

**DEPARTMENT TEN
JUDGE MICHAEL MATTICE
707-207-7310
TENTATIVE RULINGS SCHEDULED FOR
WEDNESDAY, OCTOBER 18, 2017**

**WILLIAMS, ET AL. v. CARMAX AUTO SUPERSTORES CAL., LLC, ET AL.
Case No. FCS045277**

Motion for Leave to File Third Amended Complaint

TENTATIVE RULING

Plaintiff's motion for leave to file her proposed third amended complaint is denied.

Although the facts in support of the proposed amendment were discovered or should have been discovered during a deposition held on January 15, 2016 (or possibly earlier from written discovery produced by Defendant in October of 2015), Plaintiff did not file her motion until a month prior to the date set for trial. In fact, Plaintiff expressed a desire to add identical or materially similar amendment at a case management conference on June 7, 2016, but did not file the motion for leave to amend by July 8, 2016 as ordered by this Court. Plaintiff has not provided a satisfactory explanation for the significant delay in seeking amendment and has not demonstrated reasonable diligence in pursuing the amendment. (*Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1280; *Melican v. Regents of Univ. of Cal.* (2007) 151 Cal.App.4th 168, 175; *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 746; *Record v. Reason* (1999) 73 Cal.App.4th 472, 486-487; *Roemer v. Retail Credit Co.* (1975) 44 Cal.App.3d 926, 939-940.)

**PEOPLE OF THE STATE OF CALIFORNIA v. PONG MARKETING AND
PROMOTIONS, INC., et al.
Case No. FCS047090
and related cases FCS047091, FCS047517 and FCS047518**

Motion by Plaintiff to Compel Further Responses and Production of Documents to First Set of Requests for Production of Documents to Defendant PONG GAME STUDIOS CORPORATION—Continued Hearing as to Requests 25 and 26

TENTATIVE RULING

Parties to appear.

ABDULSALAM v. McLEOD, et al.
Case No. FCS048571

Motion by Defendants for Judgment on the Pleadings

TENTATIVE RULING

A plaintiff suing a public entity or public employee must allege facts in the complaint sufficient to show either compliance with or excuse from the claims filing requirements.

Under Government Code §911.2, “a claim relating to a cause of action . . . for injury to person” must be presented “not later than 6 months after the accrual of the cause of action”.

If a party fails to present a timely claim (within 6 months of accrual of the cause of action), that party can present an application to file late claim no later than 1 year after the accrual of the cause of action. Government Code §911.4(a). The application must “state the reason for the delay in presenting the claim”, and attach the proposed claim. Government Code §911.4(b).

Plaintiff here did not file a late claim application, but instead merely presented her claim after the 6 month deadline to do so.

Thus, technically, Plaintiff has not complied with the claims filing requirements.

While ordinarily noncompliance would be sufficient to sustain a defense demurrer or grant a defense motion for judgment on the pleadings, there is an exception for public entity-induced noncompliance.

Under the doctrine of equitable estoppel, a person or entity can be estopped from asserting certain rights, if they have acted in a manner inconsistent with the assertion of those rights, and the other side has reasonably relied upon that conduct.

Equitable estoppel can be applied to any situation in which the public entity has misled or concealed the information necessary to enable the victim to file a timely claim.

[E]stoppel is available in all circumstances where the government has acted in an unconscionable manner or attempted to take unfair advantage of the claimant. The issue is determined from the totality of the circumstances.

The purpose of the requirement that claims be filed is to provide the public entity with full information concerning rights asserted against it, so that it may settle those of merit without litigation. Therefore, the public entity cannot frustrate a claimant's ability to comply with the statutes enacted for its benefit and then assert noncompliance as a defense. Christopher P. v. Mojave Unified School District (1993) 19 Cal.App.4th 165, 172.

In our case, Plaintiff alleged that the accident was investigated by the CITY, which delayed in producing a traffic collision report until after the expiration of the 6 month deadline to timely present a claim. (The accident occurred on June 7, 2016; the report was not prepared until January 4, 2017, almost 7 months thereafter). [Morgan Declaration, ¶4; Plaintiff's complaint, ¶¶9(b)(1) and 9(b)(7)]. Plaintiff "believed that he had been struck by a vehicle owned and operated by the Solano County Sheriff's Department", and that there was no evidence that he was provided any information about the driver, driver's license, insurance information, employer or the driver or owner of the vehicle at the time of the accident". [Morgan Declaration, ¶2; Plaintiff's complaint, ¶9(b)(4)]. Plaintiff's counsel further claimed that his office "made numerous phone calls to the Vallejo Police Department in an attempt to receive the Traffic Collision Report . . . and on each occasion "were told that the Report was not yet ready." [Morgan Declaration, ¶3; Plaintiff's complaint ¶¶9(b)3) and 9(b)(7)]. He finally claimed that upon the County's denial of the claim Plaintiff presented to it in early December, which identified the public entity whose vehicle and employee was involved as CITY, Plaintiff presented a claim within a week or so to CITY (about a week after the 6 month deadline). [Morgan Declaration, ¶8; Plaintiff's complaint, ¶¶9(b)(5) and 9(b)(6)]. He claimed "At all times relevant herein, the Defendants and moving party were aware of the driver, the employer of the driver and the owner of the vehicle but concealed the information for more than six months after the date of the incident." [Morgan Declaration, ¶11; Plaintiff's complaint, ¶¶9(b)(7) and 9(b)(8)].

The court finds this sufficient to support a finding of equitable estoppel on the part of Defendants to assert noncompliance with the claims presentation requirement, and therefore denies their motion for judgment on the pleadings.