is not dispositive because he has adequately 17 pled facts showing causation through a pattern of antagonism. “Although a lack of temporal proximity may 18 make it more difficult to show causation, circumstantial evidence of a ‘pattern of antagonism’ following the 19 protected conduct can also give rise to the inference.” *Porter v. Cal. Dep’t of Corr.*, 419 F.3d 885, 895 (9th 20 Cir.

2005) (internal citation omitted). Plaintiff does not, however, allege circumstantial facts supporting a 21 pattern of antagonism. Plaintiff only alleges Defendant repeatedly refused to reinstate him, rejected his 22 medical clearances with restrictions, and denied his accommodation requests. (Dkt. No. 1-2 ¶¶ 29, 30.) 23 Although Plaintiff alleges these actions negatively impacted him, they do not on their own give rise to an 24 inference Plaintiff was subjected to any hostility, let alone a pattern of antagonism.

See *Heyer v. 25 Governing Bd. of Mount Diablo Unified Sch. Dist.*, No. C-10-4525 MMC, 2011 WL 2600913, at \*3 (N.D. 26 Cal. June 30, 2011) (concluding the defendant’s denial of the request to investigate and the denial of a 27 requested transfer did not reflect a “pattern of antagonism,” absent more factual allegations “suggesting 1 Unified Sch. Dist., 521 F. App’x 599 (9th Cir.

2013); (Id. ¶¶ 37-38.) 2 Next, Plaintiff argues he engaged in continued protected activity, repeatedly requesting 3 accommodations, and complaining about their denial into 2022, including shortly before his termination. 4 But these requests and complaints are not alleged in Plaintiff’s First Amended Complaint beyond a broad 5 allegation that “[d]uring all relevant times, Plaintiff repeatedly complained that he was being illegally 6 denied accommodation and reinstatement.” (Dkt.

No. 1-2 ¶ 36.) Plaintiff’s complaint does not identify 7 when or how often between August 2021 and April 2022 he allegedly requested accommodations, to whom 8 he made those requests, and what the specific response to those requests were. See *Yartzoff*, 809 F.2d at 9 1376 (finding proximity between multiple instances of protected activity and retaliation to be apparent 10 where the specific dates of the protected activity were close in time to the alleged retaliatory conduct).

11 Plaintiff’s continuing protected activity theory is thus inadequately pled. 12 Finally, Plaintiff argues the *EEOC v. American Airlines* and *White v. American Airlines* litigation 13 involving the “100% healed” policy supports an inference of retaliatory motive.

However, the connection 14 between the other litigations and Plaintiff’s termination—absent more factual allegations suggesting 15 otherwise—is too attenuated to support an inference of retaliatory motive in this case. 16 \*\*\* 17 Accordingly, Plaintiff’s retaliation causes of action under the FEHA and California Labor Code § 18 1102.5 are dismissed for failure to state a claim.

19 VI. Leave to Amend is Appropriate 20 If a Rule 12(b)(6) motion is granted, the “court should grant leave to amend even if no request to 21 amend the pleading was made, unless it determines that the pleading could not possibly be cured by the 22 allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir.2000) (en banc) (internal quotation 23 marks and citations omitted).

Here, Plaintiff has requested leave to amend to cure any deficiencies as to 24 equitable tolling and causation. Although Defendant contends leave to amend would be futile, it is not 25 clear “the pleading could not possibly be cured by the allegation of other facts” giving rise to a plausible 26 inference equitable tolling applies or causation exists. See *Lopez*, 203 F.3d at 1127.

Thus, Plaintiff is given 27 leave to amend. 1 CONCLUSION 2 For the reasons set forth above, Plaintiff’s ADA and FEHA claims are time-barred; thus, the first 3 through seventh causes of action are dismissed with leave to amend. Should Plaintiff wish to further 4 amend these causes of action, Plaintiff should keep in mind that he must allege facts that give rise to a 5 plausible inference there are grounds for equitable tolling.

6 The eighth cause of action under California Labor Code § 1102.5, while not time barred, fails to  
7 state a claim and is dismissed with leave to amend. Although Plaintiffs seventh cause of action  
for 8 retaliation under the FEHA is time-barred, this cause of action also fails to state a claim.  
Should Plaintiff 9 wish to amend these claims, he is reminded that he must allege facts that give  
rise to a plausible inference 10 of a causal nexus between his protected activity and termination.’  
11 Plaintiff’s Second Amended Complaint, if any, shall be filed by December 4, 2025.

Failure to file a 12 a Second Amended Complaint will result in entry of judgment in Defendant’s  
favor on all claims. 13 This Order disposes of Docket No. 16. IT IS SO ORDERED. 15 || Dated:  
October 31, 2025 16 fe JAQUELINE SCOTT CORLEY 18 United States District Judge 19 20  
21 22 23 24 25 26 27 28 3 Plaintiff’s counsel is cautioned that when representing a statement to be  
a direct quotation they should ensure the statement is a direct quotation of what is stated in the  
cited case.

(See Dkt. No. 18 at 3, 8.)