Tentative Rulings for August 20, 2025
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.

23CECG05100 ***John McCubbin v. City of Fresno*** **is continued to Wednesday, August 27, 2025, at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

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(20) **Tentative Ruling**

Re: ***Ramey v. Chavez-Avina, et al.***
Superior Court Case No. 24CECG04611

Hearing Date: August 20, 2025 (Dept. 403)

Motion: Defendant Ramon Chavez-Avina's Demurrer to Complaint
Defendant Ramon Chavez-Avina's Motion to Strike Punitive Damages
Defendants Viking Insurance Company of Wisconsin, Shane McGinley, Taryn Menge, Bridget Smith, and Breanne Young's Demurrer to Complaint

Tentative Ruling:

To continue Ramon Chavez-Avina's demurrer and motion to strike to October 7, 2025 at 3:30 p.m. in Department 403. Opposition and reply deadlines will be based on the continued hearing date.

To sustain the demurrer as to defendants Viking Insurance Company of Wisconsin, Shane McGinley, Taryn Menge, Bridget Smith, and Breanne Young (collectively, "Viking defendants"), without leave to amend.

Explanation:

This action arises from an auto accident in which defendant Ramon Chavez-Avina, driving while intoxicated, collided with plaintiff's unoccupied 2006 Mercedes-Benz while apparently parked on or near the 99 freeway. Plaintiff did not witness the accident, and claims extensive damages, including emotional distress, and punitive damages, as well as the damage to her vehicle. Plaintiff alleges that defendant Viking Insurance Company of Wisconsin was Chavez-Avina's insurer, and it offered plaintiff a low-ball sum of $8,800. In addition to Viking, plaintiff sues Shane McGinley, the Chief Executive Officer of Viking, and three Viking claim representatives who worked on the claim. Plaintiff also seems to base her claims against Viking defendants on the allegation that Viking refused to insure plaintiff for a different vehicle after she refused the $8,800 offer to settle the Chavez-Avina claim. The Complaint asserts, apparently against all defendants, causes of action for breach of contract, breach of the implied covenant and fair dealing, negligence, declaratory relief, and seeks punitive damages.

All defendants demur to the Complaint, and Chavez-Avina moves to strike the punitive damages allegations. Plaintiff has filed five oppositions, though three are largely duplicative and do not appear to substantively respond to any of the motions. The two substantive oppositions violate various Rules of Court. One is 14 pages and the other 22 pages, both single spaced.

Filings are supposed to be either double-spaced or with 1 1/2 spaces between lines. (Cal. Rules of Court, rule 2.108.) Memorandum may not exceed 15 pages. (Cal. Rules of Court, rule 3.1113(d).) "A memorandum that exceeds the page limits of these

rules must be filed and considered in the same manner as a late-filed paper." (Cal. Rules of Court, rule 3.1113(g)). The court can refuse to consider a late-filed opposition. (Cal. Rules of Court, rule 3.1300(d).) Additionally, a memorandum that exceeds 10 pages must include a table of contents and a table of authorities. (Cal. Rules of Court, rule 3.1113(f).) Plaintiff's over-length single spaced documents essentially amount to 28 and 44 page oppositions, if they were double spaced.

The court will not consider plaintiff's opposition to the demurrer and motion to strike filed by Chavez-Avina. Because there are numerous issues to address and arguments to resolve in these motions, the court will continue the hearing and permit plaintiff to file a revised opposition brief that complies with the above rules of court. The court also notes that the oppositions are full of factual information not alleged in the Complaint. A demurrer can be used only to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are judicially noticeable. [Blank v. Kirwan (1985) 39 C3d 311, 318.) The court cannot consider facts or evidence asserted in the supporting or opposition memoranda. (*Ion Equip. Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.) In the revised opposition brief or briefs[1], the court requests that plaintiff restrict her arguments to the facts alleged in the Complaint, except where plaintiff is articulating how the Complaint could be amended to cure specific deficiencies.

The Viking defendants' demurrer, however, is based on a single issue that plaintiff did not directly address in her opposition. Because of the simplicity of the basis for the demurrer, the court will go ahead and rule on it now, instead of ordering further briefing.

The court intends to sustain the Viking defendants' demurrer because plaintiff may not include insurance coverage or bad faith claims against an insurer in the same action that plaintiff seeks recovery from the alleged tortfeasor insured (Chavez-Avina). And a plaintiff cannot sue the insurer's claim representatives, officials or employees in her action against the alleged tortfeasor.

> A practice guide explains why an insured and insurer usually may not be sued in the same action. "Generally, an insurer may not be joined as a party-defendant in the underlying action against the insured by the injured third party. The fact that an insurer has agreed to indemnify the insured for any judgment rendered in the action does not make the insurer a proper party. Liability insurance is not a contract for the benefit of the injured party so as to allow it to sue the insurer directly." (Croskey et al., *Cal. Practice Guide: Insurance Litigation* (The Rutter Group 2001) ¶ 15.44, italics omitted.

(*Royal Surplus Lines Ins. Co., Inc. v. Ranger Ins. Co.* (2002) 100 Cal.App.4th 193, 199.)

Plaintiff alleges that Viking and its representatives should have offered her more money for damage to her vehicle and for her emotional distress. These claims are not appropriately raised in this action against the insured, Chavez-Avina. (See *Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 576; *Cooper v. Equity General Ins. Co.* (1990) 219 Cal.App.3d 1252, 1258-1260.) Plaintiff does not respond to this authority in any of the five oppositions.

[1] Plaintiff may file separate oppositions to the demurrer and motion to strike.

For these reasons the court intends to sustain the demurrer as to the Viking defendants without leave to amend. "[A] a trial court does not abuse its discretion by sustaining a general demurrer without leave to amend if it appears from the complaint that under applicable substantive law there is no reasonable possibility that an amendment could cure the complaint's defect." (*Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481, 486.) The plaintiff has the burden to prove such "reasonable possibility." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) While plaintiff has filed overly-voluminous oppositions, she does not address this basic ground for the demurrer.

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: lmg on 8-19-25 .
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Antonio Cuevas v. Stairway Fabricators, Inc.***
Superior Court Case No. 24CECG02097

Hearing Date: August 20, 2025 (Dept. 403)

Motion: Defendant Stairway Fabricators, Inc. Demurrer and Motion to Strike as to Plaintiff's Second Amended Complaint

Tentative Ruling:

To continue these motions to Wednesday, October 1, 2025, at 3:30 p.m. in Department 403. The parties are ordered to conduct a meet and confer session in person, by video conference, or by telephone, at least 20 days prior to the hearing. If the meet and confer resolves the issues, defendant shall call the calendar clerk to take the motions off calendar. If it does not resolve the issues, defense counsel shall file a declaration, on or before Friday, September 12, 2025, stating the efforts made.

Explanation:

As set forth in Code of Civil Procedure sections 430.41 and 435.5, the parties must engage in good faith meet and confer prior to the filing of a demurrer and motion to strike. The meet and confer process must occur after any amended pleading that is subject to these motions is filed. The demurring or moving party **must meet and confer in person, by telephone, or by video conference** with the party who filed the pleading subject to demurrer or the motion to strike. While failing to meet and confer cannot be grounds to grant or deny the motion to strike (Code Civ. Proc., §§ 430.41 subd. (a)(4), 435.5 subd. (a)(4)), this does not prevent the court from taking steps to enforce the statute's requirements before ruling on the merits of the motion.

This meet and confer requirement has not been met by the moving and demurring party, defendant Stairway Fabricators, Inc. ("defendant"). Following the filing of the Second Amended Complaint ("SAC") by plaintiff Antonio Cuevas ("plaintiff"), defense counsel sent a meet and confer letter to plaintiff's counsel. (Bailey Decl., ¶ 21, Exh. K.) Plaintiff's counsel responded via letter. (*Id*., ¶ 22, Exh. L.) It is stated verbatim in Ms. Bailey's declaration that "[t]he parties engaged in continued meet and confer efforts **via email**." (*Id*., ¶ 23, emphasis added; see Exh. M.) This is insufficient to satisfy the requirement set forth in Code. An e-mail from plaintiff's counsel even concludes, "Please clarify whether you would like to actually meet and confer or if you will just proceed with filing your motions." (*Id*., Exh. M, PDF p. 136/140.) It is not a plaintiff's burden to meet and confer with a defendant prior to these motions, and the burden cannot be shifted to plaintiff if defendant's efforts are insufficient. Defense counsel again responded via e-mail, rather than by any of the means set forth in the statutes.

Defendant has not complied with the meet and confer requirements set out in Code of Civil Procedure sections 430.41 and 435.5. Although the parties engaged in some written correspondence, this is insufficient to satisfy the meet and confer

requirement. There do not appear to have been any attempts by defendant to call, video conference, meet in person with plaintiff, or otherwise meet and confer in good faith following the filing of the SAC.

The court's normal practice in such instances is to take the motion off calendar, subject to being re-calendared once the parties have met and conferred in compliance with the statutes. However, given the current congestion in the court's calendar, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are truly unsuccessful will it rule on the merits. After such good faith attempts, defendant shall file a declaration specifically detailing the efforts made.

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: lmg on 8-10-25.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Delafuente v. Osornio, et al.***
Superior Court Case No. 25CECG01341

Hearing Date: August 20, 2025 (Dept. 403)

Motions (x2): by Defendants' Demurring to the Complaint and to Strike Portions of the Complaint

Tentative Ruling:

To continue the matters to Thursday, September 18, 2025, at 3:30 p.m., in Department 403, in order to allow the parties to meet and confer *in person, by telephone, or by video conference* as required. If this resolves the issues, defendants shall call the court to take the motion off calendar. If it does not resolve the issues, defendants shall file a declaration, on or before Thursday, September 11, 2025, at 5:00 p.m., stating the efforts made.

Explanation:

Code of Civil Procedure, section 435.5 makes it very clear that meet and confer must be conducted "in person, by telephone, or by video conference." (*Id.*, subd. (a), see also Code Civ. Proc., § 435.5.) Sending a letter or an email to plaintiff's counsel requesting a meet and confer session does not shift the burden for meeting and conferring to the plaintiff. The moving party is not excused from this requirement unless they show that the plaintiff failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (*Id.*, subd. (a)(3)(B).) The evidence did not show a bad faith refusal to meet and confer on plaintiff's part that would excuse defendant from complying with the statute.

The parties must engage in good faith meet and confer, in person, by telephone, or by video conference as set forth in the statute. The court's normal practice in such instances is to take the motion off calendar, subject to being re-calendared once the parties have met and conferred. However, given the extreme congestion in the court's calendar currently, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits.

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: lmg on 8-19-25.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Diane Heskett v. Jaime Flores, JR***
Case No. 23CECG01771

Hearing Date: August 20, 2025 (Dept. 403)

Motions: (1) For Summary Judgment by Defendant Daniels Sharpsmart, Inc., dba Daniels Health (Doe 1); and

(2) For Summary Judgment, or in the Alternative, Summary Adjudication by Defendants Russell and Rosalinda Daniel

Tentative Ruling:

To grant both motions for summary judgment. The prevailing parties are directed to submit to this court, within five days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

Plaintiff Diane Antoinette Heskett (Plaintiff) filed a complaint against defendants Jaime Flores, Jr. (Flores), and Russell and Rosalinda Daniel (Mr. and Mrs. Daniel).[2] This action arises from a motor vehicle accident that occurred on March 22, 2022, involving a collision between vehicles driven by Flores and Plaintiff. On February 14, 2024, Plaintiff filed an amendment to the complaint substituting as a defendant Daniels Sharpsmart, Inc., dba Daniels Health (Sharpsmart) for the fictitiously-named Doe 1. Sharpsmart and Mr. and Mrs. Daniel now bring separate motions for summary judgment under Code of Civil Procedure section 437c against Plaintiff.

Code of Civil Procedure section 437c, subdivision (c) provides that summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 (*Aguilar*).) If the defendant satisfies this initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.)

In a motion for summary judgment, the pleadings delimit the scope of the issues and frame the outer measure of materiality. (*Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493.) A defendant moving for summary judgment must negate the plaintiff's "theories of liability *as alleged in the complaint;* that is, a moving party need not

[2] Plaintiff erroneously sued Rosalinda Daniel under two additional names, Linda Daniel and Daniel Linda.

refute liability on some theoretical possibility not included in the pleadings." (*Ibid*, italics original.)

Motion by Sharpsmart for Summary Judgment

Sharpsmart Satisfies Its Initial Burden

Sharpsmart supports its motion for summary judgment based on 12 undisputed facts, summarized as follows: On March 22, 2022, Flores was commuting to work from his home when he collided with a motorcycle driven by Plaintiff (the Accident). (Fact Nos. 1, 2.) Flores was not "on the clock" for his employer, Sharpsmart, nor was he performing a work-related errand when the Accident occurred. (Fact Nos. 3, 4, 5.) Sharpsmart did not own or lease the vehicle Flores was driving. (Fact No. 6, 7.) Flores was driving a personal vehicle owned by Mr. and Mrs. Daniel. (Fact No. 8.) Neither Flores, nor Mr. and Mrs. Daniel, have ever had an ownership interest in Sharpsmart. (Fact Nos. 9, 10, 11.) Flores paid for the fuel for the personal vehicle he was driving. (Fact No. 12.)

Plaintiff alleges Sharpsmart (Doe 1) is liable as the person who employed Flores when he operated a motor vehicle in the course of his employment. Based on the undisputed fact that Flores was operating a personal vehicle on his way to work, Sharpsmart contends it cannot be liable for Flores's alleged negligence under the "going and coming" rule as a matter of law.

The court explained the going and coming rule in *Moradi v. Marsh USA, Inc.* (2013) 219 Cal.App.4th 886 (*Moradi*):

> "Under the theory of respondeat superior, employers are vicariously liable for tortious acts committed by employees during the course and scope of their employment.... However, under the 'going and coming' rule, employers are generally exempt from liability for tortious acts committed by employees while on their way to and from work because employees are said to be outside of the course and scope of employment during their daily commute." (*Lobo v. Tamco* (2010) 182 Cal.App.4th 297, 301, citation omitted.)

(*Moradi, supra,* 219 Cal.App.4th at p. 894.)

The rule has several exceptions, including the "required-vehicle" exception, which the *Moradi* court explained as follows:

> " 'A well-known exception to the going-and-coming rule arises where the [employee's] use of [his or her own] car gives some *incidental benefit* to the employer. Thus, the *key inquiry* is whether there is an *incidental benefit* derived by the employer....' .... This exception to the going and coming rule ... has been referred to as the 'required-vehicle' exception.... The exception can apply if the use of a personally owned vehicle is either an express or implied condition of employment ..., or if the employee has agreed, expressly or implicitly, to make the vehicle available as an accommodation to the employer and the employer has 'reasonably come to rely upon its

> use and [to] expect the employee to make the vehicle available on a regular basis while still not requiring it as a condition of employment.' " (*Lobo v. Tamco, supra,* 182 Cal.App.4th at p. 301, citations omitted, italics omitted & added.)

(*Moradi, supra,* 219 Cal.App.4th at p. 895, original italics [reversing summary judgment under required-vehicle exception because employer required employee to use personal vehicle for work-related trips].)

In an appropriate case, the courts have applied the going and coming rule to grant summary judgment. (E.g., *Feltham v. Universal Protection Service, LP* (2022) 76 Cal.App.5th 1062, 1069 [affirming trial court's granting of employer's summary judgment motion based on going and coming rule where employee did not use car for work and was not acting within scope of employment when accident occurred on drive home from work]; *Bingener v. City of Los Angeles* (2019) 44 Cal.App.5th 134, 142 [affirming trial court's granting of city's summary judgment motion based on going and coming rule where accident occurred on employee's commute to work, city did not require personal use of vehicle, and employee was not performing special errand].)

Sharpsmart provides evidence to show Flores was on his way to work in a personal vehicle, not owned or leased by Sharpsmart, when the Accident occurred. (Fact Nos. 2, 6, 7.) Flores was not "on the clock" and he was not performing any work-related errand. (Fact Nos. 4, 5 [Flores depo., p. 171:2-5 (when Flores drove for employer he drove a "box truck")].) Sharpsmart's undisputed facts in this case support the application of the going and coming rule. Therefore, Sharpsmart has satisfied its initial burden to show it is exempt from vicarious liability for any tortious acts committed by Flores while on his way to work under the going and coming rule. The burden then shifts to Plaintiff to raise a triable issue of material fact.

Plaintiff Fails to Raise a Triable Issue of Material Fact

A party opposing summary judgment must present admissible evidence, including "declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice" must or may "be taken." (*Aguilar, supra,* 25 Cal.4th at p. 843, quoting Code Civ. Proc., § 437c, subd. (b).) Plaintiff asks the court to deny Sharpsmart's' motion because its separate statement is not "code-compliant." The summary judgment statute provides:

> The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denying the motion.

(Code Civ. Proc., § 437c, subd. (b)(1).) Under the statute the trial court may exercise its discretion to grant or deny a summary judgment motion based on a noncompliant separate statement:

> Trial courts [fn] should not hesitate to deny summary judgment motions when the moving party fails to draft a compliant separate statement – and an inappropriate separate statement includes an overly long document that includes multiple nonmaterial facts in violation of the Rules of Court. Courts should also not hesitate to disregard attempts to game the system by the opposing party claiming facts are "disputed" when the uncontroverted evidence clearly shows otherwise.

(*Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 876 [remarking in fn. 5 that in some cases an opportunity to correct separate statement's deficiencies may be appropriate; Code Civ. Proc., § 437c, subd. (b)(3) [opposing party's failure to comply with separate statement requirements may constitute ground for granting the motion].)

Here Sharpsmart's separate statement includes a reference to "Issue No. 1," which is required for a motion for summary adjudication but not summary judgment. The court finds the inclusion of Issue No. 1 on the separate statement causes no confusion and declines to deny the motion on this ground.

But it is Plaintiff, not Sharpsmart, who fails to follow the rules set forth in California Rules of Court, rule 3.1350 governing the format for a separate statement. Plaintiff claims Fact Nos. 2, 3, 4, 5, 6, 7, 8, 10, 11, and 12 are disputed, but Plaintiff fails to describe the evidence that supports her position that a fact is disputed and cite to the evidence in support of that position with a "reference to the exhibit, title, page, and line numbers." (Rule 3.1350(f)(2).)

Plaintiff's Compendium of Exhibits is 573 pages long. Plaintiff's separate statement fails to cite a single page number, much less a line number. For example, in an attempt to dispute Fact No. 2 (Flores was commuting to work from his home when the Accident occurred), Plaintiff cites her exhibit A, which is the entire Flores deposition transcript. She cites to no page or line to suggest Flores was working, rather than on his way to work, as Flores testified. Likewise, to dispute Fact No. 3 (Flores was not acting in the course and scope of his employment when the Accident occurred), she cites "Exhibit A: Logbook of Defendant." Although not required to do so, the court scanned through the Flores deposition and found no reference to a "logbook." The court finds Plaintiff fails to provide a scintilla of evidence to dispute that Flores was on his way to work when the Accident occurred.

Plaintiff provides no authority for her proposition that Sharpsmart must conclusively prove the vehicle driven by Flores was registered to another person in order to establish that Sharpsmart had no ownership interest in the vehicle. In any event, Plaintiff submits no evidence to dispute Sharpsmart's showing, based on its properly-cited evidence, that it did not own the vehicle Flores was driving. (See Fact Nos. 6-11 and supporting evid.)

Finally, Plaintiff attempts to distinguish Sharpsmart's cited cases by relying on *Lobo v. Tamco* (2010) 182 Cal.App.4th 297, where the court found the opposing party met its

burden to establish a triable issue of fact on whether the conditions of employment required the defendant driver to have his personal vehicle available for his employer's benefit. (*Id.* at pp. 300–301.) Here, Plaintiff has presented no facts to establish that Flores was required to use a personal vehicle for work. In fact, she presents evidence that Flores drove only a "box truck" when he drove for his employer. (Flores depo., pp. 22:24-23:1.) Therefore, the court finds Plaintiff fails to meet her burden to raise a triable issue of material fact.

Evidentiary Objections

The court declines to rule on Plaintiff's evidentiary objections because they are not material to the disposition of Sharpsmart's motion. (Code Civ. Proc., § 437c, subd. (q).) Furthermore, objections must be submitted in the proper format required by the California Rules of Court, rule 3.1354 (filed separately, quoting the objectionable material and clearly stating the grounds for objections). Objections must be made to the *evidence supporting the fact*, and not to the *facts* stated on the separate statement.

Conclusion—the Court Grants Sharpsmart's Motion

The court finds Sharpsmart meets its burden to show that under the going and coming rule, Plaintiff cannot establish the necessary element that Flores was operating a motor vehicle in the course of his employment with Sharpsmart when the Accident occurred. The burden then shifts to Plaintiff to raise a triable issue of material fact, which she fails to do. Therefore, the court grants Sharpsmart's motion for summary judgment.

Motion by Mr. and Mrs. Daniel for Summary Judgment, or in the Alternative, Summary Adjudication

Mr. and Mrs. Daniel Satisfy Their Initial Burden

Plaintiff sues Mr. and Mrs. Daniel under theories of negligent entrustment and negligent hiring or supervision. Under CACI No. 724, in order to prove a claim of negligent entrustment of a motor vehicle against Mr. and Mrs. Daniel, the elements Plaintiff must prove include: (1) Mr. and Mrs. Daniel knew, or should have known, that Flores was incompetent or unfit to drive the vehicle; and (2) Flores's incompetence or unfitness to drive was a substantial factor in causing harm to Plaintiff. For example, under case law, a defendant can be held liable for negligent entrustment if the owner knew, or based on the circumstances should have known, that the third party was intoxicated or unfit to drive, and if the third party's intoxication or unfitness resulted in injury to the plaintiff. (*Lindstrom v. Hertz Corp.* (2000) 81 Cal .App.4th 644, 648; *Hartford Accident & Indemnity Co. v. Abdullah* (1979) 94 Cal.App.3d 81, 91 ["in order to impose liability for negligent entrustment, the lending owner must know, or from facts known to him should know, that the entrusted driver was intoxicated"].)

In determining whether a defendant car owner has breached a duty of care, the defendant's conduct is measured against what an ordinarily prudent person would do. (*Osborn v. Hertz Corp.* (1988) 205 Cal.App.3d 703, 713 (*Osborn*) [holding on summary judgment rental car agency not negligent for entrusting car to person lawfully qualified

and apparently fit to drive it].) In *Osborn*, the appellate court affirmed the trial court's entry of summary judgment for the defendant, explaining:

> In general, the issue of a defendant's negligence presents a question of fact for the jury. A defendant's negligence may be determined as a matter of law only if reasonable jurors following the law could draw only one conclusion from the evidence presented. However, in an appropriate case, a defendant's lack of negligence may be determined as a matter of law. This is such a case. Defendant was not negligent for entrusting a car to a person lawfully qualified and apparently fit to rent and drive it. The trial court properly entered summary judgment for defendant.

(*Osborn, supra, 205* Cal.App.3d at pp. 712–713, citations and internal quotation marks omitted.)

Mr. and Mrs. Daniel contend Plaintiff cannot establish at least two necessary elements of negligent entrustment—(1) they knew, or should have known, that Flores was incompetent or unfit to drive the vehicle, and (2) Flores's incompetence or unfitness to drive was a substantial factor in causing harm to Plaintiff. To support their motion, Mr. and Mrs. Daniel present 32 undisputed facts, summarized as follows: After the collision (Accident) between Flores and Plaintiff, Flores was cited for failing to yield the right-of-way. (Fact Nos. 1-3.) The collision report stated Flores's "movement into the intersection, albeit slight, caused [Plaintiff] to take evasive action, subsequently resulting in the crash." (Not. of Lodgment, Traf. Col. Rpt., ex. D-005.) Apart from entrusting their 2002 Lincoln Navigator (Vehicle) to Plaintiff, Mr. and Mrs. Daniel were not involved in the Accident. (Fact Nos. 4, 5, 6, 7.) Before the Accident Mr. and Mrs. Daniel knew Flores had a valid and current California driver's license and he drove his own vehicle and other motor vehicles. (Fact Nos. 8, 9, 10.) Mr. and Mrs. Daniel "did not have the type of relationship with Mr. Flores—nor were they provided with any information from others—that would have put them on notice of any alleged inability or incapacity on his part to safely operate the [Vehicle]." (Fact No. 11.)

Flores and Mr. Daniel were both employed at Sharpsmart. Mr. and Mrs. Daniel "have never held any ownership interest in Sharpsmart. The similarity between Mr. Daniel's last name and the corporate name "Daniels Health" is purely coincidental[.]" (Fact No. 12.)

Flores was not under the influence of any drugs or alcohol at the time of the Accident. (Fact No. 13.) Mr. and Mrs. Daniel were not aware of Flores's 2000 citation for driving under the influence or the suspension of his license from 2000 to 2015, which resulted from his failure to complete community service in a timely manner. (Fact Nos. 14, 15.) After Flores's license was reinstated in 2015, no subsequent [DUI] violations were recorded before the Accident. (Fact No. 16.) Before the Accident, Mr. and Mrs. Daniel were not aware of Flores's prior DUI citation or any other citations, which included a speeding ticket and an auto accident in 2016. (Fact Nos. 17, 18, 19, 20, 21.) After Flores's vehicle was repossessed, Mr. Daniel allowed Flores to borrow the Vehicle, which was operational, in good condition, and had no known defects. (Fact No. 23.) Mr. and Mrs. Daniel had no actual or constructive knowledge of Flores's alleged unfitness or incompetence at the time of entrustment. (Fact Nos. 24, 25, 26, 27.)

Fact No. 31, which is supported by Plaintiff's own responses to requests for admission, provides:

> Plaintiff has admitted that they have no evidence to support [a] claim that [Mr. and Mrs.] Daniel observed behavior by . . . Flores that would indicate unfitness to drive prior to the [Accident]; that [Mr. and Mrs.] Daniel ever received prior notice that . . . Flores had previously been involved in any traffic violations prior to the [Accident]; that [Mr. and Mrs.] Daniel received any prior complaints regarding . . . Flores'[s] driving ability; or that . . . Flores was intoxicated at the time of the [Accident]. [¶] Further, Plaintiff has admitted they did not personally observe [Mr. and Mrs.] Daniel instruct or encourage . . . Flores to operate the [V]ehicle in an unsafe manner.

In her Response to Form Interrogatory No. 17.1, Plaintiff failed to include any facts to support her denial of Mr. and Mrs. Daniel's requests for admission numbers 12, 13, 15, 16, 17, 21, 25, and 26. (Fact No. 32.) (In fact, Plaintiff copied and pasted portions of *Sharpsmart's* response to Plaintiff's request for admissions, response to admission number 1, including an admission that Flores was not in the course and scope of his employment when the Accident occurred and neither Flores nor Mr. Daniel have (or ever had) any ownership interest in Sharpsmart. [Compare Mr. and Mrs. Daniel's ex. C-003 [p. 17] with Plaintiff's compendium of exs. to oppose Sharpsmart's mot. [filed 5/23/2025], at p. 556.])

As in *Osborn,* although negligence ordinarily is a question of fact, this is an appropriate case to determine Mr. and Mrs. Daniel are not negligent as a matter of law. (*Osborn, supra,* 205 Cal.App.3d at pp. 712–713.) They have presented facts to show Flores was lawfully qualified and apparently fit to drive the Vehicle. Mr. and Mrs. Daniel's facts establish that they did not know or have reason to know Flores might be intoxicated, he was not intoxicated, and he had a valid driver's license. In this situation, an ordinarily prudent person would have entrusted Flores with their vehicle. This is sufficient for Mr. and Mrs. Daniel to carry their burden of production. This causes a shift, and Plaintiff then must make her own prima facie showing of the existence of a triable issue of material fact on her negligent entrustment claim. (*Aguilar, supra,* 25 Cal.4th at p. 850.)

Likewise, Plaintiff's claim against Mr. and Mrs. Daniel for negligent hiring or negligent supervision requires Plaintiff to show Mr. and Mrs. Daniel hired Flores. Absent an employment relationship—and without evidence that Flores was acting in the scope of his employment at the time of the Accident, as Plaintiff herself has admitted, Mr. and Mrs. Daniel cannot be liable for negligent hiring or supervision. Based on Plaintiff's admissions that Mr. and Mrs. Daniel have no ownership in Sharpsmart, Mrs. Daniel owned the Vehicle, and Flores was not working at the time of the Accident, Mr. and Mrs. Daniel have met their burden to show Plaintiff cannot establish the necessary element of an employment relationship. Therefore, the burden shifts to Plaintiff to raise a triable issue of material fact on the negligent hiring and supervision claim as well.

Plaintiff Fails to Raise a Triable Issue of Material Fact

Using the same improper format that she used to oppose Sharpsmart's motion, Plaintiff again fails to follow the rules set forth in California Rules of Court, rule 3.1350

governing the format for a separate statement. Although Plaintiff purports to dispute certain facts, she fails to follow the format of rule 3.1350 by citing to the evidence to dispute a fact with a "reference to the exhibit, title, page, and line numbers." (Rule 3.1350(f).)

Plaintiff also fails to follow the format to provide evidence to support her additional facts. Furthermore, the additional facts are immaterial. Plaintiff contends Mr. and Mrs. Daniel have not "conclusively provided evidence" to establish ownership of the Vehicle. But Plaintiff has both alleged and admitted that Rosalina Daniel owned the Vehicle. Plaintiff fails to meet her burden to raise a triable issue of material fact on either of her causes of action against Mr. and Mrs. Daniel.

Conclusion—the Court Grants Mr. and Mrs. Daniel's Motion

In conclusion, the court finds Mr. and Mrs. Daniel meet their burden to show: (1) Plaintiff cannot establish the necessary elements of negligent entrustment because she cannot show that Mr. and Mrs. Daniel knew, or should have known, that Flores was incompetent or unfit to drive the Vehicle, or that Flores's incompetence or unfitness to drive was a substantial factor in causing harm to Plaintiff; and (2) Plaintiff cannot establish her negligent hiring and supervision claim because Mr. and Mrs. Daniel did not hire Flores and Flores was not acting in the scope of his employment when the Accident occurred. The burden then shifts to Plaintiff to raise a triable issue of material fact, which she fails to do. Therefore, the court grants Mr. and Mrs. Daniel's motion for summary judgment.

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: lmg on 8-10-25.
(Judge's initials) (Date)