

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 10 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOAH SAEEDY,

No. 22-55667

Plaintiff-Appellant,

D.C. No.

v.

8:21-cv-01911-DOC-JDE

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

MEMORANDUM*

Defendant-Appellee.

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Argued and Submitted June 8, 2023
Pasadena, California

Before: GRABER and OWENS, Circuit Judges, and TUNHEIM,** District Judge.
Dissent by Judge GRABER.

Plaintiff Noah Saeedy matriculated at the University of California, Irvine (“UCI”) in 2007 to earn a Bachelor of Arts degree in political science. Upon his enrollment, Saeedy provided UCI his diagnosis of dyscalculia and requested a

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable John R. Tunheim, United States District Judge for the District of Minnesota, sitting by designation.

waiver of the political science degree's mathematics requirement or other substitute coursework as an accommodation. Thereafter, the interactive process was initiated. Between 2010 and 2017, various UCI employees represented that a waiver of the mathematics requirement was possible for Saeedy. Saeedy continued to explore his options based on these representations, the ongoing interactive process, and because no final decision had been made.

On October 6, 2017, the Dean of the School of Social Sciences informed Saeedy in writing that the math waiver request was denied. The letter directed Saeedy to contact the Student Affairs Office "if [he] need[ed] assistance with the appropriate equivalents to the required math courses . . . to ensure their transferability." Saeedy accordingly contacted a UCI employee to determine what appropriate equivalents were possible. During these further discussions, he was advised to explore possible accommodations with the Department of Humanities. At a subsequent meeting with the School of Humanities on April 30, 2018, Saeedy was informed that no "appropriate equivalents" could be identified, and that the math requirement would not be waived.

Saeedy brought this action alleging disability discrimination in violation of Title II of the Americans with Disabilities Act ("ADA") based on failure to accommodate. The district court granted the Regents of the University of California's ("Regents") second motion to dismiss, determining that Saeedy's

claim accrued on October 6, 2017, and was therefore barred by the three-year statute of limitations. Saeedy timely appeals. We have jurisdiction under 28 U.S.C. § 1291. We reverse and remand.

We review *de novo* the district court’s dismissal of a claim on statute of limitations grounds. *MHC Fin. Ltd. P’ship v. City of San Rafael*, 714 F.3d 1118, 1125 (9th Cir. 2013). While a statute of limitations defense is typically raised in a responsive pleading, it “may be raised in a motion to dismiss if the running of the statute is apparent from the face of the complaint.” *Ledesma v. Jack Stewart Produce, Inc.*, 816 F.2d 482, 484 n.1 (9th Cir. 1987). Dismissal should only be granted “if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled.” *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980).

Accepting Saeedy’s factual allegations as true—as we must at the motion to dismiss stage, *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006)—we hold that Saeedy’s First Amended Complaint establishes that he plausibly initiated this action within the statute of limitations. “Under federal law, a cause of action generally accrues when a plaintiff knows or has reason to know of the injury which is the basis of his action.” *Cline v. Brusett*, 661 F.2d 108, 110 (9th Cir. 1981). The basis of Saeedy’s ADA claim is failure to provide a reasonable accommodation by way of a waiver of the math requirement or other

substitute coursework. While the Social Sciences Dean’s October 2017 letter denied a waiver of the math requirement, the letter went on to instruct Saeedy to contact the Director of Undergraduate Student Affairs for help determining the “appropriate equivalents to the required math courses.” The October 2017 letter plausibly instructs Saeedy to seek university help to determine whether alternative courses would be acceptable to allow him to graduate. With the required liberality, it is plausible that the Dean’s instruction left open the possibility of some option—perhaps another school within the university, another department, or some other set of qualifying courses—that would allow Saeedy to graduate, thus he would not yet have known he was injured.

Moreover, even assuming the October 2017 letter provided Saeedy notice of an injury, a UCI employee subsequently instructed Saeedy to pursue accommodations from the School of Humanities. Saeedy’s continued pursuit of those options plausibly resulted in an injury in April 2018 when accommodations to receive an alternative Bachelor of Arts degree with the Department of Humanities were denied.¹

Thus, at this stage of the litigation, we find that Saeedy has plausibly alleged

¹ Though the Regents rely on *Delaware State College v. Ricks*, 449 U.S. 250, 257–58 (1980), that case is dissimilar because the complaint here does not establish that the April 2018 denial was merely a “delayed, but inevitable consequence” of the October 2017 letter, rather than a discrete act.

that he did not know and could not have known he was injured until April 2018. The district court therefore erred in granting the Regents' motion to dismiss on statute of limitations grounds.

REVERSED AND REMANDED.

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GRABER, Circuit Judge, dissenting:

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I respectfully dissent.

As the First Amended Complaint alleges, Plaintiff began working toward a Bachelor of Arts degree in political science at the University of California, Irvine (UCI), in 2007. For about ten years, UCI engaged in an interactive process, discussing with Plaintiff possible ways to accommodate his dyscalculia.

On October 6, 2017, the Dean of the School of Social Sciences informed Plaintiff in writing that “[t]he math requirement will not be waived for you” or, indeed, for any other student in the School. The letter noted that the School had offered Plaintiff an alternative involving linguistics classes and, when he could not fulfill that requirement, the School had “provided the option to complete the math requirement off the UCI campus with one semester of approved calculus plus one semester of statistics.” The letter instructed Plaintiff to contact the “Director of the Undergraduate Student Affairs Office for assistance and review of the courses to ensure their transferability” if he “need[ed] assistance with the appropriate equivalents to the required math courses.” In my view, this letter unequivocally informed Plaintiff that (1) the math requirement would not be waived, (2) the decade-long process of negotiation over an appropriate

accommodation had ended, and (3) the described accommodation was the only acceptable one.

Dismissal based on a statute-of-limitations defense may be granted only if the complaint, read liberally, makes the running of the statute apparent. Jablon v. Dean Witter & Co., 614 F.2d 677, 682 (9th Cir. 1980). That standard is met here. “Under federal law, a claim accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action.”¹ Maldonado v. Harris, 370 F.3d 945, 955 (9th Cir. 2004) (citation and internal quotation marks omitted).

Here, the alleged injury that is the basis of the action is the School of Social Science’s refusal to waive the math requirement for Plaintiff’s political science degree. It is clear from the First Amended Complaint that what Plaintiff sought specifically was to receive a political science degree, which he had been pursuing for a decade. For example, Plaintiff alleges, in claiming that UCI’s denial of a waiver was unreasonable, that “not every UC institution requires a mathematical component in order for a student to obtain a Bachelor of Arts degree in political science.” Because the political science degree program in which Plaintiff was enrolled refused in writing, on October 6, 2017, to waive

¹ Although “state law determines the period of limitations, federal law determines when a federal claim accrues.” Alexopoulos v. S.F. Unified Sch. Dist., 817 F.2d 551, 555 (9th Cir. 1987).

the math requirement and because the letter also informed Plaintiff of the only accommodation that the School would accept, the three-year statute of limitations began to run on that date. But Plaintiff filed his original complaint more than three years later.

The allegation that, after receiving the Dean's letter, Plaintiff went to a different school within UCI, which likewise refused to waive the math requirement, did not extend the statute of limitations. Cf. Del. State Coll. v. Ricks, 449 U.S. 250, 261 (1980) (holding that "the pendency of a grievance, or some other method of collateral review of an employment decision, does not toll the running of the limitations periods"); see also Olsen v. Idaho State Bd. of Med., 363 F.3d 916, 926 (9th Cir. 2004) (holding that the plaintiff's claim accrued on the date when she received a letter notifying her of the denial of her license reinstatement and not on the later date on which that decision became final). If Plaintiff were allowed to extend the limitations period by repeatedly seeking math waivers from every academic school within UCI, his claim might never be untimely. That scenario encourages, rather than discourages, the filing of stale claims, which the statute of limitations is designed to prevent. Accordingly, I would affirm the dismissal of the First Amended Complaint as time-barred.