Tentative Rulings for May 2, 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.

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

22CECG00624 ***Kayhan Aminian v. City of Clovis*** **is continued to Thursday, June 27, 2024, at 3:30 p.m. in Department 403**

23CECG00223 ***Robert Fassett v. William N. Foxley, M.D.*** **is continued to Thursday, June 6, 2024, at 3:30 p.m. in Department 403**

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(03)

Tentative Ruling

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

Hearing Date: May 2, 2024 (Dept. 403)

Motion: Plaintiff's Motion for Summary Adjudication

Tentative Ruling:

To grant plaintiff's motion for summary adjudication of defendant Student Transportation of America's first, second, fourth, fifth, and seventh affirmative defenses.

Explanation:

Plaintiff has moved for summary adjudication of several of STA's affirmative defenses on the ground that defendant has been deemed to have admitted that plaintiff's injuries were caused entirely by defendant's and its employee Daniel Willard's negligence, that plaintiff did not contribute to the accident through her own negligence, and that no third party contributed to the accident. As plaintiff points out, the court previously granted an order deeming STA to have admitted the truth of the matters in the requests for admission after defendant failed to verify its responses. (See Exhibit 1 to Request for Judicial Notice, court's order dated November 7, 2023. The court intends to take judicial notice of its own order under Evidence Code section 452.) The requests asked to admit that defendant was 100% negligent and at fault in causing the accident, that defendant or its employee caused the accident, that no third party caused the accident, that plaintiff's negligence did not contribute to the accident, and that Willard violated Vehicle Code section 22106 by backing up a vehicle in an unsafe manner. (See Requests for Admission 1, 2, 4, 5, 7, 8, 21, 24.) Therefore, since defendant has been deemed to have admitted the truth of the matters in the requests, plaintiff contends that it can no longer prevail on its affirmative defenses that assert theories of plaintiff's comparative negligence, assumption of the risk, lack of causation, apportionment of fault, or intervening/superseding cause.

Plaintiff has met its burden of showing that it is entitled to summary adjudication based on the fact that defendant has been deemed to have admitted the truth of the matters in the requests for admission. "Any matter admitted in response to a request for admission is conclusively established against the party making the admission in the pending action, unless the court has permitted withdrawal or amendment of that admission under Section 2033.300." (Code Civ. Proc., § 2033.410, subd. (a).)

"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).)

"When discovery, properly used, makes it 'perfectly plain that there is no substantial issue to be tried', section 437c, Code of Civil Procedure, is available for prompt disposition of the case." (*Buffalo Arms, Inc. v. Remler Co*. (1960) 179 Cal.App.2d 700, 703.) "Moreover, when discovery has produced an admission or concession on the part of the party opposing summary judgment which demonstrates that there is no factual issue to be tried, certain of those stern requirements applicable in a normal case are relaxed or altered in their operation." (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21, citation omitted, italics in original.)

"The reasons for this attitude toward the legitimate products of discovery are clear. As the law recognizes in other contexts (see Evid. Code, §§ 1220–1230) admissions against interest have a very high credibility value. This is especially true when, as in this case, the admission is obtained not in the normal course of human activities and affairs but in the context of an established pretrial procedure whose purpose is to elicit facts. Accordingly, when such an admission becomes relevant to the determination, on motion for summary judgment, of whether or not there exist triable issues of *fact* (as opposed to legal issues) between the parties, it is entitled to and should receive a kind of deference not normally accorded evidentiary allegations in affidavits." (*Id.* at p. 22, citation omitted.)

Thus, "'[a] party cannot create an issue of fact by a declaration which contradicts his prior [discovery responses]. In determining whether any triable issue of material fact exists, the trial court may, in its discretion, give great weight to admissions made in deposition and disregard contradictory and self-serving affidavits of the party.'" (*Benavidez v. San Jose Police Dept.* (1999) 71 Cal.App.4th 853, 860–861, citations omitted.) "California courts … do not permit a party to defeat summary judgment by contradicting in a declaration that party's previous deposition testimony. On a motion for summary judgment, 'the credibility of the [deposition] admissions are valued so highly that the controverting affidavits may be disregarded as irrelevant, inadmissible or evasive.'" (*Wilkins v. National Broadcasting Co., Inc.* (1999) 71 Cal.App.4th 1066, 1082, citations omitted.)

"The admission of fact in a pleading is a 'judicial admission.' Witkin describes the effect of such an admission: 'An admission in the pleadings is not treated procedurally as evidence; i.e., the pleading need not (and should not) be offered in evidence, but may be commented on in argument and relied on as part of the case. And it is fundamentally different from evidence: It is a *waiver of proof* of a fact by conceding its truth, and it has the effect of removing the matter from the issues. Under the doctrine of "conclusiveness of pleadings," a pleader is bound by well pleaded material allegations or by failure to deny well pleaded material allegations.' [¶] The law on this topic is well settled by venerable authority. Because an admission in the pleadings forbids the consideration of contrary evidence, any discussion of such evidence is irrelevant and immaterial." (*Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1271, citations omitted, italics in original.)

However, "[p]roperly applied, *D'Amico* is limited to instances where 'credible [discovery] admissions ... [are] contradicted *only* by self-serving declarations of a party.' In a nutshell, the rule bars a party opposing summary judgment from filing a declaration that purports to impeach his or her own prior sworn testimony." (*Scalf v. D. B. Log Homes,*

Inc. (2005) 128 Cal.App.4th 1510, 1521–1522, citations omitted, italics in original.) "For summary judgment purposes, deposition answers are simply evidence. Subject to the self-impeachment limitations of *D'Amico,* they are considered and weighed in conjunction with other evidence. They do not constitute *incontrovertible judicial admissions as do*, for example, concessions in a pleading, or *answers to requests for admissions,* which are specially designed to pare down disputed issues in a lawsuit." (*Id.* at p. 1522, citations omitted, italics added.)

In the present case, since defendant has been deemed to have admitted the truth of the matters in the requests for admission, it cannot deny the admissions now or attempt to raise triable issues of material fact with regard to the matters it has admitted by introducing contradictory evidence. Therefore, the evidence submitted by defendant in its opposition fails to raise any triable issues of material fact. Also, while defendant has attempted to withdraw its admissions through a separate motion, the court has now denied that motion for lack of any showing that the admissions were the result of mistake, inadvertence, or excusable neglect. Therefore, since defendant has failed to obtain an order granting relief from the admissions, the motion for summary adjudication must be granted, as defendant has admitted that it was 100% negligent and was the sole cause of the accident that resulted in plaintiff's injuries.

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 5/1/2024.
(Judge's initials) (Date)