4th Civil No. G 013623

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

TOM WOOD,

Plaintiff and Appellant,

vs.

RIVERSIDE GENERAL HOSPITAL, et al.,

Defendants and Respondents.

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Appeal from the Superior Court of Orange County
Orange County Court Case No. 59 04 98
Honorable Richard J. Beacom, Judge

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# RESPONDENT'S BRIEF

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PATTERSON, RITNER, LOCKWOOD,
ZANGHI & GARTNER
JOHN ZANGHI
KAREN N. BRUECKNER
320 North "E" Street, Suite 204
San Bernardino, California 92401
(714) 885-6063

GREINES, MARTIN, STEIN & RICHLAND
TIMOTHY T. COATES
CAROLYN OILL
9601 Wilshire Boulevard, Suite 544
Beverly Hills, California 90210-5215
(310) 859-7811

Attorneys for Respondent County of Riverside

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## INTRODUCTION

To sue a public entity or public employee for personal injury, an injured party is required first to present a timely claim for damages to the public entity or to obtain judicial relief from the claim presentation requirements. (Gov. Code §§ 911.2, 911.4, 946.6.) A failure to comply with the claim statutes, or to obtain relief from compliance, bars the claimant's action at law. (Gov. Code § 945.4; Lewis v. City and County of San Francisco (1971) 21 Cal.App.3d 339.)

Plaintiff Tom Wood appeals from a summary judgment entered in favor of the County of Riverside based on plaintiff's failure to comply with the claim statutes prior to commencing the instant action for injuries allegedly sustained at Riverside General Hospital in June 1988. Plaintiff contends the trial court erred in granting summary judgment for one or more of the following reasons: (1) plaintiff substantially complied with the claim statute by submitting a completed complaint form to the hospital's Quality Assurance Department while he was hospitalized; (2) the County waived the claim statute defense by failing to treat his letter as a "defective" claim; (3) the County waived the claim statute defense by failing to raise the issue in the complaint; and (4) the County should be equitably estopped from asserting the claim statute as a defense. As we explain, none of these contentions has any merit.

First, the doctrine of substantial compliance requires *some* compliance with every element of the statutes. (Pacific Tel. & Tel. Co. v. County of Riverside (1980) 106 Cal.App.3d 183, 190.) Plaintiff's June 1988 letter failed to comply with at least two elements in that it: (1) failed to include a statement of damages, or a statement that jurisdiction over the action would rest in superior court; and (2) was not served on or delivered to the County Board of Supervisors--the governing board of the County. Accordingly, the doctrine of substantial compliance has no application to this case.

Second, plaintiff's letter could not be considered a "defective" claim, within the meaning of Phillips v. Desert Hospital Dist. (1989) 49 Cal.3d 699 and, thus, the County was not required to treat it as such. Phillips holds that a document which discloses an injury to the claimant for which the claimant seeks compensation from the public entity, and which informs the public entity in some fashion that unless the claim is resolved a lawsuit may follow, must be treated as a defective claim, imposing a statutory duty on the public entity to notify plaintiff of the defect. A failure to send such notification operates as a waiver of the defect. (Gov. Code §§ 910.8, 911, 911.3.) However, while plaintiff's letter described physical injuries to plaintiff, it did not seek compensation for those injuries, nor did it give notice that plaintiff intended to file a lawsuit. Accordingly, under Phillips plaintiff's letter did not constitute a defective claim.

Third, since compliance with the claim statutes is a prerequisite to filing suit--an integral element of plaintiff's cause of action against the public entity (Illerbrun v. Conrad (1963) 216 Cal.App.2d 521, 524)--it need not be raised as an affirmative defense in answer to the complaint. Indeed, it is not an affirmative defense at all.

Finally, plaintiff has not demonstrated the elements of an equitable estoppel. Plaintiff contends that, by failing to disclose its intention to rely on the claim statute at an earlier time, the County caused him to "aggressively pursue" discovery in the instant action. In other words, plaintiff should be permitted to pursue his barred action because the defendant did not tell him sooner that he could not prevail on one of the elements of his claim. This is not a situation to which an equitable estoppel should be applied.

Since plaintiff failed to comply with the claim statute, or obtain relief from compliance, prior to commencing his lawsuit, his action at law is barred, and summary judgment in favor of the County should be affirmed.

## STATEMENT OF FACTS

On May 11, 1988, plaintiff and appellant Tom Wood was involved in a motor vehicle accident, as a result of which he suffered a broken neck and severed spinal cord. (Clerk's Transcript on Appeal ["CT"] 7, 57.) After the accident, plaintiff was taken to and treated at Riverside General Hospital, which is owned and operated by the County of Riverside ("County"). (CT 57.) Plaintiff contends that, during his stay at the hospital, he developed bedsores, earaches, a staph infection and encountered various other problems with hospital employees--including repeated failures to timely respond to his needs. (CT 57-62; Appellant's Opening Brief ["AOB"] 1-2.)

Between June 20 and June 22, 1988, while plaintiff was still hospitalized, his mother composed a letter on his behalf, on a hospital complaint form, which explained that plaintiff was not pleased with the care he received while hospitalized. (CT 57.) The letter stated that hospital employees failed to attend to his bedsore, neglected his catheter on numerous occasions, carelessly operated the rotating bed to which plaintiff was confined, and were slow to respond to his calls because his call button was frequently accidentally set off. (CT 57-60.) The letter concluded that the care plaintiff received was "inefficient" and appalling. (CT 62.) A brief supplement to the letter, signed by plaintiff's mother, stated that plaintiff's physical therapy was set back several months as a result of hospital employees' conduct. (CT 63.) The hospital responded to the letter, indicating that the problems plaintiff had identified would be investigated and handled. (CT 64.)

On May 10, 1989, plaintiff filed the instant action against the County in superior court. (CT 1.) The complaint fails to allege either that plaintiff complied with the claim statute prior to commencing his action, or facts to support such an allegation.

On or about November 18, 1991, the County served a demand for production of documents (set two), which requested plaintiff produce any documents which demonstrated he had complied with the claim presentation requirements of the Government Code prior to commencing his action. (CT 65-66.) On or about January 7, 1992, in response to the request, plaintiff produced the June 20, 1988, letter on the hospital's complaint form. (CT 68.)

On October 9, 1992, the County filed a motion for summary judgment on the ground that plaintiff failed to comply with the claim statutes prior to filing his lawsuit against the County. (CT 31, 36.) Plaintiff opposed the motion on the ground that his June 1988 letter to the hospital: (1) substantially complied with the claim statutes; or (2) constituted a defective claim to which the County failed to respond, thus waiving any objections to it. (CT 88, 94, 97.) The trial court rejected plaintiff's arguments and granted the County's motion on December 4, 1992. (CT 206, 207.)

On December 24, 1992, plaintiff filed his notice of appeal from the court's December 4, 1992, order granting summary judgment. (CT 209.)[1/]

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1/ Plaintiff has not complied with California Rules of Court, rule 13, requiring the opening brief to contain a statement that the appeal is from an appealable judgment or order. In fact, plaintiff has appealed from a *nonappealable order*--i.e., the order granting the County's motion for summary judgment. (Modica v. Merin (1991) 234 Cal.App.3d 1072 [order granting summary judgment not appealable].) The County recognizes that an appellate court may "generously treat the appeal as from the [subsequently entered] judgment" (Buehler v. Alpha Beta Co. (1990) 224 Cal.App.3d 729, 731, fn. 1); however, it is not required to do so. (See Modica v. Merin, supra, 234 Cal.App.3d 1072 [appeal from nonappealable order granting summary judgment dismissed].) Moreover, this case is complicated by the fact that the judgment is not part of the record on appeal--thus leaving the court in a position of being unable to tell, from the record provided, if it even has jurisdiction over the appeal. Since it is plaintiff's burden, as the appellant, to provide an adequate record for review (Ballard v. Uribe (1986) 41 Cal.3d 564, 574), and since he has failed to do so, the judgment should be affirmed. (Baker v. Children's Hospital Medical Center (1989) 209 Cal.App.3d 1057, 1060 [where the record is silent, the reviewing court must presume the judgment of the trial court is correct].)

## LEGAL DISCUSSION

### PLAINTIFF'S ACTION IS BARRED BY HIS FAILURE TO COMPLY WITH THE CLAIM PRESENTATION REQUIREMENTS OF THE TORT CLAIMS ACT.

To sue a public entity or public employee, a plaintiff must first comply with the requirements of the California Tort Claims Act. (Gov. Code § 905 ["There shall be presented . . . all claims for money or damages against local public entities . . . "]; Carr v. State of California (1976) 58 Cal.App.3d 139, 145; Stanley v. City and County of San Francisco (1975) 48 Cal.App.3d 575, 579.) A prerequisite to the filing of any lawsuit relating to a personal injury claim against a public entity or a public employee is the presentation of a claim for damages to the public entity within six months after accrual of the cause of action. (Gov. Code §§ 911.2, 945.4.) Government Code section 910 requires the following information be included in a claim for damages:

> "(a) The name and post office address of the claimant. (b) The . . . address to which the person presenting the claim desires notices to be sent. (c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted. (d) A general description of the . . . injury, damage or loss incurred . . . . (e) The name or names of the public employee or employees causing the injury, damage or loss, if known. (f) The amount claimed . . . as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss,

insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed."

If a party does not present a claim to the public entity within six months, then he or she must apply, within a reasonable time not to exceed one year after accrual, for leave to present a late claim. (Gov. Code § 911.4.) If the public entity denies the late-claim application, the party may then petition the superior court for relief from the claim presentation requirements of the Tort Claims Act. (Gov. Code § 946.6.)

Compliance with the claim statute "is more than a procedural requirement, it is a condition precedent to plaintiff's maintaining an action against defendants, in short, an integral part of plaintiff's cause of action." (Illerbrun v. Conrad, supra, 216 Cal.App.2d at 524.) Failure to comply with the claim statute, or to obtain relief from compliance, bars the claimant's action at law. (Gov. Code § 945.4; Lewis v. City and County of San Francisco, supra, 21 Cal.App.3d 339.)

Plaintiff concedes--as he must--that he failed to present a timely claim to the County of Riverside prior to commencing his lawsuit. Instead, he argues that a letter he sent to the hospital in June 1988--while he was still being treated there--substantially complied with the claim presentation requirements of the claim statutes. Alternatively, plaintiff contends the June 1988 letter constituted a defective claim, and the County's failure to notify him of the defect pursuant to Government Code sections 910.8, 911 and 911.3[2/] constitutes a waiver of the claim statute defense.

As we explain, both contentions must be rejected.

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2/ All remaining statutory references herein are to the Government Code unless otherwise indicated.

A. Plaintiff's June 1988 Letter To The Hospital Did Not Substantially Comply With The Claim Statutes.

A plaintiff's action at law will be barred by his failure to comply with the claim statutes unless he can demonstrate he *substantially* complied with the statutes prior to commencing his action. Substantial compliance contemplates more than a few words on a sheet of paper; rather, substantial compliance requires the claim: (1) to include all of the elements described in Government Code section 910, (2) to be signed in accordance with Government Code section 910.2, and (3) to be presented to the proper authority in accordance with Government Code section 915. (Pacific Tel. & Tel. Co. v. County of Riverside, supra, 106 Cal.App.3d at 190 [for substantial compliance to be found, "there must be '*some* compliance with *all* the required elements'"; emphasis in original].) As the Court of Appeal recently explained in Nguyen v. Los Angeles County Harbor/UCLA Medical Center (1992) 8 Cal.App.4th 729, 733:

> "[T]he substantial compliance doctrine has application only when there is a defect in form but the statutory requirements have otherwise been met. [Citations.] The doctrine has no application when . . . there has been a failure to comply with *all* of the statutory tort claim requirements." (Emphasis in original.)

So, for example, a claim substantially complies with claim statutes if the address of the accident is inaccurate, or the verification is signed by someone other than the claimant. (See, e.g., City of San Jose v. Superior Court (1974) 12 Cal.3d 447, 456, and cases cited therein; Nguyen v. Los Angeles County Harbor/UCLA Medical Center, supra, 8 Cal.App.4th at 733.) However, where the claim entirely omits a particular item of information, or is delivered to the wrong entity, it does

not "substantially comply" with the statutes and cannot save plaintiff's action at law. (Phillips v. Desert Hospital Dist., supra, 49 Cal.3d at 708, fn. 7 [claim which fails to contain description of the loss or amount of damages does not substantially comply with the statute]; Life v. County of Los Angeles (1991) 227 Cal.App.3d 894, 900 [claim sent to hospital instead of Board of Supervisors does not constitute substantial compliance with the claim statutes]; see also, City of San Jose v. Superior Court, supra, 12 Cal.3d at 456 and cases cited therein [failure to state place of accident, or to verify claim, fatal to claim]; Foster v. McFadden (1973) 30 Cal.App.3d 943, 946.)

Plaintiff's contention in this case that his June 1988 letter to the hospital's Quality Assurance Department substantially complied with the claim statutes was properly rejected by the trial court. As plaintiff freely admits, the claim failed to contain a statement of damages or a statement regarding whether jurisdiction of the case would rest in municipal or superior court, as required by subdivision (f) of section 910. (AOB 11.) For this reason alone the doctrine of substantial compliance could not apply to plaintiff's letter. (See Phillips v. Desert Hospital Dist., supra, 49 Cal.3d at 708, fn. 7 [claim which fails to contain description of the loss or amount of damages does not substantially comply with the statute].)

Moreover, plaintiff's letter was not directed to the governing body of the County, as required by section 915. Rather, the letter was sent directly to the hospital's Quality Assurance Department. A claim is not deemed presented to the public entity until it is sent to, or actually received by, the governing board of the public entity. (Gov. Code § 915.) Since there was no evidence that plaintiff's letter was ever received by the Board of Supervisors for the County of Riverside, the letter could not substantially comply with the claim statutes. (See Life v. County of Los Angeles, supra, 227 Cal.App.3d at 900 [claim sent to hospital instead of Board of Supervisors does not constitute substantial compliance with the claim statutes].)

Despite the omissions in his letter, plaintiff contends it is "logical to infer" he substantially complied with the claim statutes because the hospital was "inspired" to investigate his complaints--thus, satisfying the purpose of the claim presentation requirements. (AOB 15.) But mere opportunity to investigate a situation does not substitute for a claim as required by the statute. It is well settled that the claim statutes must be satisfied even in the face of the public entity's *actual knowledge* of the circumstances giving rise to the claim. (City of San Jose v. Superior Court, supra, 12 Cal.3d at 455.) Additionally, as explained above, case law unequivocally holds that the doctrine of substantial compliance can only apply where there has been *some* compliance with *all* the requirements of the Tort Claims Act--not merely when the public entity has an opportunity to investigate a claim.

Moreover, plaintiff places too much significance on the fact that the hospital answered his letter, arguing that the answer "creates the impression that [plaintiff's] letter was viewed as unique and considerably more serious than a routine appraisal of the quality of health care offered at Riverside General Hospital." (AOB 16.) He claims there is no evidence that the Chief of Medical Staff responded to every written complaint. (AOB 16.) But there is also no evidence that the Chief of Medical Staff did not respond to every written complaint; nor is there evidence that plaintiff's letter was given any more or less weight than the complaints of other patients. In short, there is no *evidence* to support plaintiff's contention that the hospital treated, or should have treated, his letter as a tort claim required by the Government Code.

Plaintiff's letter, addressed to the Quality Assurance Department of the hospital, expresses plaintiff's (and his mother's) extreme dissatisfaction with the care plaintiff received at the hospital--nothing more. It does not seek compensation for his injuries, and it does not indicate plaintiff's intent to file a lawsuit as a result of his injuries. In sum, the letter falls far short of substantially complying with the claim presentation requirements of the Tort Claims Act.

B. The County Did Not Waive The Claim Statute As A Defense By Failing To Treat Plaintiff's June 1988 Letter As A "Defective" Claim.

If a claim as presented to the public entity lacks any of the information required by Government Code section 910, the public entity must so notify the claimant within 20 days to allow the claimant to provide the missing information. (Gov. Code § 910.8.) The public entity's failure to timely notify the claimant of any defect in the claim as presented operates as a waiver by the public entity of its right to rely on that defect to defeat plaintiff's complaint. (Gov. Code § 911.)

Plaintiff in this case contends his June 1988 letter to the hospital should be considered a "defective claim," which triggered the notice and defense-waiver provisions of sections 910.8 and 911. Plaintiff argues that the County's failure to notify him that the letter failed to contain a statement of damages or jurisdiction of the court operates as a waiver of the County's right to rely on the claim statutes as a defense.

Plaintiff's argument might work if the only problem with his letter was its failure to contain a statement of jurisdiction in the superior court. However, as a potential *claim*, plaintiff's letter suffers greater flaws. To begin with, the letter was never delivered to the Board of Supervisors--the governing body of the County--which is authorized to respond to claims presented pursuant to the Tort Claims Act. (See Gov. Code § 912.4 ["The *board* shall act on a claim in the manner provided . . ."; emphasis added].) Plaintiff has not explained how the board was supposed to notify him of any defect in his letter when the board was not aware of the letter. Additionally, while the letter contains a lengthy discourse describing events occurring and injuries sustained by plaintiff during his hospital stay, it does not seek

compensation for any injuries suffered,[3/] nor does it give any indication that a lawsuit would follow.

Plaintiff's reliance on Phillips v. Desert Hospital Dist., supra, 49 Cal.3d 699, is misplaced. In that case, the California Supreme Court held that a notice of intention to sue, pursuant to Code of Civil Procedure section 364, sent by plaintiffs to the public entity constituted a "defective" claim for purposes of the claim statutes, and triggered the notice and waiver defense provisions of the Government Code. Plaintiff would read Phillips to mean that any written document which discloses an injury triggers sections 910.8 and 911. But Phillips cannot be read so broadly. The notice of intention to sue in Phillips expressly stated that plaintiffs intended to file a lawsuit for injuries suffered by the plaintiff wife as a result of the hospital's negligence. (49 Cal.3d at 703.) In holding that the letter constituted a defective claim, the Court explained:

> "When a public entity receives a document which contains the information required by section 910 and is signed by the claimant or her agent as required by section 910.2, the public entity has been presented with a 'claim' under the [Tort Claims Act], and must act within 45 days or the claim is deemed to have been denied. . . .
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> " . . .
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> " . . . [A] notice, such as plaintiffs' 364 notice, which discloses the existence of a claim that if not paid or otherwise resolved will result in

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3/ Plaintiff insists that the letter disclosed his intent to seek damages because it contained a "laundry list" of *compensable* injuries. (AOB 8-9.) However, the fact that an injury is *compensable* alone does not divulge the injured party's intent to seek *compensation*. For this reason, a plaintiff must comply with the claim statutes even in light of the public entity's actual knowledge of the injury. (City of San Jose v. Superior Court, supra, 12 Cal.3d at 455.)

litigation, must be treated as a defective 'claim' activating the notice and defense-waiver provisions of the act . . . ." (Id. at 707-708.)

Viewing Phillips in light of its specific facts, it is easy to see that Phillips has no application to this case. Unlike the notice of intention to sue in Phillips, plaintiff's letter to the hospital in this case falls far short of disclosing the existence of a claim which will result in litigation. Moreover, the letter in Phillips was presented to the proper entity--the hospital itself was the public entity in that case. In this case, by contrast, a claim must be presented to the Board of Supervisors for the County. Plaintiff's letter, however, was sent to the Quality Assurance Department of the hospital. There is no evidence that the letter was ever forwarded to the Board of Supervisors. This case unequivocally falls outside the narrow parameters of Phillips.

Since plaintiff's letter was not properly delivered to the County, and since, in any event, it failed to disclose the existence of a *claim for damages* which would likely result in a lawsuit, the County was not required to treat it as a defective claim. Accordingly, the County's failure to notify plaintiff of the many defects in the letter does not waive anything.

### C. The County Did Not Waive The Claim Statute Defense By Failing To Assert It In Answer To The Complaint.

Plaintiff contends the County waived its right to rely on the claim statute as a defense because, plaintiff asserts, the County failed to raise the issue in its answer to the complaint. Plaintiff is mistaken.

First, the County was not required to raise the claim statute defense in answer to the complaint. Compliance with the claim statutes is not an affirmative

defense, but an integral element of plaintiff's cause of action against a public entity, which plaintiff must plead and prove. (Illerbrun v. Conrad, supra, 216 Cal.App.2d at 524; Toscano v. County of Los Angeles (1979) 92 Cal.App.3d 775, 783 ["The complaint should allege that a timely claim for damages has been filed with the defendant"].) Indeed, plaintiff's failure to prove every element of his cause of action--including compliance with the claim statutes--is an issue which can be raised *at any time.*[4/] (Brownell v. Los Angeles Unified School Dist. (1992) 4 Cal.App.4th 787, 793 [legal issue of whether plaintiff's complaint states a cause of action may be raised at any time, before or during trial]; see also, Pierson v. Sharp Memorial Hospital, Inc. (1989) 216 Cal.App.3d 340, 342-343 [motion for judgment on pleadings on strict liability claim for failure to state facts sufficient to constitute a cause of action properly granted after plaintiff rested her case at trial].) Thus, if not raised in a pretrial motion, the issue would be litigated at trial, where it would be plaintiff's burden to demonstrate either that he complied or was excused from complying with the claim statute prior to filing this lawsuit. (Toscano v. County of Los Angeles, supra, 92 Cal.App.3d at 783.)

Second, plaintiff's assertion that the claim statute defense was not raised in the answer is patently erroneous. The answer expressly alleges plaintiff's action is barred by Government Code sections 905, 911.2, 911.4, and 946.6, which set forth the procedures and requirements for presenting a claim, late-claim application or petition for relief from the claim presentation requirements. (CT 17.)[5/]

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4/ Moreover, the County's answer alleges generally that the complaint "fails to state facts sufficient to constitute a cause of action" against the County. (CT 15.)

5/ Section 905 states that, with a few exceptions not applicable here, all claims for money or damages must be presented to local public entities. Section 911.2 requires all such claims to be presented within six months after accrual of the cause of action. Section 911.4 provides for the presentation of an application for leave to present a late claim, in the event no timely claim is presented. And section 946.6 provides the manner in which judicial relief from the claim presentation requirements may be granted.

Plaintiff, however, faults the answer for omitting any reference to Government Code section 945.4, which states the general rule that "no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon by the board . . . ." Plaintiff contends this section is essential to the defense because it is the only section which indicates the claim must be in *writing*. This argument is absurd; how else could a claim be "presented" to a public entity for review except in writing? Moreover, plaintiff has made no argument that he presented a timely *oral* claim to the County; and he does not explain how, in the absence of such an argument, the requirement that a claim be in writing hurts him.

Since plaintiff failed to demonstrate either that the County was required to raise the claim statute as a defense in the answer, or that the County failed to do so, his argument that the County waived the defense must be rejected.

D. The County Is Not Equitably Estopped From Asserting The Bar Of The Claim Statute As A Defense.

Finally, unable to prove he complied with the claim statutes, or that the County waived the claim statute defense, plaintiff contends the County should be estopped from asserting the claim statute as a defense. To prevail on this issue in this case, plaintiff must establish all of the following elements: (1) the party to be estopped was apprised of the true facts, and (2) intended its conduct would be acted upon, or acted in a way that the party claiming estoppel reasonably believed it was so intended; (3) the party asserting the estoppel was ignorant of the true facts, and (4) relied to his detriment on the other's conduct. (See Strong v. County of Santa Cruz (1975) 15 Cal.3d 720, 725; State of California v. Superior Court (Fogerty) (1981) 29 Cal.3d 240, 244, fn. 2.) Estoppel applies only "'where one by his words

or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to *alter his own previous position.*'" (City of Long Beach v. Mansell (1970) 3 Cal.3d 462, 488 [emphasis added].)[6/]

In the context of the Tort Claims Act, equitable estoppel applies to prevent a public entity from asserting noncompliance with the claim statutes where a claimant has been *affirmatively misled* by the public entity regarding the need for or proper procedure for presenting a timely claim. (Toscano v. County of Los Angeles, supra, 92 Cal.App.3d at 784.) For example, in Bertorelli v. City of Tulare (1986) 180 Cal.App.3d 432, after plaintiff was injured in a motor vehicle accident, he was contacted by a representative for the city who engaged him in continued settlement discussions. The Court of Appeal held that, under such circumstances, "[a] reasonably prudent person would believe that nothing further need be done to preserve his or her claim." (180 Cal.App.3d at 441.) In McLaughlin v. Superior Court (1972) 29 Cal.App.3d 35, the public entity's letter denying plaintiff's late-claim application contained a warning that plaintiff had only six months after the claim was rejected to file suit--a warning which is only appropriate when the claim, rather than the late-claim application, is denied. Thus, plaintiff was justified in believing his claim had been denied on the merits.

The instant case reveals no facts to support the application of equitable estoppel. Nothing the County did or said prevented plaintiff from presenting a timely claim, or led him to believe his letter to the hospital was sufficient to satisfy the claim presentation requirements. Indeed, plaintiff does not claim otherwise.

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6/ Plaintiff's attempt to analyze the four elements of an estoppel, as set forth above, one by one is strained and inaccurate. For example, for an estoppel to apply, the "true facts" which are unknown to the party asserting the estoppel must be the same facts which are known to the party to be estopped. But plaintiff in this case contends the *facts* of which the County was aware were plaintiff's injuries, while the *facts* of which plaintiff was unaware concerned the County's intention to assert the claim statute as a defense. (AOB 13.)

Instead, plaintiff argues that the County's failure to disclose its intent to rely on the claim statute as a defense to the *complaint* misled plaintiff to believe the defense had been waived, and caused him to "aggressively pursue" the instant action. But compliance with the claim statutes is an element of plaintiff's action. A defendant does not waive the right to protest plaintiff's *failure of proof* on an *essential element* of his cause of action by failing to notify plaintiff at an early stage of the litigation that plaintiff will be unable to meet his burden of proof. Yet this is precisely the argument advanced by plaintiff in this case--an argument which must be rejected. As the Court of Appeal explained in LaRue v. Swoap (1975) 51 Cal.App.3d 543, 552:

> "'[W]here one acts with full knowledge of plain provisions of law, and their probable effect upon facts within his knowledge, especially where represented by counsel, he can neither claim (1) ignorance of the true facts or (2) reliance to his detriment upon conduct of the person claimed to be estopped, two of the essential elements of equitable estoppel.' [Citation.]"

Here, plaintiff does not claim he lacked knowledge of the claim presentation requirements as a prerequisite to his action at law;[7/] and based on his knowledge that he did not present a timely claim, he is presumed to know, through his attorney, that his action at law is, therefore, barred. Accordingly, plaintiff cannot avail himself of the equitable estoppel doctrine.

Moreover, plaintiff's claim of detrimental reliance may be rejected on another ground. Plaintiff asserts the County's silence on the claim statute defense forced him to expend time, effort and money in defending the lawsuit he had already

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7/ Nor would such a claim aid him; it is settled that lack of knowledge of the claim statutes, by itself, is not a defense to a failure to comply with them. (Tammen v. County of San Diego (1967) 66 Cal.2d 468, 476.)

filed. But the mere expenditure of time, effort and money on discovery which ultimately proves plaintiff is unable to prove his case is not the kind of "detrimental reliance" which will support equitable estoppel. Rather, the application of an estoppel requires a change in the party's *legal* position--as, for example, where the party loses a legal right as a result of the defendant's conduct. (See, e.g., Velasquez v. Truck Ins. Exchange (1991) 1 Cal.App.4th 712, 723 [recognizing estoppel may apply where defendant lulls plaintiff into delaying the filing of a lawsuit until after the statute of limitations has expired].) Here, the undisputed evidence shows that plaintiff's legal position remained unchanged: as a matter of law, whether or not he conducted discovery in this action, the complaint is barred by plaintiff's failure to comply with the claim statutes prior to filing suit. Nothing the County did or failed to do in response to the lawsuit could change this simple fact. Accordingly, plaintiff has suffered no legal detriment as a result of the County's purported failure to disclose its intentions, and the doctrine of equitable estoppel is inapplicable.

## CONCLUSION

The undisputed evidence shows that plaintiff's action at law is barred by his failure to comply with the claim statutes. Plaintiff has not demonstrated he is entitled to rely on the doctrines of substantial compliance, waiver or equitable estoppel to defeat the effect of his failure to comply with the claim statutes.

Accordingly, for all the reasons given, the County's motion for summary judgment was properly granted, and judgment in favor of the County must, therefore, be affirmed.

Dated: June 18, 1993

Respectfully submitted,

PATTERSON, RITNER, LOCKWOOD,
ZANGHI & GARTNER
John Zanghi
Karen N. Brueckner

GREINES, MARTIN, STEIN & RICHLAND
Timothy T. Coates
Carolyn Oill

By _____
Carolyn Oill

Attorneys for Defendant County of Riverside