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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

TRACY YU-SANTOS,)	1:06-CV- 1773 OWW DLB
)	
Plaintiff,)	ORDER ON DEFENDANT'S
v.)	MOTION FOR JUDGMENT IN
)	ITS FAVOR ON ALL CLAIMS
TRW VEHICLE SAFETY SYSTEMS)	RELATED TO KEILAN
INC., ROBERT SANTOS and DOES 1))	SANTOS
through 10,)	
)	(Document No. 140)
Defendants.)	
)	

On May 21, 2010, defendant TRW, ("Defendant") filed a motion for judgment as a matter of law on all claims arising from the death of Keilan Santos ("Keilan") based on Christopher Miranda's ("Miranda")¹ new sworn deposition testimony that Keilan was seated in the driver's-side (left) rear seat. On May 24, 2010, plaintiff Tracy Yu-Santos ("Plaintiff") filed a motion to amend the March 9, 2010 pre-trial order ("Pre-Trial Order") based on Miranda's testimony. Plaintiff seeks to amend the Pre-Trial

¹Miranda, the driver and only surviving witness of the accident was deposed on May 19, 2010.

1 Order² to reflect that the action is proceeding on a negligent
2 manufacturing defect and failure to warn as to the right rear,
3 right front, and *left rear seat* belts, and that the parties
4 dispute whether Keilan was seated in the left rear or right rear
5 seating positions. On May 25, 2010, the Court tentatively
6 granted Plaintiff's motion to amend the Pre-Trial Order.

7 On May 25, 2010, a telephonic status conference was held
8 regarding Defendant's opposition to Plaintiff's motion to amend
9 and Defendant's inability to proceed to trial on June 2, 2010.
10 The Court reserved ruling on Plaintiff's motion to amend pending
11 briefing by the parties. The Court granted Defendant's request
12 that the trial be continued, and reset the trial date to June 16,
13 2010, in order to afford the parties additional time to conduct
14 expert discovery and trial preparation.

15 On May 26, 2010, Plaintiff filed an opposition to
16 Defendant's motion for judgment. On May 27, 2010, Defendant
17 filed an opposition to Plaintiff's motion to amend the Pre-Trial
18 Order. On June 1, 2010, the Court denied Defendant's motion
19 after hearing the parties' oral arguments and considering the
20 parties' briefing. For the reasons stated below, Defendant's
21 motion for judgment is denied.

22 DEFENDANT'S MOTION

23 Defendant's Argument

24 Defendant argues that Plaintiff cannot prevail on her claims
25

26 ²The Pre-Trial Order provides that the action is proceeding
27 on manufacturing defect (negligence) and failure to warn as to
the right front seat belt and right rear seat belt claims.

1 related to Keilan's death for two reasons: (1) Plaintiff is
2 prohibited from asserting the theory that Keilan was seated in
3 the left rear seat belt because the Pre-Trial Order limits
4 Plaintiff's claim to the right rear seat belt; and (2) Plaintiff
5 lacks evidence that Keilan occupied the right rear seating
6 position because Miranda recently testified that Keilan was
7 seated in the left rear seat. Defendant also argues that
8 Plaintiff should not be allowed to amend the Pre-Trial Order to
9 include a left rear seat belt defect claim or evidence that
10 Keilan may have occupied the left rear seat because it would
11 create manifest injustice.³

12 Plaintiff's Opposition

13 Plaintiff argues that Miranda's recent deposition testimony
14 does not result in a total failure of proof on Plaintiff's theory
15 of liability because there is conflicting admissible evidence
16 about the seat that Keilan occupied in the vehicle. Plaintiff
17 asserts that Miranda's statements to the police officers at the
18 scene of the accident, which places Keilan in the right rear
19 seat, is admissible evidence under the present sense impression
20 exception. Miranda's recent deposition testimony, contradicts
21 his prior testimony and places Keilan in the left rear seat.
22 Plaintiff posits that the jury should determine which statement

23
24 ³This argument is also raised in Defendant's Opposition to
25 Plaintiff's Motion to Amend the Pre-Trial Order. See Doc. No.
26 154. The Court addressed Defendant's argument in its May 25,
27 2010 Order, which tentatively granted Plaintiff's motion. See
28 Doc. No. 147. On June 1, 2010, the Court granted Plaintiff's
motion after hearing oral argument and considering the parties'
briefing.

1 is the most reliable.

2 Plaintiff argues that she should be allowed to amend the
3 Pre-Trial Order to prevent manifest injustice. Plaintiff
4 represents that it did not amend its pleadings to include the
5 left rear seating position after it learned of Miranda's
6 statement to his insurance company in 2005 (i.e. that Keilan was
7 seated in the left rear seat), because it was not admissible
8 evidence. Plaintiff asserts that Miranda's unsworn statement to
9 his insurance company was hearsay. Plaintiff alleges that she
10 attempted to locate Miranda for purposes of deposing him and
11 resolving his contradictory statements, and was not successful
12 until Miranda came forward on May 3, 2010.

13
14 DISCUSSION

15 As an initial matter, Defendant's first argument related to
16 the Pre-Trial Order limitation is moot because the Court has
17 granted Plaintiff's motion to amend the Pre-Trial Order. With
18 respect to Defendant's second argument, although Defendant labels
19 its motion as a "motion for judgment," Defendant is essentially
20 requesting summary adjudication, as Defendant's motion requires
21 the Court to evaluate evidence and determine whether there is any
22 evidence that Kelian was seated in the right rear seat.⁴
23 However, summary judgment is inappropriate where a genuine
24 factual question exists as to any material fact. Fed. R. Civ. P.

25 _____
26 ⁴The Court notes that Defendant's de facto motion for
27 summary judgment does not comply with any of the requirements of
28 Rule 56 or applicable local rules regarding summary judgment.

1 56(c); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970);
2 Fortyune v. American Multi-Cinema, Inc., 364 F.3d 1075, 1080 (9th
3 Cir. 2004). Here, Plaintiff has established that a disputed fact
4 exists as to which seat Keilan occupied because Miranda's
5 conflicting prior statements place Keilan in the left rear seat
6 and right rear seat. Miranda's statement to the police at the
7 time of the accident may be admitted as a present sense
8 impression under Fed. R. Evid. 803(1), and Miranda's conflicting
9 deposition testimony may be admissible evidence as well.
10 Plaintiff represents that Miranda will be called as a witness at
11 trial, and will be testifying about Keilan's seating position.
12 Accordingly, the jury will be able to consider both statements
13 and evaluate whether Miranda's statement at the time of the
14 accident is more or less reliable than Miranda's deposition or
15 in-court testimony.

16 Further, Defendant is not entitled to judgment because
17 Plaintiff's seat belt expert, Mr. Broadhead, has opined since
18 March 25, 2008, that the left rear seat belt contained a webbing
19 manufacturing defect. As Plaintiff's correctly note, assuming
20 arguendo that the jury concludes that both seat belts were being
21 worn at the time of the accident and both failed to perform
22 according to their design specifications, the jury would be
23 entitled to find for the Plaintiff, regardless of whether the
24 jury finds Kelian was in the right or left seat.

25 Last, to the extent that Defendant is arguing that Plaintiff
26 may not pursue two alternate seating theories for Keilan, the
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1 argument is without merit. See Defendant's Opposition to
2 Plaintiff's Motion to Amend at page 12, n.6. Under federal
3 pleading rules, a party may plead claims in the alternative. See
4 Fed.R.Civ.P. 8(d)(2). Under Rule 8(d)(3), a party can plead "as
5 many separate claims" as it has "regardless of consistency"
6 between them. Fed.R.Civ.P. 8(d)(3); McCalden v. California
7 Library Ass'n, 955 F.2d 1214,1219(9th Cir.1990). Inconsistency is
8 acceptable because a plaintiff can only prevail on one of these
9 positions, and is limited to a single recovery no matter how many
10 different and conflicting theories it offers. See Astor
11 Chauffeured Limousine Co. v. Runnfeltd Inv. Corp., 910 F.2d
12 1540,1548(7th Cir. 1990).

13
14 CONCLUSION

15 Defendant's motion for judgment as a matter of law is
16 DENIED because Plaintiff has demonstrated that a disputed fact
17 exists as to whether Keilan was seated in the left rear or right
18 rear seating position, and Plaintiff's seat belt expert has
19 opined that a defect exists in the left rear and right rear seat
20 belts.

21
22 IT IS SO ORDERED.

23 **Dated: June 3, 2010**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE