Tentative Rulings for April 25, 2024
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

23CECG03654 ***Alanis, Jr., et al. v. Gutierrez*** **(Dept. 403)**

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

23CECG02993 ***Deborah Rodriguez v. Covenant Care California, LLC*** **is continued to Wednesday, July 3, 2024, at 3:30 p.m. in Department 403**

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(03)

Tentative Ruling

Re: ***Gone v. Willard***
Case No. 22CECG00390

Hearing Date: April 25, 2024 (Dept. 403)

Motion: Defendant Student Transportation of America, Inc.'s Motion to Withdraw/Amend Admissions

Tentative Ruling:

To deny defendant Student Transportation of America, Inc.'s motion to withdraw or amend admissions.

Explanation:

Under Code of Civil Procedure section 2033.280, "If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply: … The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted... The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (Code Civ. Proc., § 2033.280, subs. (b), (c), paragraph breaks omitted.)

"If the party manages to serve its responses before the hearing, the court has no discretion but to deny the motion. But woe betide the party who fails to serve responses before the hearing. In that instance the court has no discretion but to grant the admission motion, usually with fatal consequences for the defaulting party. One might call it 'two strikes and you're out' as applied to civil procedure." (*Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395–396, footnotes omitted.)

If the court enters an order deeming RFAs to be admitted, the responding party may seek relief from the order by bringing a motion under section 2033.300 to withdraw or amend the admissions. "A party may withdraw or amend an admission made in response to a request for admission only on leave of court granted after notice to all parties." (Code Civ. Proc., § 2033.300, subd. (a).) "The court may permit withdrawal or amendment of an admission only if it determines that the admission was the result of mistake, inadvertence, or excusable neglect, and that the party who obtained the admission will not be substantially prejudiced in maintaining that party's action or defense on the merits." (Code Civ. Proc., § 2033.300, subd. (b).)

The California Supreme Court has interpreted section 2033.300 as allowing a party to move for relief from an order deeming them to have admitted the truth of the matters in the RFAs after they failed to serve a timely response to the RFAs. (*Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 978-979 [interpreting former section 2033, subdivision (m), the predecessor statute to section 2033.300].) "Section 2033.300 eliminates undeserved windfalls obtained through requests for admission and furthers the policy favoring the

resolution of lawsuits on the merits." (*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1418, citing *Wilcox, supra*, at p. 983.)

"The statutory language 'mistake, inadvertence, or excusable neglect' is identical to some of the language used in section 473, subdivision (b)… The use of identical terms in two different statutes serving similar purposes suggests that the Legislature intended those terms to have the same meaning in both statutes. Moreover, the legislative history of section 2033, subdivision (m), the predecessor of section 2033.300, suggests that the Legislature intended 'mistake, inadvertence, or excusable neglect' to have the same meaning in the statute as those terms have in section 473, subdivision (b)." (*New Albertsons*, *supra*, at pp. 1418–1419, citations and footnotes omitted.)

The Court of Appeal in *New Albertsons* set forth several rules that apply to motions to withdraw or amend admissions under section 2033.300. "The trial court's discretion in ruling on a motion to withdraw or amend an admission is not unlimited, but must be exercised in conformity with the spirit of the law and in a manner that serves the interests of justice. Because the law strongly favors trial and disposition on the merits, any doubts in applying section 2033.300 must be resolved in favor of the party seeking relief. Accordingly, the court's discretion to deny a motion under the statute is limited to circumstances where it is clear that the mistake, inadvertence, or neglect was inexcusable, or where it is clear that the withdrawal or amendment would substantially prejudice the party who obtained the admission in maintaining that party's action or defense on the merits." (*New Albertsons, supra,* at pp. 1420–1421.) Also, a motion to withdraw or amend admissions should not be denied based on inexcusable delay in bringing the motion unless there is also a showing that the delay substantially prejudiced the other party. (*Id*. at p. 1421.)

In *Elston v. City of Turlock* (1985) 38 Cal.3d 227, the California Supreme Court held that the trial court abused its discretion when it denied relief from the admissions, as counsel had shown that his failure to timely respond to the RFAs was the result of excusable neglect. (*Id*. at p. 234.) The attorney in *Elston* explained that two attorneys had recently left his firm, that he was extensively involved in other business and litigation matters at the time, and that he had misplaced the RFAs and was not aware of them until after they had already been deemed admitted. (*Ibid*.) The Supreme Court held that counsel's explanation was sufficient to show excusable neglect, and that the trial court should have granted relief from the admissions, especially in light of the lack of any showing of prejudice to the opposing party. (*Id*. at pp. 234-235.)

In the present case, defendant STA moves to withdraw or amend its admissions after the court deemed it to have admitted the truth of the matters in the RFAs because STA did not serve verified responses to the RFAs before the date of the hearing. STA's attorney, Tiffany Hunter, claims that she mistakenly believed that the motion to deem the RFAs admitted was moot, as she had served substantially compliant responses to the RFAs before the hearing and therefore she believed that the motion would not be granted. Ms. Hunter also alleges that she went on her honeymoon in Fiji shortly before the hearing on the motion, and that she had another attorney cover the hearing in her absence, but the other attorney failed to request oral argument the day before the hearing so they were not allowed to present oral argument. In addition, Ms. Hunter claims that she misunderstood the court's order as requiring only that verifications be served after the hearing, which she subsequently did. Also, STA contends that the plaintiff would not suffer any prejudice if STA is allowing to amend or withdraw its admissions, as STA has provided

substantial discovery and information to plaintiff to support its defenses and no further discovery will be necessary if the motion is granted. Thus, STA contends that the court should grant the motion and allow it to withdraw or amend its admissions.

However, STA has not met its burden of showing that the order deeming the RFAs to be admitted was the result of mistake, inadvertence or excusable neglect. Ms. Hunter claims that she made a mistake because she believed that STA's responses substantially complied with the Discovery Act and rendered the motion moot or required its denial. Yet she does not explain why she believed that the responses were code-compliant when they did not include verifications. Section 2033.210, subdivision (a), clearly requires that responses to requests for admission be verified under oath. Unverified responses are tantamount to no responses at all. (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636 [holding that sanctions are mandatory where unverified responses to RFAs are served].) Also, section 2033.280 states that, where the propounding party moves to deem the RFAs to be admitted because no timely responses have been served, the court must grant the order deeming the RFAs to be admitted unless the responding party serves substantially compliant responses before the hearing. (Code Civ. Proc., § 2033.280, subd. (c).)

Plaintiff's motion was clearly based on the fact that STA's responses to the RFAs were insufficient and tantamount to no responses at all because they were unverified. In fact, plaintiff's counsel had been attempting to obtain verified responses from STA for over a year before he brought the motion to deem the RFAs admitted. However, defendant's opposition ignored the lack of verifications and attempted to argue that the RFAs were sufficient and that plaintiff should have brought a motion to compel further responses. The court's tentative ruling and subsequent order made it clear that defendant's position was incorrect, and that the lack of verifications meant that the responses were ineffective and did not comply with the Discovery Act. Ms. Hunter has not explained how her belief that the responses were substantially compliant with the Code was reasonable in light of the clear law requiring responses to RFAs to be verified, as well as the statements in plaintiff's moving papers and the court's tentative ruling, all of which clearly explained that the unverified responses were ineffective.

Nor has Ms. Hunter explained why she did not provide verifications for the RFAs before the hearing. She has not stated that she was having trouble obtaining verifications from her client, or that there was any other reason that the verifications could not have been served at any time from August 9, 2022 to the November 7, 2023 hearing date. Plaintiff's counsel had repeatedly requested verifications after the service of the initial responses, but defense counsel ignored his requests for almost a year and a half. She did eventually serve verifications for the RFAs, but not until after the court granted the motion to deem the RFAs admitted. At that point it was too late, as the court had already found that defendant had admitted the truth of the matters in the RFAs. While Ms. Hunter claims that she made a mistake which resulted in the entry of the order against STA, given the repeated requests from plaintiff's counsel for the verifications and the court's admonition that it was going to grant the motion if verified responses were not served before the hearing, it appears that her failure to provide verifications was either at worst a calculated decision not to verify the responses or at least inexcusable neglect.

Also, while Ms. Hunter claims that the order was granted in part because she was on her honeymoon in Fiji and the attorney who was covering the motion failed to request oral argument, it does not appear that requesting oral argument would have changed

the outcome of the hearing. Under section 2033.280(c), the court was required to grant the motion to deem the RFAs admitted unless verified, code-compliant responses were served before the hearing. Here, STA did not serve verified responses in substantial compliance with the Discovery Act before the hearing, so defense counsel's appearance and presentation of oral argument at the hearing would not have resulted in a different order denying the motion.

This is not a situation like the circumstances in *Elston*, where the responding party's attorney misplaced the RFAs and failed to answer them because he was unaware of their existence. Ms. Hunter clearly knew about the RFAs, and in fact she provided responses to them, albeit unverified and ineffective responses. She has not explained why she ignored plaintiff's counsel's repeated requests for verifications, as well as the court's tentative ruling stating that the requests would be deemed admitted if no verified responses were served before the hearing. Also, her claim to have misunderstood the court's order deeming the RFAs to be admitted is not credible, as the order clearly stated that the RFAs were going to be deemed admitted if verified responses were not served before the hearing. Even if she somehow misunderstood the court's tentative ruling, her mistake was not reasonable or excusable in light of the clear language of the order. Such inexcusable mistake or neglect is not a valid ground for a motion under section 2033.300.

Ultimately, defense counsel has failed to show that the entry of the order deeming the RFAs to be admitted was the result of mistake, inadvertence, or excusable neglect. Instead, it appears that the order was the result of counsel's inexcusable neglect or willful refusal to serve verifications before the hearing, which would have avoided entry of the order deeming the RFAs admitted. A reasonable attorney would not have made such a mistake, as the law requiring responses to discovery to be verified is very clear and unequivocal. Although the result here is harsh, the statute regarding requests for admissions was intended to impose harsh consequences on parties who fail to timely and properly respond to RFAs. Given defendant's repeated refusal to provide verifications until after it had been deemed to have admitted the truth of the matters in the RFAs, and in light of counsel's failure to explain why she did not provide the verifications before the hearing, the court intends to deny STA's motion to withdraw or amend the admissions.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/23/2024.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Morales v. Holly-Ray***
Superior Court Case No. 21CECG03340

Hearing Date: April 25, 2024 (Dept. 403)

Motion: Defendant La Unica Mexicana Broadcasting, Inc.'s Motion for Good Faith Settlement

Tentative Ruling:

To grant. The court will sign the order lodged on March 18, 2024.

Explanation:

Under Code of Civil Procedure section 877.6, a settlement entered by one or more of several joint tortfeasors may be determined by the court to be in "good faith." The court determines whether a settlement is within the "good faith ballpark" by considering the following factors (evaluated as of the time of the settlement): 1) a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability; 2) the amount paid in settlement; 3) a recognition that a settlor should pay less in settlement than if found liable after a trial; 4) the allocation of the settlement proceeds among plaintiffs; 5) the settlor's financial condition and insurance policy limits, if any; and 6) evidence of any collusion, fraud, or tortious conduct between the settlor and the plaintiffs aimed at making the nonsettling parties pay more than their fair share. (*Tech-Bilt, Inc. v. Woodward–Clyde & Associates* (1985) 38 Cal.3d 488, 499; *Oldham v. California Capital Fund, Inc.* (2003) 109 Cal.App.4th 421, 432 ("In other words, the superior court must understand the size of the settlement pie, how the pie is sliced, and who is getting which slice.").)

A determination that the settlement was made in good faith bars any other joint tortfeasor or co-obligor from further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault. (Code Civ. Proc. § 877.6, Subd. (c).)

All parties required to be noticed have been given notice of this motion and no one has filed opposition or objected to the settlement. The settlement between Defendant La Unica Mexicana Broadcasting, Inc. on one hand, and plaintiff on the other, should be found and determined to be in good faith as set forth in Code of Civil Procedure § 877.6. (*Tech-Bilt, supra,* 38 Cal.3d at p. 499.)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting

this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/23/2024.
(Judge's initials) (Date)