

## DEPARTMENT 28 LAW AND MOTION RULINGS

All parties are urged to meet and confer with all parties concerning this tentative ruling to see if they can reach an agreed-upon resolution of their matter. If you are able to reach an agreement, please notify the courtroom staff in advance of the hearing if you wish to submit on the tentative ruling rather than argue the motion by notifying the court by e-mailing the court at: [SSCDEPT28@lacourt.org](mailto:SSCDEPT28@lacourt.org). Include the word "SUBMITS" in all caps and the Case Number in the Subject line. In the body of the email, please provide the date and time of the hearing, your name, your contact information, the party you represent, and whether that party is a plaintiff, defendant, cross-complainant, cross-defendant, claimant, intervenor, or non-party, etc.

Please be advised that if you submit on the tentative and elect not to appear at the hearing, the opposing party may still appear at the hearing and argue the matter, and the court could change its tentative based upon the argument. **Unless you receive a submission from all other parties in the matter, you should assume that others might appear at the hearing to argue.** If you submit, but still intend to appear, include the words "SUBMITS, BUT WILL APPEAR" in the Subject line.

**If you elect to argue your matter, you are urged to do so remotely, via Court-Connect.**

Note that once the Court has issued a tentative, the Court has the inherent authority not to allow the withdrawal of a motion and to adopt the tentative ruling as the order of the court. This does not excuse a moving party's need to do one of the following: appear; submit; or take a matter off calendar by canceling the motion in the case reservation system before issuance of the tentative ruling if the matter moving party does not intend to proceed.

If you submitted a courtesy copy of your papers containing media (such as a DVD or thumb drive), unless you request the return of the media in your papers, the court will destroy it following the hearing of your matter.

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**Case Number:** 22STCV20298    **Hearing Date:** November 15, 2024    **Dept:** 28

Having considered the moving, opposition, and reply papers, the Court rules as follows.

### BACKGROUND

On June 21, 2022, Plaintiff Alec Enciso filed this action against Defendants Michelle Gonzalez ("Defendant") and Does 1-10 for motor vehicle tort and general negligence.

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On September 2, 2022, Defendant filed an answer.

On March 28, 2024, Defendant filed a motion for summary judgment or, in the alternative, summary adjudication. The motion was set for hearing on September 19, 2024. On September 5, 2024, Plaintiff filed an opposition. On September 12, 2024, Defendant filed a reply. The Court continued the hearing to November 15, 2024.

## **PARTIES' REQUESTS**

Defendant asks the Court to grant summary judgment or, in the alternative, summary adjudication.

Plaintiff asks the Court to deny the motion.

## **EVIDENTIARY OBJECTIONS**

Plaintiff's evidentiary objections

Overruled: All

Defendant's evidentiary objections

Overruled: All

## **LEGAL STANDARD**

### **A. Summary judgment and summary adjudication**

“‘[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law.’” (*LAOSD Asbestos Cases* (2023) 87 Cal.App.5th 949, 945, quoting *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*)) “[T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact.” (*Aguilar, supra*, 25 Cal.4th at p. 850.)

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When the moving party is a defendant, it must show that the plaintiff cannot establish at least one element of the cause of action. (*Aguilar, supra*, 25 Cal.4th at p. 853.) “The defendant has shown that the plaintiff cannot establish at least one element of the cause of action by showing that the plaintiff does not possess, and cannot reasonably obtain, needed evidence.” (*Id.* at p. 854.) The defendant must “present evidence, and not simply point out that the plaintiff does not possess, and cannot reasonably obtain, needed evidence.” (*Ibid.*) Thus, “the defendant must ‘support[ ]’ the ‘motion’ with evidence including ‘affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice’ must or may ‘be taken.’ [Citation.] The defendant may, but need not, present evidence that conclusively negates an element of the plaintiff’s cause of action. The defendant may also present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence—as through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing.” (*Id.* at p. 855, original emphasis.)

“Supporting and opposing affidavits or declarations . . . shall set forth admissible evidence.” (Code Civ. Proc., § 437c, subd. (d).) “Matters which would be excluded under the rules of evidence if proffered by a witness in a trial as hearsay, conclusions or impermissible opinions, must be disregarded in supporting affidavits.” (*Hayman v. Block* (1986) 176 Cal.App.3d 629, 639.)

In addition, a party moving for summary judgment or summary adjudication must support the motion with “a separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence.” (*Parkview Villas Assn. v. State Farm Fire & Casualty Co.* (2006) 133 Cal.App.4th 1197, 1209 (*Parkview Villas*), quoting Code Civ. Proc., § 437c, subd. (b)(1).) The party opposing the motion must file with the opposition papers “a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts that the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence.” (Code Civ. Proc., § 437c, subd. (b)(3).) If either party fails to comply with the applicable separate statement requirement, that failure may in the court’s discretion constitute a sufficient ground to decide the

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motion adversely to the offending party. (Code Civ. Proc., § 437c, subds. (b)(1), (3).)

In ruling on the motion, the court must consider all the evidence and all the inferences reasonably drawn from it and must view such evidence and inferences in the light most favorable to the opposing party. (*Aguilar, supra*, 25 Cal.4th at p. 843.)

## **B. Negligence**

The elements of a negligence claim are a legal duty of care, breach of that duty, and proximate cause resulting in injury. (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158.)

“The operator of a vehicle must keep a proper lookout for other vehicles or persons on the highway and must keep his car under such control as will enable him to avoid a collision; failure to keep such a lookout constitutes negligence.” (*Downing v. Barrett Mobile Home Transport, Inc.* (1974) 38 Cal.App.3d 519, 524.)

## **DISCUSSION**

### **A. The complaint**

The complaint alleges that on March 26, 2022, on Melrose Avenue between San Vicente and N. Huntley Drive in West Hollywood, CA 90069, Defendants negligently, carelessly, and unlawfully drove, operated, owned, entrusted, and maintained their vehicle, causing it to collide with and injure Plaintiff.

### **B. Undisputed facts**

The accident occurred on Melrose Avenue between San Vicente and North Huntley Drive. Plaintiff was riding a bicycle. The portion of Melrose Avenue where the accident occurred did not have a bike lane and was slightly down-hill heading east. Defendant was driving her car in front of Plaintiff, looking for a diagonal parking space.

Defendant turned her car into a diagonal parking space on her right without first checking over her right shoulder. Plaintiff had little or no time to react. He was forced to slam on his brakes and almost simultaneously slammed into Defendant’s

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car. Plaintiff's bicycle struck Defendant's car on its passenger side between the taillight and the middle of the back tire.

## **DISCUSSION**

Defendant has presented evidence (including an expert declaration) about the parties' speeds, point of impact, reaction times, and other matters. Based on this evidence, Defendant argues that Plaintiff was solely responsible for the accident as a matter of law. Specifically, Defendant argues: (1) Plaintiff is presumptively and conclusively negligent because he admitted that he rear-ended Defendant, (2) Defendant did not owe a duty to Plaintiff because it was not foreseeable that Plaintiff, in violation of multiple Vehicle Code provisions, would hit the rear of Defendant's vehicle when she was parking, and (3) even if Defendant had a duty, Defendant did not breach the duty because the accident was avoidable, i.e., Plaintiff "had sufficient time and distance to perceive, react and avoid the subject incident." (Motion p. 1.)

Defendant's evidence does not prevent a reasonable trier of fact from finding that Defendant is partly or completely liable for the accident. As Defendant admits, evidence that Plaintiff rear-ended Defendant would establish at most a "rebuttable presumption" of negligence. (Motion p. 1.) Defendant's duty analysis is based on a selective recitation of evidence which a trier of fact is not required to accept. And Defendant's argument that the collision was "avoidable" invokes the former "last clear chance" theory, which does not prevent a finding of comparative negligence. (See *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 829 ["The doctrine of last clear chance is abolished" and is "subsumed under the general process of assessing liability in proportion to negligence"].)

Therefore, Defendant has not carried her initial burden on summary judgment or summary adjudication.

Even assuming Defendant had carried her initial summary judgment or summary adjudication burden, Plaintiff has raised triable issues of fact concerning (1) whether Defendant checked her mirrors before turning into the diagonal parking space (exh. 3, p. 20), (2) whether Defendant activated her turn signal before turning into the parking space (see exh. 2, p. 43; exh. 3, p. 20), (3) whether Defendant failed to look over her right shoulder before turning right into the parking space (exh. 3, p. 21), and (4) whether Defendant "darted" in front of Plaintiff, giving him insufficient

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time to brake before striking Defendant's car (see exh. 2, pp. 40-42).

The Court denies the motion.

## **CONCLUSION**

The Court DENIES Defendant Michelle Gonzalez's motion for summary judgment or, in the alternative, summary adjudication.

Moving party is ordered to give notice of this ruling.

Moving party is ordered to file the proof of service of this ruling with the Court within five days.

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