



properly found that its contents were subject to dispute”); Madeja v. Olympic Packers, LLC, 310 F.3d 628, 639 (9th Cir. 2002) (the district court did not abuse its discretion in refusing to take judicial notice of bankruptcy proceedings against the charterer of a vessel because the documents submitted for judicial notice were not authenticated). In addition, given the number of documents defendants seek to have considered in connection with their Motion to Dismiss, the court is persuaded that such documents and the arguments raised in the pending motions should be considered in the context of a motion for summary judgment. See Wright & Miller, 5C Fed. Prac. & Proc. Civ. § 1366, at 159 (3d ed. 2004) (“As the language of [Rule 12(b)(6)] suggests, federal courts have complete discretion to determine whether or not to accept the submission of any material beyond the pleadings that is offered in conjunction with a Rule 12(b)(6) motion and rely on it, thereby converting the motion, or to reject it or simply not consider it.”).

Even without resort to the RJN, the court finds that defendants’ contentions regarding equitable tolling of the statute of limitations (see Dkt. 75-2, Motion at 10-21), is better resolved in either a motion for summary judgment or trial. See Huynh v. Chase Manhattan Bank 465 F.3d 992, 1003-04 (9th Cir. 2006) (“Generally, the applicability of equitable tolling depends on matters outside the pleadings, so it is rarely appropriate to grant a Rule 12(b)(6) motion to dismiss (where review is limited to the complaint) if equitable tolling is at issue.”); Morales v. City of Los Angeles, 214 F.3d 1151, 1153 (9th Cir. 2000) (“[A] district court may grant a 12(b)(6) motion to dismiss on statute of limitations grounds only if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled.”) (internal quotation marks omitted); Davenport v. Litton Loan Servicing, LP, 725 F.Supp.2d 862, 873 (N.D. Cal. 2010) (same).

**This Order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.**

Accordingly, IT IS ORDERED THAT:

1. The Joint Motion of All Defendants to Dismiss Third Amended Complaint (**Document No. 75**) is **denied**. Any argument raised in the Motion may be raised in a motion for summary judgment.

2. Defendants' Request for Judicial Notice (**Document No. 76**) is **denied**.

3. Defendants shall file an Answer(s) to the Third Amended Complaint no later than **October 20, 2016**.

Dated this 6th day of October, 2016.

/s/

Fernando M. Olguin  
United States District Judge