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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 J. Delgadillo and S. Delgadillo,

10 Plaintiffs,

11 v.

12 BNSF Railway Company,

13 Defendant.  
14

No. CV-21-01679-PHX-DLR

**ORDER**

15  
16 Pending before the Court are Defendant's motion for summary judgment and  
17 Plaintiff's motion to withdraw admissions, which are fully briefed. (Docs. 22, 33, 39, 54,  
18 60.) The Court grants the motion to withdraw admissions and denies the motion for  
19 summary judgment.

20 **I. Background**

21 In the early morning of April 12, 2019, a BNSF train crew saw a body stretched out  
22 on the tracks ahead of them. (Doc. 22-1.) The crew applied the emergency brakes and  
23 blew the horn. Ten seconds they blew the horn; the body remained motionless. The train  
24 needed 14 more seconds to stop but didn't have them, and it struck the lifeless body of  
25 Decedent, whose blood alcohol content was 0.265. (Docs. 22-1, 22-2.). The coroner  
26 determined the death was a suicide and that the train had caused Decedent's death. (Doc.  
27 23-3.)

28 Decedent's parents brought this wrongful death action, alleging negligence by

1 BNSF and two members of the train’s crew.<sup>1</sup> Plaintiffs’ daughter (Decedent’s sister)  
2 represented Plaintiffs at the outset, and she failed to respond to Defendant’s requests for  
3 admissions, effectively deeming them admitted under Federal Rule of Civil Procedure 36.  
4 Shortly after the deadline passed, Plaintiffs’ counsel was removed from the case, and  
5 Plaintiffs proceeded pro se afterward. (Doc. 19.)

6 While discovery was ongoing, Defendant brought a motion for summary judgment,  
7 predicated in significant part on the admissions deemed admitted. The Court construed  
8 Plaintiffs’ response to the motion for summary judgment as a motion to withdraw those  
9 admissions and ordered further briefing. The motions are now ripe.

## 10 **II. Motion to Withdraw Admissions**

11 Plaintiffs seek to withdraw admissions deemed admitted by default, and in their  
12 place, Plaintiffs request that the responses to requests for admission that they served upon  
13 Defendant just a few months ago be deemed operative. District courts may exercise  
14 discretion in ruling on a motion to withdraw admission but must consider whether granting  
15 the motion (1) would promote presentation of the merits and (2) would not prejudice the  
16 opposing party in “maintaining or defending” the action on the merits. Fed. R. Civ. P. 36.

17 The first prong is met when “upholding the admissions would practically eliminate  
18 any presentation of the merits of the case.” *Conlon v. United States*, 474 F.3d 616, 622  
19 (9th Cir. 2007) (quoting *Hadley v. United States*, 45 F.3d 1345, 1348 (9th Cir. 1995)).  
20 Here, no wrongful death suit could survive if the Court upheld the admissions that (1)  
21 Decedent died on April 11, 2019, (2) before being run over by the train, or else (3)  
22 committed suicide. Thus, the first prong is satisfied.

23 Now, to the second prong. The party relying on the deemed admission has the  
24 burden of proving prejudice. *Id.*

25 The prejudice contemplated by Rule 36(b) is “not simply that  
26 the party who obtained the admission will now have to  
27 convince the factfinder of its truth. Rather, it relates to the  
28 difficulty a party may face in proving its case, e.g., caused by  
the unavailability of key witnesses, because of the sudden need

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<sup>1</sup> The crew defendants were dismissed. (Doc. 1 at 2.) BNSF is the sole remaining defendant.

1 to obtain evidence” with respect to the questions previously  
2 deemed admitted.

3 *Id.* Defendant alleges prejudice in that it has “relied on the admissions for over two  
4 months” and the motion to withdraw comes ten months after the admissions were deemed  
5 admitted. (Doc. 54 at 2-3.) But mere time lost, without more, is not enough. Besides,  
6 discovery is ongoing, and Defendant actively conducted discovery during the pendency of  
7 the motion for summary judgment as if the requests for admission were never deemed  
8 admitted. (*See, e.g.*, Docs. 42-51.) Defendant has not shown prejudice.

9 The Court will grant the motion to withdraw admissions, and the responses to  
10 requests for admission served upon Defendant in May 2022 are operative.

### 11 **III. Motion for Summary Judgment**

12 Summary judgment is appropriate when there is no genuine dispute as to any  
13 material fact and, viewing those facts in a light most favorable to the nonmoving party, the  
14 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A fact is material  
15 if it might affect the outcome of the case, and a dispute is genuine if a reasonable jury could  
16 find for the nonmoving party based on the competing evidence. *Anderson v. Liberty Lobby,*  
17 *Inc.*, 477 U.S. 242, 248 (1986); *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061  
18 (9th Cir. 2002). Summary judgment may also be entered “against a party who fails to make  
19 a showing sufficient to establish the existence of an element essential to that party’s case,  
20 and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*,  
21 477 U.S. 317, 322 (1986).

22 Defendant’s motion is denied for two reasons. First, as to the arguments in the  
23 motion for summary judgment relying on the admissions previously deemed admitted,  
24 those fail because those admissions are no longer operative. Second, to the extent  
25 Defendant argues that Decedent was committing suicide, thus severing the causal chain  
26 and barring liability, the Court is not convinced.

27 For this latter proposition, Defendant relies on *Maricopa County. v. Cowart*, 471  
28 P.2d 265, 267 (Ariz. 1970), which reviewed a wrongful death case arising from a suicide.

1 In that case, a juvenile with a history of homicidal ideation—but whose doctor did not  
2 deem him an immediate suicide risk—strangled himself with his bedsheets by leaning back  
3 and pulling the sheets taut when confined to a juvenile detention center. The court held:

4 In those cases in which a specific duty of care is absent, that is  
5 cases involving a wrongful act by the defendant and a  
6 subsequent suicide by the injured party, the almost universal  
7 rule is that the suicide by the injured party is a superseding  
8 cause which is neither foreseeable nor a normal incident of the  
9 risk created and therefore relieves the original actor from  
10 liability for the death resulting from the suicide.

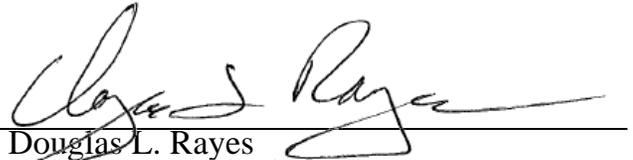
11 *Id.* Defendant thus concludes that it cannot be liable because Decedent committed suicide.

12 But that conclusion does not necessarily follow. In *Cowart*, the decedent’s suicidal  
13 potentiality was unknown and manner of suicide was unfortunately creative and hard to  
14 predict; as such, the plaintiff there could not establish a specific duty of care and the suicide  
15 was ruled an intervening cause. In other words, the plaintiff could not show that the  
16 defendant had a duty to prevent suicide with respect to the decedent and especially as to  
17 the manner of suicide. With respect to trains and train tracks, however, it’s not surprising  
18 or unpredictable that a motionless object will block ground-level tracks, e.g., a motor  
19 vehicle stalled in the middle of the tracks. Defendant concedes that Decedent laid  
20 unconcealed and motionless across the ground-level track. Unlike decedents in cases cited  
21 by Defendant, Decedent did not surprise Defendant’s agents by jumping in front of a  
22 subway train, *Washington Metro. Area Transit Auth. v. Johnson*, 726 A.2d 172, 177 (D.C.  
23 1999), or trespassing onto elevated tracks to commit, *Escobar v. Chicago Transit Auth.*,  
24 No. 1-3-2056, 2014 WL 4674604, at \*1 (Ill. Ct. App. September, 19 2014). As the Arizona  
25 Supreme Court has observed, “whether a railroad is negligent in a particular manner, such  
26 as in failing to provide automatic crossing gates, is a question of fact for the jury.” *DeElena*  
27 *v. S. Pac. Co.*, 592 P.2d 759, 762 (Ariz. 1979). The Court sees no reason to deviate from  
28 this general rule. Accordingly,

29 **IT IS ORDERED** that Plaintiffs’ motion to withdraw their admissions (Doc. 33) is  
30 **GRANTED.**

1           **IT IS FURTHER ORDERED** that Defendant’s motion for summary judgment  
2 (Doc. 22) is **DENIED** without prejudice to Defendant filing a new motion within the  
3 current dispositive motions deadline if it deems such a motion appropriate based on the  
4 facts as they now exist and develop through discovery.

5           Dated this 16th day of September, 2022.

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11           Douglas L. Rayes  
12           United States District Judge  
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