

Tentative Rulings for December 5, 2022

Department PS1

To request oral argument you must notify Judicial Secretary Carol Delfosse-Kidd at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.

Public access is available through Zoom. For more information, please see: [Remote Appearances \(ca.gov\)](#)

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the Zoom meeting number:

- Call-in Numbers: 1 (669) 254-5252 or 1 (833) 568-8864
- Meeting Number: **160-520-9376**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call twenty (**20**) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

This court follows California Rules of Court, rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local rule 3316; and Department PS1 Law & Motion Rules: https://www.riverside.courts.ca.gov/Divisions/Civil/PS1_Law_and_Motion_Rules.pdf?rev=03-01-2022-02:06:07pm

Tentative Rulings for each law and motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at: <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department PS1 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

For additional information and instructions on telephonic appearances, visit the court's website at: [Remote Appearances \(ca.gov\)](#) Instructions at: https://www.riverside.courts.ca.gov/PublicNotices/Zoom%20Appearances%20Public%20Access_instructions_v2.pdf?rev=03-07-2022-01:16:09pm

Department PS1 Trial rules are available at: https://www.riverside.courts.ca.gov/Divisions/Civil/PS1_trialrules.pdf?rev=03-01-2022-02:06:07pm

Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1.)

1.

CVPS2103031	PITCHFORD vs WILLIAMS	Hearing re: Motion to Compel by KENNETH WILLIAMS, C.R. ENGLAND, INC.
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Tentative Ruling: Grant. No opposition was filed. Responding party is ordered to serve verified responses to the Demand for Production of Documents, Set Three, without objections within 60 days of service of notice (CCP § 2031.310). Responding party is further ordered to pay attorney's fees and costs to moving party in the amount of \$325.50 within 60 days of service of notice. (CCP 2023.010, 2030.290 (c), 2031.310, and 2033.280.) Prevailing party ordered to give notice pursuant to CCP §1019.5.

2.

CVPS2103031	PITCHFORD vs WILLIAMS	Hearing re: Motion to Compel by KENNETH WILLIAMS, C.R. ENGLAND, INC.
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Tentative Ruling: Grant. No opposition was filed. Responding party is ordered to serve verified answers without objections to Special Interrogatories, Set Two, within 60 days of service of notice (CCP § 2030.290). Responding party is further ordered to pay attorney's fees and costs to moving party in the amount of \$325.50 within 60 days of service of notice. (CCP 2023.010, 2030.290 (c), 2031.310, and 2033.280.) Prevailing party ordered to give notice pursuant to CCP §1019.5.

3.

PSC2004806	KATZLER vs TRT HOLDINGS A PRIVATE HOLDING COMPANY	Hearing on Motion for Summary Judgment on Complaint of TYLER KATZLER by JACOB AARON SCHWARTZ, OMNI HOTELS MANAGEMENT CORPORATION
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Tentative Ruling: Deny summary judgment; grant summary adjudication as to the third cause of action for negligent entrustment and fifth cause of action for negligent hiring etc., otherwise deny summary adjudication.

Defendants move for summary judgment or, alternatively adjudication of each cause of action in the Complaint. The general facts are undisputed. Plaintiff was 11 years old when he was staying with his family at the Omni resort. He was riding in a golf cart driven by Schwartz, who was a bellman at the resort. Schwartz's main duty as a bellman was transporting guests on golf carts. (Defendant's SUF, ¶ 45.) On the date of the incident, Schwartz was driving a golf cart, on which Plaintiff Tyler Katzler was a passenger. Schwartz was on his way from the lobby to drop off a family at the 1400 building, when Plaintiff also got on the golf cart. (Schwartz Depo., 50:3-6.) On the way back, after making a turn towards the lobby, Schwartz realized that Plaintiff was not in the golf cart. (Defendant's SUF, ¶ 17.) Schwartz saw Plaintiff laying on the ground approximately five to ten feet behind the golf cart and immediately went to help him. (Defendant's SUF, ¶ 18.) Schwartz then drove Plaintiff to his room in Building 28, where he was reunited with his mother. (Defendant's SUF, ¶ 20.) When Plaintiff arrived at his hotel room, he was not able to tell his mother what had happened, and to this day, Plaintiff does not have any memory of the incident. (Defendant's SUF, ¶ 21.) Schwartz did not see what happened to Plaintiff, and there is no surveillance videotape of the incident. (Defendant's SUF, ¶ 32.)

The Complaint that frames this motion alleges against remaining Defendants Omni and Schwartz the following causes of action: (1) motor vehicle, (2) negligence, (3) negligence entrustment, (4) vicarious liability, and (5) negligent hiring, training, supervision, or retention of employee.

Summary judgment is granted when a moving party establishes the right to entry of judgment as a matter of law. (Code Civ. Proc., § 437c(c).) A defendant moving for summary judgment bears the initial burden of proving that there is no merit to a cause of action by showing that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c; *Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037.) Once the defendant has made such a showing, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or as to a defense to the cause of action. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) If the plaintiff does not make such a showing, summary judgment in favor of the defendant is appropriate. “The purpose of the summary judgment procedure is not to try the issues but merely to discover ... whether the parties possess evidence which demands the analysis of trial.” (*Colvin v. City of Gardena* (1992) 11 Cal.App.4th 1270, 1275.) Summary judgment can be granted only where the essential facts are either conceded or beyond dispute. “A party may 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, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, [or] that there is no merit to a claim for damages. . . .” (Code Civ. Proc., § 437c(f)(1).) “A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.” (*Ibid.*) The above-described burden-shifting framework applies to a motion for summary adjudication just as it would to a summary judgment.

Defendants contend that the causes of action have no merit because Plaintiff cannot demonstrate that Defendants breached their duty and cannot demonstrate causation showing that Defendants’ alleged breach was the substantial factor in causing Plaintiff’s injuries. Defendants contend that Plaintiff has no evidence to demonstrate a breach or that any breach was the proximate cause of Plaintiff’s injuries because there were no witnesses to the incident, and Plaintiff has no recollection of the details of the incident. The Court disagrees. The circumstantial evidence that Plaintiff has put forward is sufficient to establish that causation is a triable issue. (See *Diamond v. Caterpillar Tractor* (1976) 65 Cal.App.3d 173, 183-185.) The summary judgment motion must be denied for that reason, along with the motion to summarily adjudicate the first and second causes of action.

Defendants also move to summarily adjudicate the third cause of action for negligent entrustment. They have put forth sufficient evidence to shift the burden to Plaintiff, who has not made any meaningful attempt to argue that there are triable issues to preclude summary judgment. This is particularly so because Plaintiff also argues in his fourth “cause of action” that Omni is vicariously liable for any negligence by Schwartz, obviating the need for the third cause of action. The Court denies the motion with respect to this fourth “cause of action” because it is not a cause of action but a theory of liability, and therefore outside the scope of Code of Civil Procedure section 437c(f)(1).

Defendants move to summarily adjudicate the fifth cause of action for negligent hiring, supervision, and training etc. Defendants have met their burden with respect to this issue, and Plaintiff has not meaningfully responded or demonstrated the existence of triable issues. It further appears that Plaintiff concedes that he is not longer pursuing this cause of action. (Oppo. p. 17:16-17.)