

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 08/24/2020

TIME: 08:20:00 AM

DEPT: 20

JUDICIAL OFFICER PRESIDING: Matthew P. Guasco

CLERK: Miriam Hernandez

REPORTER/ERM: None

CASE NO: **56-2018-00520146-CU-PO-VTA**

CASE TITLE: **Adilene Ayala as Sucessor vs Southern California**

CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Motion for Summary Judgment

MOVING PARTY: Utility Tree Service Inc

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment or in the Alternative, Summary Adjudication as to Plaintiffs Complaint; Memo of Points and Authorities, 06/10/2020

APPEARANCES

Michael J Chaloupka, counsel, present for Plaintiff(s) telephonically.

Irwin S Evans, counsel, present for Defendant,Cross - Complainant(s) telephonically.

CHARLES J. SCHMITT, counsel, present for Defendant(s) telephonically.

Michael I Kim, counsel, present for Defendant(s) telephonically.

Hillary D. Patton, counsel, present for Defendant(s) telephonically.

Andy Mendoza, counsel, present for Defendant,Cross - Defendant(s) telephonically.

Keith E. Smith, counsel, present for Defendant(s) telephonically.

At 08:47 a.m., court convenes in this matter with all parties present as previously indicated.

Counsel have received and read the court's written tentative ruling.

Matter submitted to the Court without argument.

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling.

Request for Judicial Notice

The Court GRANTS UTS's request for judicial notice of certain records in the Court's file of this action, as well as public agency regulations.

Evidentiary Objections

The Court SUSTAINS each and every one of the 30 objections made by defendants and cross-complainants, Southern California Edison Company and Edison International (collectively, "SCE"), to the Declaration of William Ross and associated exhibits. Mr. Ross's declaration lacks foundation, incorporates hearsay, and contains improper legal opinions and conclusions about the contracts and liabilities at issue. The Court has examined each of the objections carefully; each is well-taken.

The court SUSTAINS each and every one of the 12 objections made by SCE to the Declaration of Andy

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Mendoza and associated exhibits. Mr. Mendoza's declaration does not properly authenticate the evidentiary material attached to it. It is not enough to attach an evidentiary exhibit to a declaration which states that the exhibit is a true and correct copy of what it purports to be. The declarant must provide the further foundation necessary to admit the document as evidence of some relevance to the action. Mr. Mendoza's declaration fails to meet these standards in the particulars identified by the objections.

Undisputed Material Facts ("UMF"s) and Additional Material Facts ("AMFs")

For the limited purpose of ruling on the pending motion, the Court makes the following findings concerning the UMFs and AMFs:

Cross-referencing and comparing UTS's separate statement with the three opposition responsive separate statements, the Court finds the following UMFs are not established by the cited evidence and are materially disputed by one or more of the opposing parties: 1, 17, 19, 20, 22, 23, 26, 27, 31, 32, 33, 39, 41, 43, 45, 46, and 47.

In light of the Court's ruling on the objections as stated above, and the motion as discussed more fully below, the Court does not make any findings about the AMFs offered by opposing parties.

Legal Principles Governing Summary Judgment/Adjudication

Summary judgment procedure is well settled: "A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code of Civ. Proc., § 437c, subd. (a).) A party may also move for "summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty. . . ." (Code of Civ. Proc., § 437c, subd. (f)(1).) "The court must grant the motion if all the papers submitted show that there is no triable issue as to any material fact [citation omitted]-that is, there is no issue requiring a trial as to any fact that is necessary under the pleadings and, ultimately, the law [citations omitted]-and that the moving party is entitled to a judgment as a matter of law [citation omitted]." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855-56, 107 Cal.Rptr.2d 841, 24 P.3d 493, internal quotation marks omitted ("*Aguilar*").) "The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Id.*, 25 Cal.4th at p. 855, 107 Cal.Rptr.2d 841, 24 P.3d 493.) The court must construe the evidentiary showing, and all reasonable inferences therefrom, in the light most favorable to the opposing party. (*Id.*, 25 Cal.4th at p. 857, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

The Court follows a three-part test in ruling on the motion:

- (a) "First, . . . 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." (*Id.*, 25 Cal.4th at p. 850, 107 Cal.Rptr.2d 841, 24 P.3d 493.)
- (b) "Second, . . . the 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." (*Ibid.*)
- (c) "Third, . . . how the parties moving for and opposing, summary judgment may each carry their burden of persuasion and/or production depends on which would bear what burden of proof at trial." (*Id.*, 25 Cal.4th at p. 851, 107 Cal.Rptr.2d 841, 24 P.3d 493.)

In determining whether a material triable issue exists, the Court must construe the evidence offered by the moving party in support of the motion strictly and the evidence offered in opposition to the motion

liberally. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 839, 89 Cal.Rptr.2d 540.) Moreover, the Court is not permitted to weigh or assess the credibility of, or resolve conflicts concerning, the evidence offered in support of or opposition to the motion; conflicts in the evidence must be resolved by the trier of fact, not the Court. (Code of Civ. Proc., §437c, subd. (e); *Boicourt v. Amex Assurance Co.* (2000) 78 Cal.App.4th 1390, 1397, fn. 4, 93 Cal.Rptr.2d 763; *AARTS Productions, Inc. v. Aetna Life Ins. Co.* (1986) 179 Cal.App.3d 1061, 1064, 225 Cal.Rptr. 203.)

Ruling on Motion

The Court DENIES UTS's motions for summary judgment and summary adjudication. UTS has not met its initial burden of negating an essential element of each cause of action plaintiffs allege against UTS by the production of admissible evidence. The burden, therefore, does not shift to opposing parties to produce evidence of a material triable dispute.

Counsel for UTS shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court.