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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

ALEJANDRO LEYVA and MARINA MENDOZA,

Plaintiffs,

vs.

LANCE SANDMAN and DOES 1 through 50,
inclusive,

Defendants.

TOMISLAV GEORGE, an individual,

Plaintiff,

vs.

FIRSTSERVICE RESIDENTIAL CALIFORNIA, LLC, a limited liability corporation; LANCE SANDMAN, an individual; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: BC534796
(Consolidated w/Case No. BC548489)
[Re-Assigned for All Purposes to the Hon. Ralph Hofer, Dept. D, North Central District - Glendale)

**PLAINTIFF TOMISLAV GEORGE'S
OPPOSITION TO DEFENDANT
FIRSTSERVICE RESIDENTIAL'S
MOTION FOR SUMMARY
JUDGMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Filed Concurrently with the Declarations of Alan Van Gelder, Jean Seawright and attached exhibits, Plaintiffs' Separate Statement of Material Disputed Facts, Plaintiffs' Response to Separate Statement of Undisputed Facts and Objections to Defendant's Evidence Filed in Support]

Date : June 10, 2016
Time : 9:00 a.m.
Dept. : "D"

Leyva/Mendoza Complaint Filed: 1/30/14
George Complaint Filed: 6/13/14
FSC: June 23, 2016
Trial: July 5, 2016

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1 TO THE HONORABLE COURT AND TO ALL PARTIES OF RECORD HEREIN:

2 Plaintiff TOMISLAV GEORGE hereby submits the following Opposition to FirstService
3 Residential California, LLC's (hereinafter FSR) Motion for Summary Judgment on the following
4 grounds:

5 1. FSR has not met its burden of proof at summary judgment. FSR has omitted the sworn
6 testimony of Lance Sandman and Plaintiff from their motion. Lance Sandman has testified that at
7 all times that he was with Plaintiff on the night of the incident Sandman was acting within the
8 course and scope of his employment with FSR. Plaintiff also has testified that Sandman and
9 Plaintiff were together on the date of the incident in connection with Sandman's work for FSR.
10 The dispute between Sandman and FSR at a minimum dooms FSR's motion.

11 2. FSR employee Lance Sandman was in the course and scope of his employment at the
12 time he was involved in the automobile collision that injured Plaintiff. He was on a "special
13 errand" at the time of the collision, which means FSR is vicariously liable for his negligence.
14 *Jeewarat v. Warner Bros. Entertainment Inc.* (2009) 177 Cal.App.4th 427.

15 3. Lance Sandman's negligent driving and consumption of alcohol all occurred within the
16 course and scope of his employment of FSR. It does not matter if at some point Lance Sandman
17 began mixing business with pleasure. His actions occurred while he was acting for the benefit of
18 his employer and set the chain of events in motion that caused Plaintiff's injury. An employer is
19 liable for harm caused by an employee, "where an employee undertakes activities within his or her
20 scope of employment that cause the employee to become an instrumentality of danger to others
21 even where the danger may manifest itself at times and locations remote from the ordinary
22 workplace." *Purton v. Marriott Internat., Inc.* (2013) 218 Cal.App.4th 499, 504 (citing *Childers v.*
23 *Shasta Livestock Auction Yard, Inc.* (1987) 190 Cal.App.3d 792, 804-05.) In other words, "[s]o
24 long as the risk is created within the scope of the employee's employment, **the scope of**
25 **employment must follow the risk so long as it acts proximately to cause injury.**" *Id.* "Thus,
26 existing California case law clearly establishes that an employer may be found liable for its
27 employee's torts **as long as the proximate cause of the injury** occurred within the scope of
28 employment. It is **irrelevant that foreseeable effects of the employee's negligent conduct**

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1 occurred at a time the employee was no longer acting within the scope of his or her
2 employment.” *Id.* (Emphasis added.)

3 4. Defendant has utterly failed to address Plaintiff’s negligent hiring, supervision,
4 training, and retention claims. Defendant negligently hired, trained, supervised, and retained
5 Lance Sandman .

6 5. Triable issues of material disputed fact exist concerning whether Sandman was acting
7 within the course and scope of his employment at the time of the incident that prevent Defendant’s
8 motion from being granted.

9 Plaintiff’s Opposition is based on this notice, the attached memorandum of points and
10 authorities, the Declaration of Alan Van Gelder and attached Exhibits, the Declaration of Jean
11 Seawright, Plaintiff’s Separate Statement of Material Disputed Facts, (hereinafter referred to as
12 DF), Plaintiff’s response to FSR’s separate statement of undisputed facts, Plaintiff’s objections to
13 FSR’s evidence in support of summary judgment, all pleadings on file in this matter, and all
14 evidence and argument submitted at hearing on this matter.

15 DATED: May 27, 2016

GREENE BROILLET & WHEELER, LLP



18 Bruce A. Broillet, Esq.
19 Scott H. Carr, Esq.
20 Alan Van Gelder, Esq.
21 Attorneys for Plaintiff

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION.**

3 Plaintiff Tomislav George suffered severe injuries on March 17, 2013 in an automobile
4 crash caused by Defendant FSR's employee/general manager Lance Sandman. (DF 1) FSR's
5 motion is built on the false argument that Mr. Sandman was not in the course and scope of his
6 employment the time of the crash. FSR's motion mischaracterizes the law and the facts and also
7 omits key pieces of evidence. The most telling omission concerns Mr. Sandman's testimony.

8 Mr. Sandman has admitted that at the time of Plaintiff's injury, he was in the course and
9 scope of his employment with FSR. (DF 2) Mr. Sandman claims he suffered injuries in the March
10 17th crash. (DF 3) He submitted a worker's compensation claim for those injuries against FSR,
11 claiming that he was in the course and scope of his employment at the time of his injuries. (DF 4)
12 On May 22, 2014 FSR paid Mr. Sandman \$10,000 to settle his worker's compensation claim.
13 (FSR also agreed to help reduce and pay off liens from Sandman's medical providers.) (DF 5)

14 On November 26, 2014 Mr. Sandman signed a declaration admitting that he was in the
15 course and scope of his employment at the time of the crash. (DF 7) (Attached as Exhibit 22 to the
16 Declaration of Alan Van Gelder). On February 19, 2016 Mr. Sandman testified at his deposition
17 for nine and a half hours. He repeatedly admitted that he was in the course and scope. (DF 8)

18 Sandman's admissions doom FSR's motion. FSR has not attempted to address or refuted,
19 Mr. Sandman's admissions. As such, FSR has not even shifted the burden of proof at summary
20 judgment. In addition, Plaintiff has other evidence showing that Mr. Sandman was in course and
21 scope. (For example the testimony of Plaintiff Tomislav George on the subject also dooms FSR's
22 motion.) At a minimum, the dispute between FSR and Sandman cannot be resolved as a matter of
23 law. Only a jury can decide whether Sandman or FSR is to be believed on the issue.

24 **II. STANDARD OF LAW AT SUMMARY JUDGMENT.**

25 Summary judgment is drastic and should be used with caution. *Mann v. Cracchiolo* (1985)
26 38 Cal.3d 18, 35-36. The Court must consider all of the evidence and all inferences and view
27 them in the light most favorable to the plaintiff. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th
28 826, 843. The court's job is only to see if any triable issues of fact exist, not to decide the merits

1 of the case. *Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1107. Summary judgment is
2 improper when an inference reasonably deducible from the evidence contained in the opposing
3 papers raises a triable issue as to a material fact. *Aguilar* at 856-857. All doubts as to whether any
4 material, triable issues of fact exist are to be resolved in favor of the plaintiff. *Barber v. Marina*
5 *Sailing Charter Co.* (1995) 36 Cal.App.4th 558. Although plaintiff cannot rely on speculation,
6 evidence and all reasonable inferences arising therefrom must be viewed in the light most
7 favorable to plaintiffs. (*Aguilar* at 856-57.)

8 The moving party has the *initial* burden of production to make a prima facie showing of
9 the nonexistence of any triable issue of material fact. *Aguilar* at 850. Only if the defendant
10 submits sufficient evidence to shift the burden is the plaintiff required to respond. (*Id.*) If the
11 burden has not been shifted, plaintiff does not need to respond. *Hand v. Farmers Ins. Exchange*
12 (1994) 23 Cal.App.4th 1847, 1853-1854. Even if the defendant makes a sufficient showing to shift
13 this burden of production to the opposing party, this does not shift the burden of persuasion, which
14 remains upon the defendant as the moving party. The party moving for summary judgment carries
15 “*from commencement to conclusion...the burden of persuasion that there is no triable issue of*
16 *material fact and that he is entitled to judgment as a matter of law.*” (*Aguilar, supra*, at 850.)

17 If there is even a *single triable issue of material fact*, a motion for summary judgment must
18 be denied. (*Versa Technologies, Inc. v. Superior Court* (1978) 78 Cal.App.3d 237, 142.) The
19 opposition declarations are *liberally construed* while the moving party’s evidence is strictly
20 scrutinized. (*Saelzler v. Advanced Group* 400 (2001) 25 Cal.4th 763, 768.) “The presence of
21 inferences supporting a judgment in favor of plaintiff is sufficient to defeat a summary judgment
22 in favor of defendant.” (*Hulett v. Farmers Ins. Exchange* (1992) 10 Cal.App.4th 1051, 1059.)

23 **III. CALIFORNIA AUTHORITY SUPPORTS A FINDING THAT FSR CAN BE**
24 **VICARIOUSLY LIABLE FOR THE NEGLIGENCE OF LANCE SANDMAN.**

25 Under the doctrine of respondeat superior, an employer may be held vicariously liable for
26 torts committed by an employee within the scope of employment. *Purton v. Marriott Internat.,*
27 *Inc.* (2013) 218 Cal.App.4th 499, 504. Under the respondeat superior doctrine, the term “scope of
28 employment” has been interpreted broadly. *Id.* at 505. The employer's liability “extends beyond

1 his actual or possible control of the employee to include risks inherent in or created by the
2 enterprise.” *Id.* The fact that an employee “is not engaged in the ultimate object of his
3 employment at the time of his wrongful act does not preclude attribution of liability to an
4 employer. ... **Thus, an employer's vicarious liability may extend to the employee's negligence,**
5 **willful and malicious torts, or acts that contravene an express company rule and confer no**
6 **benefit to the employer.”** *Id.* (Emphasis added.)

7 “Ordinarily, the determination whether an employee has acted within the scope of
8 employment presents a question of fact; it becomes a question of law, however, when the facts are
9 undisputed and no conflicting inferences are possible.” *Purton, supra*, at 505.

10 Imposition of respondeat superior liability is not dependent on the employer's undertaking
11 any act or upon any fault by the employer. *Id.* Rather, an employer may be vicariously liable for
12 an employee's tort if the employee's act was an “outgrowth of his employment”, “inherent in the
13 working environment,” “typical of or broadly incidental to the employer's business, or, in a
14 general way, foreseeable from the employee's duties.” *Purton, supra*, at 505.

15 As the Court explained in *Jeewarat v. Warner Bros. Entertainment, Inc.* (2009) 177
16 Cal.App.4th 427, 434-435, “The respondeat superior doctrine is to be given a broad application.”
17 The fact that “an employee is not engaged in the ultimate object of his employment at the time of
18 his wrongful act does not preclude attribution of liability to an employer.” “Thus, acts necessary
19 to the comfort, convenience, health, and welfare of the employee while at work, though strictly
20 personal and not acts of service, do not take the employee outside the scope of employment.” *Id.*

21 As the *Jeewarat* Court further explained, “**where the employee is combining his own**
22 **business with that of his employer, or attending to both at substantially the same time, no**
23 **nice inquiry will be made as to which business he was actually engaged in at the time of**
24 **injury, unless it clearly appears that neither directly nor indirectly could he have been**
25 **serving his employer.”** *Id.* (Emphasis added.)

26 Foreseeability in the context of respondeat superior liability must be distinguished from
27 foreseeability as a test for negligence. *Purton, supra*, at 505 (citing *Farmers, supra*, at 1004.)
28 “Foreseeability” as a test for respondeat superior merely means that “in the context of the

1 particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair
2 to include the loss resulting from it among other costs of the employer's business." *Id.*

3 In *Jeewarat*, the employee had attended an out of town business conference. Upon
4 returning to Los Angeles he picked up his personal vehicle at the airport and started driving to his
5 personal residence. On the way home he was involved in an automobile accident. The plaintiff
6 claimed that the employer was vicariously liable for the injury despite the fact that the employee
7 was driving home from the airport. *Jeewarat, supra*, at 431-432.

8 The *Jeewarat* Court ruled that the employer could be held liable. The Court held that, an
9 employee, "coming from his home or returning to it on a special errand either as part of his regular
10 duties or at a specific order or request of his employer ... is considered to be in the scope of his
11 employment from the time that he starts on the errand until he has returned or until he deviates
12 therefrom for personal reasons." The Court went on to hold that a special errand the employee "is
13 in the course and scope of employment for the entire trip; it does not cease after the task has been
14 accomplished." The employer is "liable for torts committed by its employee while traveling to
15 accomplish a special errand because the errand benefits the employer." *Id.* at 436. The Court held
16 that the employee's business trip qualified as a special errand. As a result, the employer was liable
17 for the employee's actions until the employer made it back to his home. *Id.* at 436.

18 In *Purton v. Marriott Internat., Inc.* the defendant was vicariously liable for an automobile
19 collision caused by employee Michael Landri. At the time of the collision, Mr. Landri was
20 intoxicated. Mr. Landri was not working for his employer on the date of the collision. Mr. Landri
21 started his evening by consuming alcohol at his private residence. He was then picked up by a co-
22 worker to attend his employer's annual holiday party. At the holiday party Mr. Landri consumed
23 more alcohol. Eventually Mr. Landri and several co-workers drove back to Mr. Landri's home.
24 Twenty minutes after Landri arrived home he decided to drive an intoxicated co-worker back to
25 the co-worker's residence. While driving the co-worker home Landri crashed his vehicle. Landri
26 plead guilty to manslaughter while driving under the influence. *Purton, supra*, at 503.

27 The defendant in *Purton* moved for summary judgment claiming that once Landri arrived
28 home it could no longer be liable for Landri's conduct. The plaintiff argued that because Landri

1 became intoxicated during the course and scope of his employment, defendant was liable. In
2 rejecting the defendant's claims the *Purton* Court examined *McCarty v. Workmen's Comp.*
3 *Appeals Bd.* (1974) 12 Cal.3d 677, writing at 506-07:

4 {The California Supreme Court} concluded that "[e]mployee social and recreational
5 activity on the company premises, endorsed with the express or implied permission of the
6 employer, falls within the course of employment if the 'activity was conceivably of
7 some benefit to the employer' " or otherwise was a "customary incident of the
8 employment relationship." (*Ibid.*) (Emphasis added.)

9 Although *McCarty* is a workers' compensation case, our high court has considered
10 workers' compensation cases to be helpful in determining an employer's vicarious liability
11 for its employee's torts because both fields of law allow recovery for an injured party
12 irrespective of proof of the employer's fault. ... The *McCarty* court found that the
13 employer's purchase of intoxicants for recurrent gatherings on the premises **demonstrated**
14 **that it considered the gatherings to be company activities that benefited the company**
15 **by fostering company camaraderie and the discussion of company business.**
16 (*McCarty, supra*, 12 Cal.3d at p. 682.) (Emphasis added.)

17 It concluded that the employee's attendance at the party came within the scope of his
18 employment because it conceivably benefited the company (*ibid.*) and the record
19 demonstrated that these parties had become "a recognized, established, and encouraged
20 custom" (*id.* at p. 683). The *McCarty* court noted that the going and coming rule, which
21 generally exempts an employer from liability for tortious acts committed by employees
22 while going to or coming home from their workplace (*Hinman, supra*, 2 Cal.3d at p. 961),
23 did not protect the employer because the employee became intoxicated at his workplace
24 "and this intoxication proximately caused his death." (*McCarty, supra*, 12 Cal.3d at p.
25 681.) After examining other cases, the *McCarty* court stated that "if the proximate cause
26 is of industrial origin, the time and place of injury or death even if foreign to the
27 premises does not serve to nullify recovery." (*Id.* at p. 681.) (Emphasis added.)

28 *Purton* examined *Harris v. Trojan Fireworks Co.* (1981) 120 Cal.App.3d 157 to support
vicarious liability. *Harris* held there were sufficient facts that would support a determination that
an employee's intoxication occurred at a party, that the employee's attendance at the party and
intoxication occurred within the scope of his employment, and that it was foreseeable the
employee would attempt to drive home while still intoxicated and might have an accident. (*Id.* at
165.) The *Harris* court stated that "the pivotal consideration was ... whether there was a sufficient
business relationship between the employment and the banquet at which the defendant became
intoxicated to hold the employer liable for the employee's negligent driving." (*Id.*)

The *Purton* Court also examined *Childers v. Shasta Livestock Auction Yard, Inc.* (1987)
190 Cal.App.3d 792. In *Childers*, the court held that an employer was liable for the actions of its
off-duty employees when the employer provided alcohol and permitted the employees to drink at

1 the workplace after hours. (*Id.* at p. 806.) In doing so, the *Childers* court applied the test in
2 *McCarty*, noting that the test “is properly applied where an employee undertakes activities
3 within his or her scope of employment that cause the employee to become an instrumentality
4 of danger to others even where the danger may manifest itself at times and locations remote
5 from the ordinary workplace.” (*Id.* at 804–805). (Emphasis added.) In other words, “[s]o long
6 as the risk is created within the scope of the employee's employment, the scope of employment
7 must follow the risk so long as it acts proximately to cause injury.” (*Id.* at 805.) As an
8 example, the *Childers* court cited an employee manufacturing radioactive fuel that became
9 contaminated on the job and later contaminated nonemployees while playing basketball at a gym
10 far from the jobsite. (*Id.*) Because the employer created the risk of injury, the *Childers* court
11 concluded that it should bear the cost of the injury. (*Id.*)

12 In summing up the previous authorities the *Purton* Court concluded, “Thus, existing
13 California case law clearly establishes that an employer may be found liable for its employee's
14 torts as long as the proximate cause of the injury occurred within the scope of employment. It
15 is irrelevant that foreseeable effects of the employee's negligent conduct occurred at a time
16 the employee was no longer acting within the scope of his or her employment. Here, there is
17 sufficient evidence in the record to support a finding that Landri breached a duty of due care owed
18 to the public by becoming intoxicated at the party.” *Id.* at 508. (Emphasis added.)

19 *Purton* held that, “Assuming a trier of fact concludes that the proximate cause of the
20 accident occurred within the scope of employment, there is no reasonable justification for cutting
21 off an employer's potential liability as a matter of law simply because an employee reaches home.
22 As acknowledged by the *McCarty*, *Childers* and *Bussard* courts, the employer's potential
23 liability under these circumstances continues until the risk that was created within the scope
24 of the employee's employment dissipates.” *Id.* at 511. (Emphasis added.)

25 “We concur with the observations of the *Childers* court that alcohol abuse is foreseeable
26 and extremely dangerous, and innocent people are injured or killed as a consequence of the
27 negligence of those who have consumed alcohol at events that otherwise benefit a commercial
28 enterprise. ... We think that if a commercial enterprise chooses to allow its employees to
consume alcoholic beverages for the benefit of the enterprise, fairness requires that the

1 enterprise should bear the burden of injuries proximately caused by the employees'
2 consumption.” *Id.* at 511. (citing *Childers, supra*, at 810.)(Emphasis added.)

3 **IV. SANDMAN WAS IN THE COURSE AND SCOPE OF HIS EMPLOYMENT.**

4 Essentially, FSR claims that it is entitled to summary judgment because Sandman’s crash
5 1) occurred on a weekend; 2). Sandman did not need to drive for his job; 3) Sandman and George
6 were friends; 4). FSR did not or could possibly receive any potential benefit from Sandman and
7 George’s visit to Tam O’Shanters and the visit had no relation to FSR business; 5). There was no
8 possible way that FSR could foresee that Sandman might socialize with Board members or
9 consume alcohol while engaged in Prado/FSR related activities; and 6) Sandman was intoxicated.
10 As the authorities above indicate, the fact that Sandman was intoxicated does not, by itself, entitle
11 FSR to summary judgment. As for the other claims by FSR, they are not supported by the
12 evidence, wrong, and/or disputed.

13 **A. Sandman, FSR, The Prado, and The Prado Board.**

14 The Prado is an upscale condominium property/community located in Pasadena. (DF 10)
15 The Prado is controlled by the Prado Community Association. Decisions concerning operations,
16 hiring, and expenses at the Prado are made by the Prado’s Board of Directors. (DF 11) In 2013 the
17 Board consisted of Plaintiff, Regan Elliot, Chris Krzak, and Otto Peterson. (DF 12)

18 FSR was hired by the Board to serve as property manager for the Prado. The contract was
19 for a fixed term of one year but could be terminated by the Prado Board with 60 days notice. At
20 the end of each year, the Prado Board could elect to continue the relationship with FSR or end the
21 contract. FSR received a base fee for the property management for the term of the contract but
22 would receive additional compensation for additional services and expenses it incurred in
23 connection with the work it provided to the Prado. (DF 13-14)

24 Attached as Exhibit 23 is the contract for services between FSR and the Prado. Of
25 relevance to this motion is Section 2.5 under Scope of Work. FSR through Lance Sandman is the
26 Agent under the contract. A portion of Section 2.5 reads:

27 **Section 2.5. Bids and Quotations: Agent shall review and provide guidance and**
28 **assistance to the Board of Directors concerning the bidding process of engaging in**
contracts for goods, materials, and services that are expected to exceed \$1,000 as a
one-time cost or \$15,000 or more as an annual contract. The phrase "goods, materials and
services" shall be broadly construed to include every kind of goods, materials and
services including, but not limited to, those supplied by accountants, architects, attorneys,
banks, bookkeepers, governmental agencies, insurance agents and companies, landscapers,
maintenance workers, repair workers, and all other similarly situated. Agent shall assist

1 **the Association with third parties that provide such goods, materials and services to**
2 **the Association** by providing specifications if appropriate, checking references and
3 providing assistance regarding the engagement of third parties. (DF 15)¹

4 On the date of the incident Mr. Sandman was employed by FSR as a district manager for
5 the Los Angeles region and as the general manager at the Prado. (DF 16) He was responsible for
6 running the day to day operations at the Prado for FSR, including dealing with the Prado finances.
7 (DF 17) Mr. Sandman was also FSR's main point of contact with the members of the Prado Board.
8 (DF 18) He was also responsible for handling complaints from the Board. (DF 19). Mr. Sandman
9 explained that it was one of his job responsibilities to "keep the board members happy." (DF 20.)

10 Attached as Exhibit 24 is a job description that Defendant created for Mr. Sandman's
11 position prior to hiring him. In the description the Defendant writes that Mr. Sandman will
12 manage and supervise the "day to day activities" at the Prado and handle all property operations as
13 "required by schedule, Board of Directors, and homeowners." (DF 21) Under "Essential Duties
14 and Responsibilities", Mr. Sandman was required to "2. Manage Board of Directors, Homeowner,
15 and Community relations, attend all client meetings, including committee meetings as
16 appropriate." (DF 22) Under "Physical Demands" Mr. Sandman, "Must be able to drive to
17 different Company locations." Under "Hours" it was explained that Mr. Sandman was not an
18 hourly employee but rather a salaried employee. (DF 23) The description explained that
19 "Attendance at evening meetings and occasional weekend association events required." (DF 24)

20 FSR could foresee that Sandman, in connection with company business and for the benefit
21 of FSR, would be entertaining members of the Prado Board at events outside of the Prado,
22 including events at restaurants and bars. (DF 25) FSR had a policy that permitted Sandman to
23 obtain reimbursement from FSR for certain travel and entertainment expenses. (DF 26) The policy
24 is attached as Exhibit 25. Included in the policy are the following relevant sections:

25 "Employees are often required to expend funds on behalf of the Company during the
26 normal course of business." Paragraph 1 under Purpose and Enforcement.

27 "Entertainment expenses are reimbursable only when directly related to company business
28 and must be properly documented." Bullet Point #1 - Section 1.10 Entertaining.

¹ Prior to being FSR, the company was known as Merit Property Management. (DF 9)

1 “In all cases of entertainment, great care and judgment must be exercised to ensure that the
2 costs of meals, sports events, or other recreational activities incurred on behalf of the
3 Company are appropriate to the nature and extent of the business (both current and that
4 likely to be obtained) with the party being entertained.” Bullet Point #2 – Section 1.10
5 Entertaining. (DF 27-29)

6 Another document that highlights that it was foreseeable that Mr. Sandman would be
7 consuming alcohol in connection with his employment with FSR is FSR’s substance abuse policy.
8 Portions are attached as Exhibit 26. A specific exemption to the policy states, “The Company,
9 client or vendor-sponsored activities, which may include the service of alcoholic beverages, are
10 not included in [the substance abuse] policy. **However, all Employees are viewed as**
11 **representatives of the Company, whether at work or participating in these events.** The
12 Company expects that such consumption will be in moderation so as not reflective negatively on
13 the Company’s Professional reputation.” (DF 30) The section even goes on to envision and
14 describe a foreseeable situation where an FSR employee might be at a Company or Client activity,
15 consume alcohol, and potentially drive while intoxicated. (DF 31)

16 **B. Required to Drive In Connection with Your Job Duties and Work Closely with**
17 **the Board at The Prado.**

18 FSR attempts to argue that Sandman’s job responsibilities did not require him to use an
19 automobile. The contention is disputed by Sandman and also be FSR’s own words and actions.

20 Although Sandman was injured in the collision in March of 2013, by May of 2013 Mr.
21 Sandman was making inquiries about when he could return to work. On May 9, 2013, FSR’s
22 Senior Vice President of Human Resources Lupe Mujica sent a letter to Sandman in response to
23 his inquiries. The letter is attached as Exhibit 19. In the letter, Ms. Mujica writes to Sandman
24 stating, “As you know, your current position **requires that you drive in connection with your**
25 **job duties, and work closely with the Board at the Prado. We need to be assured that you can**
26 do both safely and effectively before you return to full duties.” Mr. Sandman was shown the May
27 9th letter. Mr. Sandman agreed that as of 2013 his job duties at FSR required him to be able to
28 drive and work closely with the Board. (DF 33-34)

1 **C. Your Out of the Box Purveyor of Fine Events Has Made It So Wonderful to**
2 **Work With You.**

3 Mr. Sandman testified that he understood that one of FSR's selling points for the services
4 it could provide the Prado was FSR's ability to help foster the sense of community among the
5 Prado residents. (DF 35) FSR had promised the Prado Board that it would help foster a sense of
6 community among the Prado residents. (DF 36) Mr. Sandman understood that one of the best
7 ways that FSR could help foster the Prado community was through the organizing of community
8 events for Prado residents. In fact his superiors at FSR told him to throw community events "to
9 help foster community among the Prado residents, and keep the homeowners satisfied." (DF 37)

11 FSR's motion attempts to imply that Sandman's job responsibilities did not include
12 socializing with the Board and organizing social events. That is simply not accurate. Attached as
13 Exhibit 33 is an excerpt from the FSR website. The website in describing the services shows how
14 FSR, as part of its business model, intentionally seeks to blur the line between personal and
15 business and client and friend. As explained by FSR:

16 FirstService Residential California has long been recognized as the residential property
17 management company of choice for communities and homeowner associations throughout
18 the state. Why? ... [W]e put the right teams in place to provide outstanding service **and**
19 **build strong relationships with every homeowner and Board member. We care for**
20 **the people and communities we serve as if they were family – because to us, that's**
21 **exactly what they are.** (Emphasis added). (DF 38)

22 Mr. Sandman was read the above FSR excerpt and testified in response:

23 Q: ... is that your understanding, sort of, in terms of what part of your responsibilities
24 were as the manager for FirstService to treat the directors and the residents like family?

25 A Yes.

26 Q And while you were friendly with all of the board members, **it was also part of your**
27 **job responsibility to be friendly with them; correct?**

28 A Yes.

 Q And, in fact, as part of your Performance Reviews for FirstService, **your supervisors**
 encouraged you to be friendly with all the directors; correct?

 A Yes. (160:4-16) ²

26 ² Blurring the line between friend and client for a business benefit was a common feature of
27 services being provided at the Prado. For example emails from the concierge service operating at
28 the Prado to Prado members usually ended with the phrase, "Your New Best Friend." (DF 40).

1 Sandman repeatedly received praise from his supervisors at FSR for forming a close bond
2 with the Prado Board and for organizing Prado Community events. FSR continually encouraged
3 him to engage in such activities. For example in Mr. Sandman's 2008-2009 performance review
4 his supervisor at FSR wrote in a section called, "Areas of Strength/Highlights" that one of
5 Sandman's strengths was his, "Excellent customer service skills. Often get glowing remarks or e-
6 mails from board members and residents alike. **They really love you. This includes service**
7 **above and beyond by way of excellent social community building events you create and**
8 **produce. Just remarkable efforts here."** (Emphasis added). (DF 42)

9 The FSR review stated in the Established Goals for 2009 Forward section, "**Encourage**
10 **more social events for residents. Completed pizza and beer event, St. Patrick's Day get**
11 **together, second yuletide party, second annual Cinco de Mayo party, and a movie night. GL, just**
12 **an excellent job with all of this. I think this is a large part of why you're getting so many rave**
13 **reviews lately, and the residents and board feel so well taken care of."** (DF 43)

14 In a performance review FSR provided to Mr. Sandman in 2011, FSR continued to praise
15 Sandman for his relationship with the Board and his involvement in social events for the Prado
16 Community. In the Manager Comments section FSR called Sandman a continued "bright spot"
17 for FSR. (DF 44) The review went on to read, "Your excellent management skills and the year to
18 year happiness and **satisfaction of the board** and the client in general has been awesome. Your
19 humor, your can do attitude, solution oriented, **out of the box purveyor of fine events has made**
20 **it so wonderful to work with you.** I consider it an honor to have worked beside you and I thank
21 you for the years of excellent work you have accomplished. I look forward to you continuing to
22 do great things in the future." (Emphasis added.) (DF 45) The FSR review went on to state,
23 "**Because of your good work we were able to take an increase in management fees in 2012."**
24 (Emphasis added.) (DF 46.) In connection with the review Sandman testified:

25 Q: And do you recall being given credit by your supervisor for the increase in the
26 management fee?

26 A: Yes.

27 Q: In order to get an increase in the management fee, is that something that the Prado
28 Board of Directors would have to approve?

28 A: Yes.

1 Q Do you feel your strong relationships with all of the board members was a factor in
2 helping get that increase in the management fee? ...

A: Yes. I felt that my job or goal was to make it so that the board would never consider
3 putting the management contract out to bid.

Q And you felt that the social events you took the board members and the residents out
4 were part of that process of making sure they were quite happy with FirstService as the
property management company; correct? ...

A: Yes.

5 In 2013 Andrew Schlegel was Lance Sandman's supervisor. (DF 48) According to Mr.
6 Schlegel FSR did not prohibit general managers such as Mr. Sandman from becoming friends or
7 being friendly with Board members. (DF 49) He also admitted that such friendships benefit FSR.
8 A friendship between Sandman and the Board increases the chance that FSR remains as property
9 manager and increases the chances that the Board will hire FSR affiliated and approved vendors
10 for work at the Prado. (DF 50). Schlegel admitted that he would encourage FSR employees to
11 form great relationships with Board members and that it was a principal of FSR. (DF 51).

12 **D. Blending Business With Social for the Benefit of FSR.**

13 Mr. Sandman testified that he told the Prado Board members he was available to them on a
14 **24 hour/7 Day a week basis**. All the Prado Board members had Mr. Sandman's cell phone
15 number. Mr. Sandman had an FSR provided cell phone. Tending to the Board, keeping the Board
16 happy, and throwing various social and community events for the Prado was such a time
17 consuming job that Sandman felt it actually interfered with his personal life. (DF 52-54.)

18 Mr. Sandman's organization of events for the Prado included events that took place outside
19 of the Prado building. For example, Sandman organized a trip for Prado residents to the Getty
20 Museum. The trip began with breakfast for the residents, then the tour of the Getty, and ended
21 with a stop at **an Irish themed tavern** in Santa Monica. Alcohol was consumed at the tavern and
22 each resident was given one free beer as part of the fee charged for the event. (DF 55).

23 Alcohol was a common occurrence at many events Sandman helped organize for Prado
24 residents. Alcohol was served and consumed at Prado wine and cheese parties, the yearly Prado
25 Cinco De Mayo party, the yearly Christmas Party, and the yearly St. Patrick's Day party. (DF 56)
26 Mr. Sandman would also visit restaurants outside of the Prado to strike up relationships with the
27 restaurants to provide services at the Prado or provide discounts to residents of the Prado who
28

1 visited the restaurants. (DF 57) In November 2012, Mr. Sandman was instrumental in securing a
2 discount on alcoholic cocktails for Prado residents at a restaurant called Neapolis. (DF 58).

3 Mr. Sandman, as part of his job for FSR, would repeatedly engage in activities that would
4 take him and various Prado Board members to events away from the Prado. Mr. Sandman, acting
5 for the benefit of his employer FSR, engaged in these outside Prado trips with Board members to
6 discuss Prado business, curry favor with the Prado Board members, and propose ideas and
7 locations that might ultimately lead to events for Prado residents. (DF 60)

8 In his deposition Mr. Sandman indicated that sometimes the Prado Board meetings would
9 be organized at restaurants off the Prado grounds. (DF 61) Mr. Sandman also indicated that he
10 would often discuss Prado business with individual Board members at restaurants off the Prado
11 grounds. (DF 62) Mr. Sandman had individual dinners with Board Members Elliot, Krzak, and
12 George to discuss Prado business. Sometimes Sandman paid for those dinners. (DF 63)

13 According to Sandman, on multiple occasions he sought reimbursement for dinners he
14 purchased for Prado Board members. FSR permitted Sandman to obtain reimbursement for
15 entertainment expenses, which included entertaining clients for business purposes. The policy did
16 not preclude Sandman from obtaining reimbursement for dinners with Board members or the
17 purchasing of alcoholic beverages. (DF 64-66)³

18 According to Sandman, many of his offsite contacts with the Prado Board blended
19 business with socializing. Socializing with the Board was good business for FSR. According to
20 Sandman - the stronger the relationship was between the Board and Sandman, the stronger the
21 relationship was between FSR and the Prado. Typically during offsite events with Board
22 Members, Sandman would discuss with Board members the aesthetics of the building, the
23 concierges, the running of the front desk, Prado staff, and Prado events. Sandman could not
24

25 ³ Lisa Sutton claims that Sandman had never sought reimbursement for entertainment
26 expenses. Her declaration is irrelevant because Sandman claims he was planning to obtain
27 reimbursement for his expenses on the 17th. (DF 67) Sandman disputes Ms. Sutton's claims. Also,
28 as set out in Plaintiff's Objections, Ms. Sutton's declaration is totally devoid of foundation.

1 remember a single instance where he wasn't discussing Prado business while socializing and
2 entertaining Board members off site. (DF 69-71)

3 Sandman's efforts to curry favor with the Board and socialize with the Board for the
4 benefit of FSR often involved driving and events that took place outside of the Prado. (DF 72) For
5 example, Mr. Sandman took Board member Regan Elliot and her husband on a tour of famous
6 Hollywood cemeteries with the idea that such a tour might eventually be put together for the
7 Prado. Mr. Sandman separately took Board Member Krzak on the same cemetery tour. (DF 73-
8 74) He also separately took Plaintiff on the same tour. (DF 73) Mr. Sandman took Board Mr.
9 Krzak and his significant other out to eat on a weekend and then took them on a tour of Los
10 Angeles landmarks. Krzak and Sandman discussed potentially doing a similar tour for Prado
11 residents. Sandman used his personal vehicle to drive Krzak and his significant other on the tour.
12 (DF 75) Mr. Sandman would drive Board members to the airport. (DF 76) Mr. Sandman went on
13 trips to restaurants individually with Board members Elliot, Krzak, and Plaintiff. (DF 77)

14 In early 2013 Mr. Sandman was invited by Prado resident and future Board Member Gary
15 Wong to a racetrack in Willow Springs. Mr. Sandman raced his personal vehicle (a 2010 Dodge
16 Challenger) and Mr. Wong raced his personal vehicle. (DF 78) Board member Otto Peterson also
17 went with Mr. Sandman and Mr. Wong to the racetrack. (DF 79) Mr. Sandman stated that
18 although he had a personal interest in the visit to the racetrack, he viewed the visit as also having a
19 business component. He called the visit a blended visit. (DF 80)

20 Plaintiff was not the first Board Member that Mr. Sandman took to Tam O'Shanters.
21 Sandman had previously taken Board Member Elliot to Tam O'Shanters. (DF 81)

22 **E. The Visit to Tam O'Shanters on March 17, 2013.**

23 For several years prior to the date of the incident, Sandman had been helping the Prado
24 Board organize a St. Patrick's Day event at the Prado for the Prado residents. (DF 82) The 2013
25 event was going to be held a few days before St. Patrick's Day, on March 15, 2013. (DF 84) In the
26 run up to the event, Mr. Sandman took responsibility for helping put together the bidding for the
27 event. After costing out the bids for the event, he sent an email on March 5th to all members of the
28

1 Prado Board. (DF 85)The email is attached as Exhibit 27. In the email he seeks approval from the
2 Board for the ultimate cost of the St. Patrick’s Day event. (DF 86)

3 The first thing to note in the email is that the budget for the 2013 St. Patrick’s Day event
4 from third party vendors was \$1,600 plus tax and gratuity. (DF 87) Pursuant to Section 2.5 of the
5 contract between the Prado and FSR, Sandman on behalf of FSR “shall review and provide
6 guidance and assistance to the Board of Directors concerning the bidding process of engaging in
7 contracts for goods, materials, and services that are expected to exceed \$1,000.” (DF 88)
8 According to Board Member Krzak, it was one of Sandman’s job responsibilities to provide the
9 Board with ideas, input, and suggestions regarding what would go into the social events and the
10 budgeting for social events. (DF 83)

11 The email also describes the Prado St. Patrick’s Day celebration as one of the three major
12 events that are put on at the Prado each year. He also explained that in 2013 he was trying to
13 provide a “higher caliber” of food selection for the event. As stated in the email, the St. Patrick’s
14 Day event in 2013 was also to feature alcohol on an “all you can drink” basis. (DF 89)

15 In his deposition Mr. Sandman indicated that he always had a concern that Prado events he
16 helped organize at the Prado had to have a certain “wow factor.” (DF 90) He knew the Board was
17 spending money on the events and his name was behind the events. He also knew that if the
18 Board did not like the events or the event did not live up to expectations it would reflect poorly on
19 Mr. Sandman and FSR. (DF 91) Board Members had complained to him about certain events
20 lacking a certain excitement or not “punching up to” Prado standards. (DF 92)

21 After the St. Patrick’s Day event on March 15th at the Prado, Mr. Sandman began thinking
22 about improvements that could be made for the event that would take place in 2014.(DF 93) Mr.
23 Sandman thought that the way Tam O’Shanters celebrated St. Patrick’s Day might provide at a
24 minimum inspiration for improvements that could be made to the Prado St. Patrick’s Day
25 celebration. Mr. Sandman also thought that perhaps they could get catering or live music from
26 Tam O’Shanters for the next Prado event. Essentially, Mr. Sandman was thinking that Tam
27 O’Shanters might be able to provide more upscale alternative ideas or options over the previous
28 St. Patrick’s Day events at the Prado. (DF 94)

1 Given that Mr. Sandman was looking to improve upon the 2013 St. Patrick' Day event,
2 which was already budgeted over \$1,000, advice he would be providing members of the Board
3 would clearly fall under his responsibilities in Section 2.5 of the Prado/FSR contract. (DF 95)
4 Sandman's supervisor in 2013, Andrew Schlegel admitted that if the budget of the St. Patrick
5 Party exceeded \$1,000, Sandman's advice and consultation with Board members regarding the
6 selection of vendors, food, entertainment, and caterers would fall under Section 2.5 of the
7 Prado/FSR contract. (DF 96)

8 On the date of the incident Sandman called George. Sandman stated that he wanted to
9 show George an event that was taking place at Tam O'Shanter. (DF 97) According to George,
10 Sandman had described the event as a really "big wow" and something that they might want to do
11 at the Prado for future St. Patrick's Day celebrations. (DF 98) Sandman believes it was George
12 who first reached out to Sandman to summon him to the Prado. (DF 99) However, Sandman
13 agrees with George that it was Sandman's idea to go to Tam O'Shanter. Sandman also testified he
14 wanted to take George to the Tam O'Shanter to help get ideas and potential catering and
15 entertainment options for future St. Patrick's Day events. (DF 100)

16 Sandman picked George up at the Prado in his vehicle and the two drove to Tam
17 O'Shanter's. (DF 101) According to both George and Sandman the two went looking around the
18 Tam O'Shanter's hoping to find entertainment and/or catering options or ideas that could be
19 incorporated into future Prado St. Patrick's Day celebrations. (DF 102)

20 Sandman testified that he purchased alcohol for himself and Mr. George. (DF 103) He
21 also testified that because he and George were at Tam O'Shanter's to look for ideas and options for
22 a Prado event that he planned to seek reimbursement from FSR for the alcohol he had purchased
23 George under FSR's entertainment expense policy. (DF 104)

24 Mr. Sandman stated that while he and Mr. George consumed some alcohol while at Tam
25 O'Shanter's, he does not believe that he consumed an excessive amount of alcohol. (DF 105) Mr.
26 Sandman testified that he felt he was safe to drive after he left Tam O'Shanter's with Mr. George.
27 (DF 106) Mr. George does not recall Mr. Sandman acting in a manner that caused him to believe it
28 was unsafe to drive with Mr. Sandman. (DF 107) After spending a few hours at Tam O'Shanter's,

1 Mr. Sandman took Mr. George back to the Prado. Mr. Sandman crashed his vehicle on the way
2 back to the Prado. (DF 108)

3 **F. Sandman Disputes FSR's Version of the Collision.**

4 Although Mr. Sandman does acknowledge that he is responsible for causing the collision
5 that injured Plaintiff, he disputes FSR's version of how the collision occurred. FSR's motion
6 claims that Sandman was racing and going over 100 per hours at the time of the collision. In his
7 deposition Sandman denied racing and stated that he was only driving between 70 to 80 miles at
8 the time of the collision. (DF 109) FSR's motion claims that Mr. Sandman was heavily intoxicated
9 at the time of the incident. While Sandman admits he consumed alcohol prior to the incident, he
10 disputes that he was intoxicated at the levels claimed by FSR's motion. (DF 105)

11 **V. FSR IS VICARIOUSLY LIABLE FOR THE NEGLIGENCE OF SANDMAN.**

12 As explained above, it was a normal and foreseeable part of Lance Sandman's job to
13 socialize with and entertain Prado Board members at locations away from the Prado.(DF 39-51;
14 68-69.) Prado events and interactions with Prado Board members frequently and foreseeably
15 involved alcohol. (DF 55-56; 89) Tom George was not the first Board member Sandman had
16 brought to Tam O'Shanters and at least one Prado event had taken place at an Irish Tavern in
17 Santa Monica. (DF 55;81) Planning events at the Prado and advising the Board on such events
18 was a part of Sandman's job responsibilities. (DF 20-24; 36-37; 39) He was praised by his
19 supervisors for such social interactions and event planning. (DF 41-46)

20 Sandman was fulfilling the promise FSR had made to the Prado Board to help foster a
21 sense of community. FSR benefited from Sandman's socializing and event planning in the form
22 of repeated renewal of the FSR contract and an increase in management fees. (DF 36-37,46, 50)

23 The Prado had an annual St. Patrick's Day event that Mr. Sandman helped plan. FSR
24 praised him for his St. Patrick's Day planning. Mr. Sandman was looking to improve upon
25 previous events to keep the Prado Board happy and therefore continue the solid relationship with
26 FSR. (DF 20; 56; 41-46) It is not surprising that on St. Patrick's Day Mr. Sandman would take a
27 Prado Board member to a place that had a more upscale St. Patrick's Day celebration to show that
28 Board member potential catering, live entertainment, and other ideas that might improve the

1 Prado's St. Patrick Day celebration. Given that the Prado St. Patrick Day event and other Prado
2 events featured alcohol, it is not surprising that Sandman and George would consume alcohol.
3 Given that FSR had a policy that envisioned situations where FSR employees would purchase
4 alcohol in connection with client development, the fact that Sandman and George consumed
5 alcohol is not surprising or unusual.

6 The moment Sandman arrives at the Prado to pick up George to drive him to Tam
7 O'Shanters he is officially driving for the benefit of his employer. (This is especially true, if as
8 Sandman testified, George, an FSR client, was the person who summoned Sandman to the Prado.)
9 At that moment, the trip becomes a business trip and Sandman is on a special errand for his
10 employer similar to the situation in *Jeewarat v. Warner Bros. Entertainment Inc.* (2009) 177
11 Cal.App.4th 427. Until Sandman safely delivers George back to the Prado, Sandman is driving for
12 the benefit of his company. Because this collision occurred before Sandman had completed his
13 business trip, FSR is vicariously liable.

14 Sandman's mission, trip, and responsibilities to FSR and the Prado were not over until he
15 safely delivered George back to the Prado. While Sandman is driving George back to the Prado,
16 he is on a special errand for FSR. It doesn't matter if Sandman was intoxicated at the time.
17 "[W]here the employee is combining his own business with that of his employer, or attending to
18 both at substantially the same time, **no nice inquiry will be made as to which business he was**
19 **actually engaged in,**" at the time of injury. *Jeewarat.* at 434-35.

20 Part of Sandman's job responsibilities were to socialize with members of the Board and
21 mix business with pleasure. (DF 41-51) Within those job responsibilities Sandman was authorized
22 to entertain if he felt it would further FSR relationship with his client. (DF 47, 69, 89, 111-113)
23 Entertainment could also foreseeably include alcohol purchases. (31; 55-56; 66) FSR even had a
24 policy envisioning situations where Sandman might need to consume alcohol while interacting
25 and socializing with clients. (DF 30-31)

26 Sandman's supervisor in 2013, Andrew Schlegel, has been reimbursed by FSR for
27 entertainment expenses in connection with dinners with FSR clients. Mr. Schlegel has been
28 reimbursed for taking board members of various properties out to dinner at restaurants. (DF 112)

1 Mr. Schlegel even admitted that FSR has reimbursed him for purchasing alcohol at restaurants for
2 Board members. (DF 113) In fact, sometime after the incident, Mr. Schlegel took Prado Board
3 members Elliot and Krzak out to a restaurant called Smitty's and was reimbursed by FSR for the
4 meals he purchased. According to Schlegel, his dinner with Elliot and Krzak was not strictly
5 limited to a discussion of Prado business. Even though the entire dinner was not spent talking
6 Prado business, Schlegel felt comfortable being reimbursed for by FSR for the dinner. (DF 114)

7 Mr. Schlegel was asked if FSR would reimburse a general manager who purchased alcohol
8 for a Board member if the purpose of the purchase was business related. Although Mr. Schlegel
9 was (due to this lawsuit) uncomfortable with the concept, he indicated that such a reimbursement
10 would not violate FSR policy and would not necessarily be denied. (DF 115)

11 The St. Patrick's Day celebration at the Prado helped foster a sense of community and
12 earned FSR/Sandman rave reviews from the Prado Board and an increase in fees. Sandman's job
13 responsibilities included advising the Board on events costing more than \$1000. Sandman had
14 organized events involving alcohol and trips to bars in the past for the Prado. (DF 34, 37, 41-46,
15 55-56, 96) He had taken George to Tam O'Shanter's to show him potential ideas for the next Prado
16 St. Patrick's Day party. The two are at a restaurant on St. Patrick's Day that serves alcohol trying
17 to get inspiration for and planning an event that is commonly associated with alcohol. (DF 93-95;
18 100; 102) It is not hard to foresee that Mr. Sandman might consume alcohol during the visit.

19 *Purton* supra 218 Cal.App.4th 499 is instructive. The employee got intoxicated at a
20 company holiday party and while driving another intoxicated employee home crashed his car.
21 *Purton* explained that because the employee got intoxicated during an event that benefited the
22 employer, the employer was liable for the intoxicated employee no matter how far he strayed from
23 the event. The employer remains liable until the risk of intoxication dissipates. "We concur with
24 the observations of the *Childers* court that alcohol abuse is foreseeable and extremely dangerous,
25 and innocent people are injured or killed as a consequence of the negligence of those who have
26 consumed alcohol at events that otherwise benefit a commercial enterprise. ... We think that if a
27 commercial enterprise chooses to allow its employees to consume alcoholic beverages for the
28

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1 benefit of the enterprise, fairness requires that the enterprise should bear the burden of injuries
2 proximately caused by the employees' consumption." *Id.* at 511.

3 The fact that Sandman became intoxicated while planning a Prado event instead of getting
4 intoxicated at a Prado event does not separate this case from *Purton*. He was entertaining a client
5 of his employer, planning on getting reimbursed for that entertainment from his employer, and
6 planning an event that was going to benefit both his client and his employer. He was driving one
7 of his employer's clients home. The event that was being planned concerned a holiday commonly
8 associated with alcohol, and an event that frequently had "all you can drink" alcohol. Sandman's
9 supervisor Mr. Schlegel admitted that the risk of an FSR employee such as Sandman getting
10 intoxicated while entertaining a client or on FSR business was a foreseeable event. (DF 116).

11 **VI. NEGLIGENCE TRAINING, SUPERVISION, AND HIRING OF LANCE SANDMAN.**

12 Plaintiff also has a claim against FSR for negligent hiring, supervision, and training.
13 FSR's motion is silent on this issue, which means that FSR has not shifted its burden or entitled to
14 summary judgment. Attached to Opposition is the Declaration of nationally recognized hiring and
15 supervision expert Jean Seawright. Ms. Seawright lays out in her declaration a number of defects
16 in FSR's training, hiring, supervision, policies, and procedures that helped cause Plaintiff's injury.
17 Her charges go unanswered by FSR. (DF 117-151)

18 **VII. CONCLUSION.**

19 For the above reasons FSR's motion must be denied.

20 DATED: May 27, 2016

GREENE BROILLET & WHEELER, LLP

21 
22 _____
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24 Scott H. Carr, Esq.
25 Alan Van Gelder, Esq.
26 Attorneys for Plaintiff
27
28

SERVICE LIST

Leyva/Mendoza v. Lance Sandman

Lead Case No. BC534796 (Los Angeles Superior Court – Glendale)

George v. FirstService Residential California, LLC, et al.

Case No. BC548489 (Los Angeles Superior Court – Glendale)

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RELATED MATTER:
Alejandro Leyva, et al. v. Lance Sandman
Lead Case No. BC534796 (LASC-Central)

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RELATED MATTER:
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