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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

REZA NAGAH, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CALIFORNIA EMPLOYMENT )  
 DEVELOPMENT DEPARTMENT, et al., )  
 )  
 Defendants. )

Case No.: C 07-6268 PVT  
**ORDER DENYING PLAINTIFF’S REQUEST  
FOR LEAVE TO FILE MOTION FOR  
RECONSIDERATION OF SUMMARY  
JUDGMENT ENTERED AGAINST PLAINTIFF’S  
STATE LAW CLAIMS**

On June 24, 2010, Plaintiff filed a Request for Leave to File a Motion for Reconsideration of Summary Judgment Entered Against Plaintiff’s State Law Claims. Having reviewed the papers submitted by the parties, the court finds it appropriate to issue this order without further briefing or oral argument.

IT IS HEREBY ORDERED that Plaintiff’s motion is DENIED.

Plaintiff fails to show that leave to file a motion for reconsideration is warranted under Civil Local Rule 7-9, which requires the moving party to show:

- “(1) That at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is sought. The party also must show that in the exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at the time of the interlocutory order; or
- “(2) The emergence of new material facts or a change of law occurring after

1 the time of such order; or

2 “(3) A manifest failure by the Court to consider material facts or dispositive  
3 legal arguments which were presented to the Court before such  
interlocutory order.” See CIVIL L.R. 7-9(b).

4 Plaintiff has not shown that any of the foregoing circumstances apply. He bases his request  
5 on a claim that he was excused from complying with the claim presentation requirement of the  
6 California Tort Claims Act. While this would be a “material difference in fact” from that which was  
7 presented to the court before entry of its summary judgment order, Plaintiff has not asserted, much  
8 less shown, that he did not know that purported fact before the summary judgment order was  
9 entered. Nor has Plaintiff shown the emergence of any new material facts or changes of law  
10 occurring after the time of the order, nor a manifest failure by the court to consider material facts or  
11 dispositive legal arguments that were before the court. Thus, leave to file a motion for  
12 reconsideration is not warranted under Civil Local Rule 7-9.

13 Moreover, it appears Plaintiff’s anticipated motion for reconsideration lacks merit. Plaintiff  
14 essentially argues he was excused from the claim presentation requirement because Defendants  
15 “never intended to investigate or settle Plaintiff’s claims.” However, the Tort Claims Act required  
16 Plaintiff to present his state law tort claims not to the Defendants, but to the California Victim  
17 Compensation and Government Claims Board. See, CAL.GOV’T.CODE 905.2. Plaintiff has not  
18 suggested there is any reason to believe that presentation of his claims to the California Victim  
19 Compensation and Government Claims Board would have been futile. And even if Plaintiff could  
20 show claim presentation would have been futile, Plaintiff cites no case, and the court has found none,  
21 where futility excused noncompliance with the claim presentation requirement.

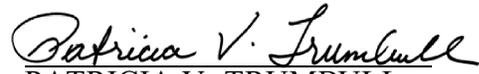
22 Plaintiff reminds the court of its policy of resolving cases on their merits rather than  
23 technicalities when reasonably possible.<sup>1</sup> However, California’s claim presentation requirement is  
24 not merely a procedural “technicality.” It is a *substantive element* of any tort cause of action against  
25 the state. See *State v. Superior Court (Bodde)*, 32 Cal.4th 1234, 1240-44 (2004). The intent of the

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26  
27 <sup>1</sup> Plaintiff also points out that failure to allege compliance with the claims presentation  
28 requirement does not divest a court of subject matter jurisdiction, citing *State v. Superior Court (Bodde)*,  
32 Cal.4th 1234, 1239 n.7 (2004). However, in the footnote cited, the court was merely explaining why  
it found dismissal for failure to state a claim appropriate rather than dismissal for lack of jurisdiction.

1 Tort Claims Act is to “confine potential governmental liability to rigidly delineated circumstances:  
2 immunity is waived only if the various requirements of the act are satisfied.” *See Williams v.*  
3 *Horvath*, 16 Cal.3d 834, 838 (1976). Plaintiff’s failure to either comply with the claim presentation  
4 requirement, or establish a legally cognizable excuse for noncompliance, takes his claims outside of  
5 the scope of California’s waiver of sovereign immunity. Thus, summary judgment in favor of the  
6 state Defendants on Plaintiff’s state law tort claims was warranted.

7 Dated: 7/1/10

  
8 PATRICIA V. TRUMBULL  
9 United States Magistrate Judge  
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