AMERICAN BOARD OF TRIAL ADVOCATES
Sacramento Valley Chapter

April 19, 2024
12pm – 1pm

Requests For Admission
A Potent and Underutilized Discovery Weapon!

THANK YOU TO OUR EVENT SPONSOR

RECORD RETRIEVAL SOLUTIONS

THANK YOU TO OUR ANNUAL SPONSORS

CAROL NYGARD & ASSOCIATES DEPOSITION REPORTERS

OFFICES OF NOAH S. A. SCHWARTZ AT RINGLER
1-800-322-7585 Settlement Consulting

JUDICATE WEST
Alternative Dispute Resolution
*Results Beyond Dispute*SM

MRK MEDICAL CONSULTANTS

Basic Fact Pattern

- MVA AT INTERSECTION OF FAIR OAKS BOULEVARD & WATT AVENUE
- PLAINTIFF, JULIE BROWN – DEFENDANT, JOHN WILSON
- BOTH CLAIM THEY HAD THE GREEN LIGHT
- TCR CONCLUDED MR. WILSON WAS AT FAULT
- MS. BROWN SUSTAINED A NECK INJURY AND HAD A CERVICAL FUSION AT C4-5
- BILLED MEDICALS: $100,000
- PAID MEDICALS: $50,000
- MS. BROWN HAD A PRIOR CERVICAL FUSION AT C5-6, 5 YEARS BEFORE ACCIDENT
- MS. BROWN COMPLAINED OF NECK PAIN/RADICULAR SYMPTOMS IN THE 12 MONTHS PRIOR TO THIS ACCIDENT
- MR. WILSON WAS RUNNING AN ERRAND FOR HIS EMPLOYER AT THE TIME OF THE ACCIDENT

Requests for Admission Plaintiff to Defendant

- ADMIT YOU ENTERED THE INTERSECTION ON A RED TRAFFIC SIGNAL
- ADMIT PLAINTIFF JULIE BROWN ENTERED THE INTERSECTION ON A GREEN TRAFFIC SIGNAL
- ADMIT YOU WERE DRIVING YOUR PERSONAL VEHICLE AT THE TIME OF THE ACCIDENT
- ADMIT YOU WERE PERFORMING AN ERRAND FOR ACME CONSTRUCTION COMPANY AT THE TIME OF THE ACCIDENT
- ADMIT DR. JONES' MEDICAL BILL FOR MEDICAL SERVICES TOTALS $100,000
- ADMIT THIS ACCIDENT WAS A SUBSTANTIAL FACTOR IN CAUSING PLAINTIFF TO REQUIRE A CERVICAL FUSION AT C4-5

Requests for Admission Defendant to Plaintiff

- ADMIT YOUR HEALTH INSURANCE CARRIER PAID $50,000 TO DR. JONES IN FULL SATISFACTION OF HIS MEDICAL BILL
- ADMIT YOU HAD COMPLAINED OF NECK PAIN IN THE 12 MONTHS BEFORE THIS ACCIDENT
- ADMIT YOU HAD COMPLAINED OF BILATERAL RADICULAR SYMPTOMS IN YOUR HANDS IN THE 12 MONTHS BEFORE THE ACCIDENT
- ADMIT YOU HAD COMPLAINED OF BILATERAL RADICULAR SYMPTOMS IN YOUR ARMS IN THE 12 MONTHS BEFORE THIS ACCIDENT

Purpose of RFAs

- HAVE OPPOSING PARTY ADMIT FACTS RELEVANT TO THE CASE
- LIMIT TRIAL TIME PROVING "OBVIOUS FACTS"
- STRATEGY FOR POSSIBLE POST TRIAL MOTION
- STRATEGY FOR CREDIBILITY OF WITNESSES

Scope of Admissions

- LIMITATIONS ON NUMBER
- LIMITATION ON SCOPE
- ULTIMATE FACTS FOR THE CASE
- AUTHENTICITY OF DOCUMENTS

Drafting Tips

- STAND ALONE REQUEST
- NOT COMPOUND
- KEEP RFA AS SIMPLE AS POSSIBLE

Timing Tips

- INITIAL DISCOVERY
- SUPPLEMENTAL DISCOVERY – LAST SET BEFORE TRIAL

How to Respond

- GOOD FAITH BELIEF FOR THE RESPONSE
- ADMIT
- OBJECTIONS
- MOTION FOR A PROTECTIVE ORDER

What to do After Receipt of Responses

- REVIEW AND ANALYZE RESPONSES

No Responses vs Deficient Responses

- MOTION TO COMPEL RESPONSE
- MOTION FOR FUTURE RESPONSE
- MOTION TO DEEM RFA'S ADMITTED

Use of RFAs at Trial

- HOW?
- WHY?
- IMPACT ON TRIAL

Post-Trial Remedies

- MOTION FOR FEES & COSTS (COST-OF-PROOF SANCTIONS)
- TIPS FOR THE MOTION
- STANDARD ON REVIEW BY TRIAL COURT

FOR QUESTIONS ABOUT THIS PROGRAM E-MAIL:

JENNY BLEVINS
Executive Director
Sacramento Valley Chapter of ABOTA

Jennifer@caladmanagement.com

FOR MORE INFORMATION ABOUT ABOTA:

www.abota.org

AMERICAN BOARD OF TRIAL ADVOCATES

Request For Admissions

CCP Section 2033, et seq

April 19, 2024

Outline

1. Purpose of Request for Admissions
   - Have Opposing Party Admit Facts Relevant to the Case
   - Limit Trial Time Proving "Obvious Facts"
   - Strategy for Possible Post Trial Motion
   - Strategy for Credibility of Witnesses

2. Scope of Admissions
   - Limitations on Number (Section 2033.030)
   - Limitation on Scope (Section 2033.010)
   - Ultimate Facts for the Case
   - Authenticity of Documents (Section 2033.030)

3. Drafting Tips
   - Stand alone Request (Section 2033.060)
   - Not Compound
   - Keep RFA as Simple as Possible
   - Include Form Interrogatory 17.1

4. Timing Tips
   - Initial Discovery
   - Supplemental Discovery---Last Set Before Trial

5. How to Respond
   - Good Faith Belief for the Response (Section 2033.220)
   - Admit
   - Objections (Section 2033.230)
   - Motion for a Protective Order (Section 2033.080)

6. What to do after receipt of Responses
   - Review and Analyze Responses
   - Create Strategy for Trial

7. No Responses vs Deficient Responses (Section 2033.280-290)
   - Motion to Compel Response
   - Motion for Further Response
   - Motion to Deem RFA's Admitted

8. Use of RFA's at Trial
    - How
    - Why
    - Impact on Trial (Section 2033.410)

9. Post Trial Remedies
    - Motion for Fees and Costs (Section 2033.420)
    - Tips for the Motion
    - Standard on Review by Trial Court

10. Fact Pattern Example

Fact Pattern

This litigation arises out of a motor vehicle accident at the intersection of Fair Oaks Boulevard and Watt Avenue in Sacramento California. Plaintiff, Julie Brown suffered injuries as a result of the accident, and has brought a personal injury lawsuit against defendant, John Wilson. Ms. Brown was heading northbound on Watt Avenue in the number 3 lane and was the first car to limit line waiting for light to turn green. When her light turned green, she proceeded northbound into the intersection, and was struck broadside by a vehicle driven by Mr. Wilson traveling westbound on Fair Oaks Boulevard in the number 1 lane. Mr. Wilson was adamant he had a green light and entered the intersection on a continuous green. However, a witness in the left turn lane for westbound Fair Oaks Boulevard told the investigating officer light had cycled from green, to yellow, to red as Wilson entered the intersection, and the light had been red for westbound traffic for 3-5 seconds before the collision. As a result, the TCR concluded Mr. Wilson ran a red light and was the primary collision factor. Additionally, at the time of the accident, Mr. Wilson, a foreman for Acme Construction Company was driving his personal vehicle, going to McDonald's to pick up lunch for his construction team.

As a result of the accident, Ms. Brown suffered a neck injury, and ultimately had a cervical fusion at C 4-5 performed by Dr. Jones. Dr. Jones billed his medical services for surgery at $100,000, but Ms. Brown's health insurance

paid $50,000 to completely satisfy Dr. Jones Bill. Additionally, Ms. Brown had a prior Cervical Fusion at C 5-6, a different level, 5 years before this accident, and had complained of neck pain and bilateral radicular symptoms in her arms and hands in the 12 months prior to this accident.

Request for Admissions from Plaintiff to Defendant

1. Admit you entered the intersection on a red traffic signal

2. Admit plaintiff Julie Brown entered the intersection on a green traffic signal

3. Admit you were driving your personal vehicle at the time of the accident

4. Admit you were performing an errand for Acme Construction Company at the time of the accident

5. Admit Dr. Jones medical bill for his medical services total $100,000

6. Admit this accident was a "Substantial Factor" in causing Plaintiff to require a Cervical Fusion at C 4-5

Request for admissions from Defendant to Plaintiff

1. Admit your health insurance carrier paid $50,000 to Dr. Jones in full satisfaction of his medical bill
2. Admit Plaintiff had complained of neck pain in the 12 months before this accident
3. Admit plaintiff had complained of bilateral radicular symptoms in her hands in the 12 months before this accident.
4. Admit plaintiff had complained of bilateral radicular symptoms in her arms in the 12 months before this accident.

WILCOXEN CALLAHAM, LLP
WILLIAM M. LYONS, SBN 042558
MICHELLE C. JENNI, SBN 183292
DREW WIDDERS, SBN 245439
2114 K Street
Sacramento, California 95816
Telephone: (916) 442-2777
Facsimile: (916) 442-4118

Attorneys for Plaintiffs
TRACY MORRIS and CIERRA MORRIS, a minor by and through her Guardian Ad Litem, TRACY MORRIS

SUPERIOR COURT OF CALIFORNIA

COUNTY OF PLACER

TRACY MORRIS, CIERRA MORRIS, a minor by and through her Guardian Ad Litem, TRACY MORRIS,

Plaintiffs,

vs.

PAULA SWEDENBERG, and DOES 1 through 50, inclusive,

Defendants.
_____/

Case No. SCV0031513

[PROPOSED] ORDER RE PLAINTIFFS' MOTION FOR ORDER REQUIRING PAYMENT FOR EXPENSES FOR FAILURE TO MAKE ADMISSIONS

Date: September 12, 2013
Time: 8:30 a.m.
Department: 42

Trial: July 8, 2013
Complaint Filed: August 1, 2012

After oral argument having been requested by Defendant PAULA SWEDBERG, and good cause appearing therefore, the Court adopts the tentative ruling and makes an Order on Plaintiffs' Motion for Order Requiring Payment for Expenses for Failure to Make Admissions as follows:

Plaintiffs' motion is granted in part and denied in part.

Code of Civil Procedure section 2033.420(a) provides that if a party fails to admit the truth of any matter when requested, and if the party requesting that admission thereafter proves the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order to pay

reasonable expenses unless it finds that: (1) an objection to the request was sustained or a response to it was waived; (2) the admission sought was of no substantial importance; (3) the party failing to make the admission has reasonable ground to believe that that party would prevail on the matter; or (4) there was other good reason for the failure to admit.

Request for Admission No. 1 asked defendant to admit that she was 100% at fault for the accident at issue in this case. Defendant denied this request, based upon her asserted belief that she did not run a red light prior to the collision. Plaintiff correctly notes that both independent witnesses to the accident testified defendant ran the red light, and that the investigating officer concluded that defendant was at fault. However, despite testimony of those witnesses, it was apparent from defendant's trial testimony that she harbored a heartfelt belief that the traffic light was in her favor. The contrary testimony

of other witnesses does not establish that defendant had no reasonable grounds to believe that she would prevail on this issue based on her own recollection of the incident and testimony. Accordingly, plaintiffs are not entitled to reimbursement of expenses based on defendant's denial of Request for Admission No. 1.

Requests for Admission Nos. 3 and 4 asked defendant to admit that the plaintiffs, respectively, were injured as a result of the accident. Defendant responded that she lacked sufficient information to respond to the request, but admitted that plaintiffs did claim they were injured. Defendant's responses to these requests were nonresponsive, if not evasive. The responses neither directly admitted that plaintiffs were injured, nor denied that they were injured. Under the circumstances, these responses constitute a failure to admit the truth of facts within the meaning of Code of Civil Procedure section 2033.420(a). This is so because at the time of defendant's responses, the deposition of plaintiff Tracy Morris had been completed, and defendant had gained information concerning the injuries to both Tracy Morris and Cierra Morris. Additionally, defendant possessed medical records relating to plaintiff Tracy Morris's injuries. At trial, defendant offered no evidence to dispute that either plaintiff had been injured as a result of the accident. In opposition to the instant motion, defendant contends that she never denied that plaintiffs were injured as a result of the accident, and notes that the extent of

injuries was a contested issue. However, the Requests for Admission did not seek admissions regarding the extent of plaintiffs' injuries, but only that plaintiffs were injured at all as a result of the accident. Defendant offers no evidence to support the assertion that she had a reasonable basis to believe, at the time the responses were made, that plaintiffs had not been injured as a result of the accident, and accordingly, there was no reasonable basis for her failure to admit the same. All of the testimony at trial, even from defendant's own medical expert, confirmed that plaintiff Tracy Morris sustained injuries. The court further finds that the admissions sought were of substantial importance and that there was no good reason for defendant's failure to admit these requests. As none of the exceptions under Code of Civil Procedure section 2033.420(a) apply, the motion is granted with respect to defendant's responses to Requests for Admission Nos. 3 and 4.

Request for Admission No. 6 asked defendant to admit that the police officer who prepared the traffic collision report concluded that defendant violated California Vehicle Code section 21453. Defendant responded: "Defendant admits that the Officer attributed fault to Defendant after only speaking to Defendant for only a moment while she was in the hospital." While defendant's response attempts to minimize or qualify that the officer concluded that defendant violated Vehicle Code section 21453, defendant's response essentially admits the requested fact, regardless of the additional statements made therein. As defendant admitted the requested fact, plaintiffs are not entitled to reimbursement of expenses as to Request for Admission No. 6.

Plaintiffs are entitled to reimbursement of reasonable expenses incurred in proving they were injured as a result of the accident. Plaintiffs submit that such expenses should include $4,100 in attorneys' fees, and $8,000 in expert witness fees, for a total of $12,100. The attorneys' fees requested are based on hourly rates of $400, $350 and $250 per hour for the attorneys who worked on various parts of the case. Having considered the respective backgrounds and experience of the attorneys as set forth in the supporting declaration, the court finds the hourly rates and total fees requested are reasonable when viewed against prevailing rates for such legal work in this area.

Plaintiffs are awarded attorneys' fees in the amount of **$4,100**, plus expert witness fees in the amount of **$8,000**, for total expenses in the amount of **$12,100**, payable by defendant.

IT IS HEREBY ORDERED.

Charles D. Wachob

DATED: November 6, 2013.

JUDGE OF THE SUPERIOR COURT

Approved as to form:

PATREA R. BULLOCK
Attorney for Defendant PAULA SWEDBERG

WILCOXEN CALLAHAM, LLP
WILLIAM M. LYONS, SBN 042558
MICHELLE C. JENNI, SBN 183292
DREW M. WIDDERS, SBN 245439
2114 K Street
Sacramento, California 95816
Telephone: (916) 442-2777
Facsimile: (916) 442-4118

Attorneys for Plaintiffs
TRACY MORRIS and CIERRA MORRIS, a minor by and through her Guardian ad Litem, TRACY MORRIS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

TRACY MORRIS and CIERRA MORRIS, a minor by and through her Guardian ad Litem, TRACY MORRIS,

Plaintiffs,

v.

PAULA SWEDBERG, and DOES 1 through 50, inclusive,

Defendants.
_____/

Case No. S-CV-0031513

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDER REQUIRING PAYMENT FOR EXPENSES FOR FAILURE TO MAKE ADMISSIONS

DATE: September 12, 2013
TIME: 8:30 a.m.
DEPT.: 42

Complaint Filed: August 1, 2012
Trial Date: July 8, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Federal Rules

Statutes

I.

INTRODUCTION

As this Court may recall, this case arises out of a motor vehicle accident that occurred on January 31, 2011. Plaintiffs TRACY MORRIS and her daughter CIERRA MORRIS alleged that Defendant PAULA SWEDBERG (erroneously sued as SWEDENBERG) ran a red light and collided into their vehicle causing them harm. On April 4, 2013, given the available evidence[1], Plaintiffs served Request for Admissions requesting Defendant admit responsibility for the accident and that the accident caused Plaintiffs' harm.

On May 7, 2013, just two months before trial, Defendant responded to Plaintiff TRACY MORRIS's Request for Admissions. Defendant denied responsibility for the accident and admitted only that Plaintiffs' "claimed injury," not that the Plaintiffs were actually injured as a result of the accident.

Based on the evidence, Defendant had no good faith reasonable belief she could prevail on these issues at trial. Therefore, under CCP §2033.290(a) Plaintiffs move this Court for an Order imposing cost-of-proof sanctions, including reasonable attorney's fees, in proving at trial that Defendant was responsible for the accident and that the accident caused harm to the Plaintiffs. Because Defendant cannot establish any applicable exception under CCP §2033.290(b) for her failure to admit these issues, the Motion should be granted.

II.

PROCEDURAL HISTORY

A Complaint in this matter was filed on August 1, 2012. On November 9, 2012, Defendant served discovery requests to Plaintiffs TRACY and CIERRA MORRIS. On December 28, 2012, Plaintiffs served responses to Defendants discovery requests listing their injuries from the accident, including TRACY MORRIS's fractured vertebrae. (See attached, Exhibit 1, page 5, Response 6.2 and Exhibit 2, page 4, Response 6.2.)

//

[1] Which included two eye-witnesses, the investigating officer, and two Plaintiffs saying Defendant ran the red light causing an accident that required all persons involved to be transferred by ambulance to the hospital.

On December 14, 2012, the deposition of Defendant SWEDBERG was taken by Plaintiffs' counsel. In that deposition, she admitted she was aware that two independent witnesses said she ran a red light prior to the collision. She disagreed. (See attached, Exhibit 3, p. 23:16-21.) She also described the injuries she suffered as a result of the accident. (See attached, Exhibit 3, page 19:25-20:19.)

On January 15, 2013, Defendant SWEDBERG's counsel subpoenaed Plaintiff TRACY MORRIS's medical records. Those included Sutter Roseville Medical Center records. The records described in detail the injuries TRACY MORRIS sustained in the collision. (See attached, Exhibit 4, Trauma History and Physical.)

On April 11, 2013, Defendant SWEDBERG's counsel took the deposition of TRACY MORRIS. During the deposition, TRACY MORRIS described the injuries she sustained in the accident. (See attached, Exhibit 5, p. 32:20-24). She also described the injuries her daughter, CIERRA MORRIS, sustained. (See attached, Exhibit 5, p. 11:11-17).

On May 9, 2013, Defendant SWEDBERG served verified responses to Plaintiff TRACY MORRIS's Request for Admissions. (See attached, Exhibit 6 [Plaintiff's Request for Admissions, Set One] and Exhibit 7 [Defendant's Responses to Requests for Admissions, Set One].). Of relevance to this motion are the following requests and responses:

Request 1: Admit that YOU were 100% at fault for the subject ACCIDENT?

Response 1: Deny.

Request 3: Admit that Plaintiff TRACY MORRIS was injured as a result of the subject ACCIDENT?

Response 3: Defendant admits that Plaintiff claims injury but lacks sufficient information with respect to the Request for Admission.

Request 4: Admit that Plaintiff CIERRA MORRIS was injured as a result of the subject ACCIDENT?

Response 4: Defendant admits that Plaintiff claims injury but lacks sufficient information with respect to the Request for Admission.

Request 6: Admit that the police officer that prepared the traffic collision report in this matter concluded that YOU violated California Vehicle Code (CVC) 21453 .

//

Response 6: Defendant admits that the Officer attributed fault to Defendant after only speaking to Defendant for only a moment while she was in the hospital.

Trial in this matter commenced on July 8, 2013. At trial, to prove Defendant negligently ran the red light and was therefore responsible for the accident, Plaintiffs offered the testimony of two independent eye-witnesses, the investigating officer, Plaintiffs and an Expert Accident Reconstructionist. Defendant, on the other hand, offered no evidence, expert or otherwise, other than her own testimony that her light was green, to explain how she could have had a green light despite the testimony of all of the other witnesses that they had a green light. Additionally, to prove that their injuries were caused by the accident, Plaintiffs offered their own testimony, the testimony of Kevin Morris, neurosurgeon Vanburen Lemons, M.D., and Defendant's own expert, Dr. David Jones. Defendant did not offer any evidence to dispute causation at trial.

III.

LEGAL ANALYSIS

The Court in *Brooks v. Am. Broad. Co.* (1986) 179 Cal.App.3d 500 stated that the primary purpose of requests for admissions is to put at rest triable issues in order to expedite trials. The Court further explained that the purpose of imposing sanctions for failing to admit an issue is directly related to expediting trials. The need to expedite trials is especially important these days due to the limited available Court resources. The sanctions for failure to admit, however, are not meant to be a penalty, but rather to reimburse reasonable expenses where the admission was of substantial importance to the trial. As stated in *Brooks v. Am. Broad. Co.*, *supra*, 179 Cal.App.3d 500:

//

//

//

//

//

> The primary purpose of requests for admissions is to set at rest triable issues so that they will not have to be tried; they are aimed at expediting trial. *(Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 429 [15 Cal.Rptr. 127, 364 P.2d 303].) The basis for imposing sanctions under section 2034, subdivision (c), is directly related to that purpose. Unlike other discovery sanctions, an award of expenses pursuant to section 2034, subdivision (c), is not a penalty. Instead, it is designed to reimburse reasonable expenses incurred by a party in proving the truth of a requested admission where the admission sought was "of substantial importance" (§ 2034, subd. (c); *Hillman v. Stults* (1968) 263 Cal.App.2d 848, 884 [70 Cal.Rptr. 295]) ***such that trial would have been expedited or shortened if the request had been admitted***. [Emphasis added.] (*Id*. at 509.)

A. Defendant's Failure to Admit Responsibility For the Accident and That The Accident Caused Plaintiffs' Harm Supports An Order Requiring Defendant to Pay Plaintiffs' Reasonable Expenses

CCP 2033.420(a) provides:

> If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, **the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees.** [Emphasis added.]

Request for Admissions 1, 3, and 4 required Defendant to admit responsibility for the accident, and that the accident caused Plaintiffs harm. Defendant did not do so. Because of this failure, Plaintiffs TRACY MORRIS and CIERRA MORRIS were required to prove the matter at trial. This entitles Plaintiffs to an Order for reasonable expenses unless Defendant can establish she was excused from admitting those issues.

B. Defendant Does Not Meet Any of the Permissible Reasons for Not Admitting Responsibility for the Accident and That the Accident Caused Plaintiffs' Harm

CCP §2033.420(b) states that the Court shall make an order approving Plaintiffs' reasonable expenses unless it finds one of the following:

> (b) The court shall make this order unless it finds any of the following:
>
> (1) An objection to the request was sustained or a response to it was waived under Section 2033.290.
>
> (2) The admission sought was of no substantial importance.
>
> (3) The party failing to make the admission had reasonable ground to believe that that party would prevail on the matter.
>
> (4) There was other good reason for the failure to admit.

1. Defendant Made No Objections to the Admissions

Defendant made no objection to the request she admit responsibility for the accident. Nor is it a valid argument that there was insufficient information available to Defendant to admit that Plaintiffs were injured at the time of accident. As stated in *Brooks*, *supra*:

> Thus, if a party denies a request for admission (of substantial importance) in circumstances where the party lacked personal knowledge but had available sources of information and failed to make a reasonable investigation to ascertain the facts, such failure will justify an award of expenses under section 2034, subdivision (c). (*Id.* at 510).

> ...Sometimes a party justifiably denies a request for admission based upon the information available at the time of the denial, but later learns of additional facts or acquires information which would have called for the request to be admitted if the information had been known at the time of the denial. If such a party thereafter advises the party that propounded the request for admission that the denial was in error or should be modified, a court should consider this factor in assessing whether there were no good reasons for the denial. (*Id.*)

Here, at the time of Defendant's responses to the Request for Admissions, just 2 months before trial, Defendant had the medical records of Plaintiff TRACY MORRIS evidencing that the accident caused injuries. Defendant's Counsel had also taken Plaintiff TRACY MORRIS's deposition and questioned her on both her and her daughter's injuries from the accident. All the evidence supported that the accident caused injuries. Because no objection was made to the requests for admission and Defendant had sufficient information to respond, she does not meet the criteria set forth in CCP §2033.420(b)(1).

2. The Admissions Were of Substantial Importance

It cannot be argued in good faith that fault for the accident (i.e. negligence) or injury as a result of the accident (i.e. causation) are not central to the case. Other than damages, these are two of the three issues the jury had to decide in order to fill out the verdict form. Clearly, these issue were central to the case and were to the verdict. Thus, CCP §2033.240(b)(2) is inapplicable.

3. Defendant Had No Reasonable Grounds To Believe She Would Prevail on the Issues of Liability and Causation

Given the evidence, it was unreasonable for Defendant to believe she would prevail at trial on either the issue of being responsible for the accident or that the accident did not

cause injuries to Plaintiffs. It is not enough to hotly contest an issue, there must be a reasonable good faith belief the party will prevail on the issue at trial. See, *Brooks, supra* at 511.

As stated in *Brook*s:

> Finally, in considering this issue, a court may properly consider whether at the time the denial was made the party making the denial held a reasonably entertained good faith belief that the party would prevail on the issue at trial. (Cf. Fed. Rules Civ. Proc., rule 37(c).) In this regard, we disagree with the suggestion in *Haseltine v. Haseltine, supra*, 203 Cal.App.2d 48, 61, that it is enough for the party making the denial to "hotly contest" the issue. In our view, there must be some reasonable basis for contesting the issue in question before sanctions can be avoided. (*Id.* at 511).

At the time of Defendant's denial, she was aware that two independent witnesses stated she ran the red light. (See attached, Deposition of PAULA SWEDBERG, Exhibit 3, p. 23:16-21.) She was also aware that the investigating officer found her at fault for running the red light. (See attached, Requests for Admissions, Set One and Responses thereto, Exhibit 6 and 7, specifically at Request 8.) At trial, the evidence of Defendant's fault included two witnesses, the investigating officer, two plaintiffs, and Plaintiffs' expert engineer stating Defendant ran the red light. Defendant offered no evidence, expert or otherwise, other than her own testimony that she had a green light, to explain how it was that if all other witnesses stated they had the green light, she could have also had a green light. Under the weight of this evidence, there could be no good faith reasonable belief she would prevail at trial on the issue of responsibility for the accident. If Defendant did have a good faith belief she would prevail, why did she not sue or file a cross-complaint against Plaintiff TRACY MORRIS? Defendant herself was injured during the accident. (See attached, Exhibit 3, page 19:25-20:9.) Furthermore, over a year later she was still treating with a chiropractor for injuries she sustained in the accident. (*Id.* lines 10-19.)

Defendant's refusal to admit that Plaintiffs were injured as a result of the accident was also unreasonable. At the time of Defendant's failure to admit, she knew that she was injured as a result of the accident. She had ordered and received Plaintiff TRACY MORRIS's medical records evidencing her injuries caused by the accident. Her attorney had taken Plaintiff

TRACY MORRIS' deposition and questioned her about the injuries caused to both her and CIERRA MORRIS as a result of the accident. Defendant had also had TRACY MORRIS examined by her own expert who concluded that she had sustained injuries as a result of the accident. At trial, the evidence of Plaintiff's injury included, Plaintiffs, Kevin Morris, Dr. Lemons and Defendant's **own** expert, Dr. Jones. Under the weight of the evidence available at the time of her response, including her own expert, there could be no good faith reasonable belief she would prevail at trial on whether the accident caused Plaintiffs' harm. Furthermore, Defendant offered no evidence to dispute this issue at trial. Thus, CCP §2033.420(b)(3) is inapplicable.

4. There Was No Other Good Reason to Not Admit The Request

There was no good reason for Defendant's failure to admit responsibility for the accident and that Plaintiffs were injured as a result of the accident. As stated in *Brooks, supra*, the primary purpose of Requests for Admissions "is to set at rest triable issues so that they will not have to be tried; they are aimed at expediting trial." The failure of Defendant to admit the issues of responsibility for the accident and causation of harm resulted in increased expenses to Plaintiff TRACY MORRIS and her daughter in proving these matters at trial. Additionally, the trial could have been expedited if Plaintiff did not have to spend over a day putting on witnesses to establish Defendant was responsible for the accident and that it caused Plaintiffs' harm. Thus, CCP §2033.420(b)(4) is inapplicable.

Based on the above, Defendant does not meet the criteria set forth in CCP §2033.420(b) and, as such, the Court should require Defendant to pay the reasonable expenses of proof at trial, including reasonable attorney's fees.

C. Reasonable Expenses Incurred in Proving Defendant's Negligence and That it Caused Harm to Plaintiffs

Submitted with the moving papers and attached to the Declaration of William M. Lyons is an itemization of Plaintiffs' counsels' costs and time spent on the issue of Defendant's negligence and causation of harm.

//

The total amount of time Plaintiffs' counsel spent on preparing for and proving negligence at trial totals 33 hours. The fees incurred by Plaintiff for this amount of time totals **$10,000.00**. This amount is conservative. It does not include any time in discovery or interviewing witnesses. It only includes 16 hours in trial preparation which is only a fraction of the time spent in preparing this matter for trial.

The total amount of time Plaintiffs' counsel spent on preparing for and proving causation of harm at trial totals 13.3 hours. The fees incurred by Plaintiff for this amount of time totals **$4,100.00**. This amount is conservative. It does not include any time in propounding discovery and interviewing witnesses. It only includes 8 hours in trial preparation which is only a fraction of the time spent in preparing this matter for trial.

In that Defendant PAULA SWEDBERG did not admit liability, Plaintiffs were required to retain an Accident Reconstruction expert, Larry Neuman, P.E. Mr. Neuman surveyed the scene, photographed the scene and gave a deposition. Despite his deposition testimony, Defendant still refused to admit liability and Plaintiffs were forced to bring Mr. Neuman to testify at the trial in this matter.

The total amount of costs Plaintiffs' counsel spent preparing for and proving Defendant's negligence at trial is **$6,506.19**.

Plaintiffs requested that Defendant admit that the accident caused injuries to Plaintiffs. Despite Defendant's own expert's report regarding TRACY MORRIS indicating that she was injured and the fact that he had no opinion regarding CIERRA MORRIS, Defendant still refused to admit injury as a result of the accident. As such, Plaintiffs were required to retain Dr. Lemons and have him testify at the trial.

The total amount of costs Plaintiffs' spent preparing for and proving at trial that Defendant's negligence caused harm to Plaintiffs is **$8,000.00**.

Thus, the total reasonable expenses including attorney's fees in proving negligence are **$16,506.19**. The total reasonable expenses including attorney's fees in proving causation are **$12,100.00**.

//

IV.

CONCLUSION

The jury returned a verdict establishing that Defendant PAULA SWEDBERG was 100% responsible for this accident. The jury also returned a verdict establishing that Defendant PAULA SWEDBERG was a substantial factor in causing Plaintiffs' harm. Since Defendant did not admit that she was 100% responsible and that the accident caused Plaintiffs' harm, Plaintiffs incurred costs and attorney's fees associated with proving Defendant's negligence. Plaintiffs respectfully request that the reasonable expenses and attorney's fees outlined in Plaintiffs' counsel's declaration be reimbursed pursuant to Code of Civil Procedure §2033.420(a) in the amount of **$26,606.19**.

Respectfully submitted,

DATED: **WILCOXEN CALLAHAM, LLP**

By:_____
WILLIAM M. LYONS
MICHELLE C. JENNI
DREW M. WIDDERS
Attorneys for Plaintiffs TRACY MORRIS and CIERRA MORRIS, a minor by and through her Guardian Ad Litem, TRACY MORRIS