

**PROPOSED TENTATIVE**

On July 16, 2024, Morgan M. Bouslaugh (plaintiff) filed a first amended complaint (FAC) against Lafond Vineyard, Inc. (LaFond) and Julian Mathieu (Mr. Mathieu) (collectively, defendants), raising a single cause of action for negligence. Mr. Mathieu, based on information and belief, “is employed either directly, indirectly or constructively by” LaFond. On October 22, 2023, Mr. Mathieu and one Cassidy Falk (Ms. Falk) were on the vineyard property of LaFond, consuming alcohol and cocaine, while “trap shooting. . . .” According to the FAC, this was all done with knowledge of Mr. Mathieu. Plaintiff alleges that defendants were negligent “in allowing Ms. Falk to leave LaFond’s premises by motor vehicle while intoxicated with an illegal substance,” for Ms. Falk “exposed the public and specifically plaintiff to the peril of an intoxicated driver[,] creating a known foreseeability of harm.” While driving, Ms. Falk lost control of her motor vehicle; she traversed the center line of the road, colliding with plaintiff’s vehicle, travelling in the opposite direction. Ms. Falk died, while plaintiff was injured. In paragraph 10, plaintiff alleges that the “The Coroner’s Report of Ms. Falk (attached hereto as Exhibit C and incorporated herein by reference) is believed to show the presence of cocaine levels which would suggest it was consumed in the immediate time frame prior to the accident and while Ms. Falk” was on LaFond’s premises. In paragraph 14, plaintiff alleges that Ms. Falk and Mr. Mathieu “were boyfriend and girlfriend,” thus creating a “special relationship.” In paragraph 19, plaintiff alleges that Ms. Falk was invited onto the Premises where Mr. Mathieu resides and was intoxicated with alcohol and an illegal substance while on the Premises. Mr. Mathieu and Lafond [] allowed this illegal activity to occur on the Premises. Further, an established special relationship existed as Mr. Mathieu stated in the CHP report Ms. Falk was his girlfriend and Ms. Mathieu and Lafond [] allowed an intoxicated and vulnerable person to leave the Premises by motor vehicle under the control on a public road creating a duty owed to the general public, and specifically Plaintiff to not allow a foreseeable harm to occur.” In a signed order by the court on August 26, 2024, the parties stipulated that Item 4, which asks for punitive damages, would be stricken from the FAC.

Defendant Lafond has filed a demurrer to the only cause of action for negligence. At its core, defendant Lafond contends that this cause of action is barred by Civil Code section 1714, subdivision (b) and (c),<sup>1</sup> which codifies the rules for social host immunity. (See also Bus & Prof.

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<sup>1</sup> This provision reads in relevant part as follows: “(b) It is the intent of the Legislature to abrogate the holdings in cases such as *Vesely v. Sager* (1971) 5 Cal.3d 153, *Bernhard v. Harrah's Club* (1976) 16 Cal.3d 313, and *Coulter v. Superior Court* (1978) 21 Cal.3d 144 and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an

Code, § 25602, subd. (b) [same].) According to defendant, the scope of this immunity provision includes not only those who furnish the alcohol, but those to those who “did not directly furnish the alcohol . . . , but simply failed to prevent [a person] from drinking the alcohol available” on their premises. (See, e.g., *Allen v. Liberman* (2014) 227 Cal.App.4th 46, 56.) Plaintiff filed an untimely opposition on November 4, 2024; pursuant to Code of Civil Procedure section 1005, the opposition had to be filed 9 courts days before the hearing, which would have been October 31, 2024. The court nevertheless exercises its discretion to consider it. A reply was filed on November 6, 2024. All briefing has been reviewed.

The elements of a negligence cause of action are well settled. (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158 [elements of negligence claim are legal duty of care, breach of that duty, and proximate cause resulting in harm].) To establish Lafond’s direct liability for negligence, plaintiff’s allegations would have to show that Lafond placed plaintiff in direct peril by its own actions and failed to protect plaintiff from that very same peril; or defendant had a special relationship with either plaintiff directly (establishing a duty to protect the plaintiff) or with Ms. Falk, who would be considered a dangerous third party tortfeasor (giving rise to a duty to control her conduct). (*Musgrove v. Silver* (2022) 82 Cal.App.5th 694, 711-712.) To establish Lafond’s liability vicariously, plaintiff’s allegations would have to show that Mr. Mathieu, as an employee (there are no allegations that Ms. Falk was an employee), engaged in conduct that caused harm to plaintiff, and that Mr. Mathieu was acting within the scope of his employment at the time of the negligent conduct. (*Id.* at p. 712.)

The relevant allegations in the operative pleading seem predicated on establishing Lafond’s *direct, not vicarious*, liability. While plaintiff alleges that Mr. Mathieu was an employee of Lafond, and actually lived on Lafond’s premises, there are no allegations that Mr. Mathieu was acting within the scope of his employment at any time when he was interacting with Ms. Falk, who was Mr. Mathieu’s girlfriend.<sup>2</sup> Plaintiff underscores this point in

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intoxicated person. [¶] (c) Except as provided in subdivision (d), no social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages. [¶] (d)(1) Nothing in subdivision (c) shall preclude a claim against a parent, guardian, or another adult who knowingly furnishes alcoholic beverages at his or her residence to a person whom he or she knows, or should have known, to be under 21 years of age, in which case, notwithstanding subdivision (b), the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death. [¶] (2) A claim under this subdivision may be brought by, or on behalf of, the person under 21 years of age or by a person who was harmed by the person under 21 years of age.”

<sup>2</sup> A case example of vicarious liability can be seen in *Childers v. Shasta Livestock Auction Yard Inc.* (1987) 190 Cal.App.3d 792. *Childers* concluded that an employee could sue an employer in tort on a theory of respondeat superior (a form of vicarious liability) for injuries caused by another employee’s consumption of alcohol in the scope of her employment. The *Childers*’ court observed “that where an employee consumes alcohol in the scope of his or her employment, the employer is liable for injuries proximately caused to members of the public by the consumption of alcohol. Neither Civil Code section 1714 nor Business and Professions Code section 25602 immunizes the employer from respondeat superior liability.” (*Id.* at p. 798.) That is, the doctrine of respondeat superior attaches if the activities that caused the employee, which become an instrumentality of danger to others, were undertaken with the employer’s permission and were of some benefit to the employment, or constituted a customary incident of employment. (*Purton v. Marriott Internat. Inc.* (2013) 218 Cal.App.4th 499, 509.) Liability,

opposition, by arguing that Lafond had a special relationship with either plaintiff or with Ms. Falk, a relevant argument for purposes of direct liability. As a result, the court examines the party's claims through a direct liability prism only.

With this in mind, plaintiff in opposition seems to acknowledge the import of the social host immunity statutes as detailed by defendant, but claims they are inapplicable because the allegations indicate that Ms. Falk consumed not only alcohol but also cocaine. Specifically, plaintiff contends in opposition that the social host immunity statutes do not apply because they do not protect “the illegal act of possessing or providing cocaine,” or the consumption “of illegal drugs in the presence of an employee who witnesses her actions and allowed them to occur on Lafond . . . property.”

It seems true that “there is no social host immunity for aiding and abetting a person's” illegal drug use, which includes cocaine. (*Allen v. Liberman*, *supra*, 227 Cal.App.4th at p. 59.) But the fact illegal drugs are involved by itself<sup>3</sup> does not blunt the import of the social immunity statutes when alcohol is involved, as is the case here. Of particular relevance is *Musgrove v. Silver* (2022) 82 Cal.App.5th 694, in which plaintiffs alleged that defendant employer was responsible for an employee's wrongful death, after the employee consumed an excessive amount of alcohol and drugs (cocaine) and then drowned during a trip paid for by the employer. As relevant for our purposes, the appellate court affirmed the trial court's grant of summary judgment in favor of the employer. “The evidence before the court at the time of summary judgment refuted the allegations that [defendant employer] ‘furnished’ decedent with drugs; to the contrary, the undisputed facts showed that [the employer] did not supply anyone with cocaine, or have any knowledge that anyone was ingesting it. At most, the undisputed evidence showed that [employer] furnished [decedent] with alcohol in two ways – by allowing her to drink wine served with the meals prepared by [another employee] and by covering the cost of any alcohol she purchased . . . . This is insufficient, as matter of law, to establish liability. That is our Legislature has explicitly established that a private person cannot be held liable for furnishing alcohol to another adult. (Civ. Code, § 1714, subd. (c) [“[N]o social host who furnishes alcoholic beverages to any person may be held legally accountable for ... injury to [that] person ... resulting from the consumption of those beverages.”]; Bus. & Prof. Code, § 25602, subd. (b) [same]; *Allen*, *supra*, 227 Cal.App.4th at p. 56 [social host immunity also reaches hosts who do

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however, does not attach “where the misconduct does not arise from the conduct of the employer's enterprise but instead out of a personal dispute . . . or is the result of a personal compulsion. In such cases, the risks are engendered by events unrelated to the employment, so the mere fact that an employee has an opportunity to abuse facilities or authority necessary to the performance of his or her duties does not render the employer vicariously liable.” (*Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1006.) The allegations in the operative pleading rest on Lafond's own acts of liability, under a direct liability theory, not on any vicarious liability theory as articulated under the auspices of *Childers* and progeny.

<sup>3</sup> Based on the autopsy report attached to the operative pleading, Ms. Falk was driving under the influence of alcohol and drugs at the time of the accident; it was concluded that the motor vehicle accident was the result of “acute alcohol and cocaine intoxication.”

not directly furnish but do not stop others from drinking alcohol they make available].)” (*Musgrove*, *supra*, 82 Cal.App.5th at pp. 710-711.)

Here, as was true in *Musgrove*, there is no allegation that Lafond “furnished” cocaine to anyone.<sup>4</sup> The allegations thus suggest one of two possible scenarios – that Ms. Falk brought the cocaine with her, or that it was supplied by Mr. Mathieu, Ms. Falk’s boyfriend. Nor is there any allegation Lafond knew cocaine was being ingested on its property, as was true in *Musgrove*. Accordingly, as was true in *Musgrove*, the ingestion of cocaine does not alone blunt the impact of the social host immunity statutes in the current context (or otherwise obviate the need to discuss them).

In this regard, it is settled that failure to supervise people who drink alcohol at a social event falls within the scope of social host immunity. (*Allen*, *supra*, at p. 54.) Courts have held that “to the extent plaintiff’s theory of liability rests on defendants’ failure to supervise their guests to whom they had furnished alcohol, defendants are shielded by immunity. [Citation.]” (*Biles v. Richter* (1988) 206 Cal.App.3d 325, 331.) Courts have also pointed out that if the “failure to supervise” theory of liability was enough to circumvent the social host immunity statutes, the immunity would be “seriously eroded” because “the duty of supervision is premised upon the need to look after those whose coordination and judgment have been adversely affected by the consumption of alcohol. If allowed, the duty would appear to exist in many if not most cases where alcohol is furnished by social hosts.” (*Ibid.*; *DeBolt v. Kragen Auto Supply, Inc.* (1986) 182 Cal.App.3d 269, 274–275.) Simply put, social host immunity applies to owners of premises where alcohol is consumed. (*Leong v. San Francisco Parking, Inc.* (1991) 235 Cal.App.3d 827, 832–834 [plaintiff “cannot hold any of the respondents liable for simply permitting [a person] to consume alcoholic beverages on respondent’s premises”].)<sup>5</sup> These principles apply here.

Plaintiff attempts to sidestep these rules by arguing in opposition that Lafond had a “special relationship” either with plaintiff directly, establishing a duty to protect plaintiff, or otherwise had a special relationship with Ms. Falk as a dangerous third party tortfeasor, meaning defendant had a duty to control Ms. Falk’s behavior, which was breached when it let her drive intoxicated on the road. (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 215 [a special relationship, creating a duty of care, exists when there is a special relationship with the victim or the person who created the harm]; p. 216 [a special relationship between the defendant and

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<sup>4</sup> A close review of the operative pleading indicates the following allegations: 1) Mr. Mathieu resides at the Lafond vineyard property; 2) he was employed by Lafond “either directly, indirectly, or constructively”; 3) Ms. Falk was on the property with Mr. Mathieu “trap shooting” and “drinking Coors light”; 4) Ms. Falk was on the property drinking and ingesting cocaine, with Mr. Mathieu’s “knowledge”; and 5) Mr. Mathieu and Lafond “allowed this illegal activity to occur on the Premises.”

<sup>5</sup> There is an exception to the social host immunity. A “parent, guardian, or another adult” who “knowingly furnishes alcoholic beverages at his or her residence to a person whom he or she knows, or should have known, to be under 21 years of age,” may be held legally accountable to a person suffering from those consuming beverages. (Civ. Code, § 1714, subd. (d)(1).) There are no allegations this provision applies here.

victim is one that gives the victim the right to expect protection from the defendant, while a special relationship between the defendant and the dangerous third party is one that entails an ability to control the third party's conduct]; see *Safechuck v. MJJ Productions, Inc.* (2023) 94 Cal.App.5th 675, 692.) Examples of relationships that give the victim a right to expect protection from defendant involve parents and children, colleges and students, employers and employees, common carriers and passengers, and innkeepers and guests. (*Brown, supra*, 11 Cal.5th at p. 216.) A typical setting for the recognition of a special relationship of the first type is where “the plaintiff is particularly vulnerable and dependent upon the defendant, who, correspondingly, has some control over the plaintiff's welfare.” (*Id.* at p. 220; *Safechuck, supra*, 94 Cal.App.5th at p. 692.) The earmarks of a special relationship with a foreseeably dangerous person (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 619) are similar, based on concepts of control and dependence. (*Ibid*; see *Barenborg v. Sigma Alpha Epsilon Fraternity* (2019) 33 Cal.App.5th 70, 77-78 [examples of special relationships when the persons posing risks include a parent with dependent children, a custodian with those in custody, and an employer with employees when the employment facilitates an employee's harm to third parties].)

In paragraph 15 of the operative pleading, plaintiff contends that Lafond's negligence “in allowing Ms. Falk to leave the Premises by motor vehicle while intoxicated with an illegal substance exposed the public and specifically plaintiff to the peril of an intoxicated driver creating a known foreseeability of harm.” *If* plaintiff is alleging that Lafond had a “special relationship” with the plaintiff directly, and thus had a duty to protect plaintiff, there is nothing offered in the operative pleading to suggest a parent-child, employer-employee, common carrier and passenger, innkeeper, and guests, or even a proprietor and patron/invitee kind of relationship. Plaintiff was not on the grounds of Lafond, and was not a customer.

Perhaps more telling, even if a special relationship could be established between defendant and plaintiff, tort liability is foreclosed by the social host immunity statutes under the authority of *Andre v. Ingram* (1985)164 Cal.App.3d 206 and progeny. *Andre* was quite clear: social host immunity statutes “cannot be avoided by alleging the wrong, not as the furnishing of the alcohol, but as failing to warn the passenger or stop the driver.” (*Id.* at p. 208.) Of particular relevance on this point is *Musgrove v. Silver, supra*, 82 Cal.App.5th 4th 694. The *Musgrove* court observed that even if it assumed there was a special relationship between defendant and plaintiff (based on an employer-employee relationship, meaning the former had a duty to protect the later), “plaintiffs are seeking liability to hold [defendant] liable for [defendant's] own conduct in failing to protect [employee] from the alcohol he furnished or subsidized. This is not a viable theory because . . . California statutory law provides that a person cannot be liable in tort for furnishing alcohol to another adult (Civ. Code, § 1714, subd. (c); Bus. & Profs. Code, § 26502, subd. (b)). This statutory prohibition trumps any potential tort liability that might otherwise come into being by virtue of any special relationship obligating [defendant] to protect [plaintiff].” (*Id.* at p. 711; see also *Allen, supra*, 227 Cal.App.4th at p. 50 [“special relationship,

by itself, does not negate the specific statutory social host immunity applicable to these facts” (that is, when the special relationship obligates the defendant to protect the injured party)].

Nor is the court convinced that plaintiff has alleged a “special relationship” based on defendant’s ability to control Ms. Falk’s conduct.<sup>6</sup> Again, defendant may owe an affirmative duty to protect another from the conduct of third parties if the defendant has a “special relationship” with the third person who creates the danger. (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 235[.]) The common characteristic of such a special relationship, however, is control and dependence, meaning defendant must have had control over the third party’s welfare. (*Colonial Van & Storage, Inc. v. Superior Court* (2022) 76 Cal.App.4th 487, 500[.]) The allegations in the pleading do not have the earmarks of control. Ms. Falk was not Lafond’s employee, but Mr. Mathieu’s girlfriend, and there are no allegations that defendant had any control over Ms. Falk’s actions in any way. Indeed, plaintiff fails to explain how Lafond could have prevented Ms. Falk from consuming alcohol and fails to show how defendant could have prevented her from driving away.

More importantly, the court in *Andre v. Ingram*, *supra*, 164 Cal.App.3d 20, concluded that a similar special relationship, even if it could be adequately alleged/proven, would not be able to circumvent the import and scope of the social immunity statutes, as detailed above. In *Andre*,<sup>7</sup> the plaintiff/appellant contended “that the special relationship” of a host-guest between [defendant/] respondent and the [plaintiff] imposed a legal duty on respondent to control the conduct of her adult son [i.e., the third party tortfeasor who drove while intoxicated, similar to Ms. Falk] for the protection of [plaintiff]. Appellant does not suggest how respondent reasonably could have prevented [her adult son] from consuming the alcohol purchased and furnished by appellant, or how she could have prevented him from driving appellant’s car. The contention [in any event] is untenable. The Legislature established that consumption, not furnishing, alcohol beverages is the proximate cause of resulting injuries. It would be unreasonable to conclude that a person, who did not prevent another person from driving while intoxicated, would not be liable

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<sup>6</sup> Plaintiff appears at times to confuse or at least conflate the two types of special relationships. Plaintiff alleges on one hand that Ms. Falk was a dangerous third party and that defendant had a duty to control her behavior after consumption of intoxicants; at the same time, plaintiff claims that Ms. Falk “was particularly vulnerable and dependent on [Lafond] . . .,” relying on *Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879. (Opp. at p. 6.) *Koivumaki* involved a situation in which defendant transported a visibly intoxicated person to a hillside cliff and then failed to protect the victim from falling. (*Id.* at p. 894-895[.]) *Koivumaki* did not involve and thus did not discuss the standards for a “special relationship” involving control over a third party tortfeasor, but only the standard associated with a vulnerable *plaintiff*. Ms. Falk may well have been vulnerable; her vulnerability, however, is not the essential inquiry when attempting to establish a “special relationship” between her and defendant, as the inquiry focuses on her dangerous propensity and, notably, defendant’s ability to control the third person. This confusion/conflation simply reinforces the court’s decision to sustain the demurrer.

<sup>7</sup> In *Andre*, defendant owned the house where defendant’s adult son lived. Plaintiff and the adult son consumed alcohol that plaintiff bought, and they consumed a bottle of alcohol from defendant’s home, all of which was consumed in defendant’s home. Defendant’s adult son, with plaintiff as a passenger, drove while intoxicated, injuring plaintiff. (*Andre*, *supra*, at p. 208[.]

if he furnished the alcohol which caused the intoxication, but would be liable if he did not furnish it.” (*Andre, supra*, at pp. 210-211, emphasis added.) *Andre*’s observations appear dispositive here. (*Id.* at p. 211; see also *Leong, supra*, 235 Cal.App.3d 827, 834 [same].)<sup>8</sup>

In summary, the court sustains the demurrer, although with leave to amend.<sup>9</sup> Plaintiff makes much of the fact that the social immunity statutes do not apply because Ms. Falk was found to have ingested cocaine, and in so doing, seems to concede (at least impliedly) that the social immunity statutes would bar this lawsuit but for Ms. Falk’s consumption of cocaine. While the court agrees that the social host immunity statutes do not apply when illegal drugs are involved, the fact cocaine was consumed *alone* is not enough to blunt the impact of the social host immunity statutes when, as here, alcohol was also consumed. *Musgrove, supra*, makes this clear at a minimum. Plaintiff will have to allege that cocaine was a substantial factor in causing the traffic accident involving plaintiff. Further, plaintiff will have to articulate a cognizable basis for Lafond’s direct liability based on Ms. Falk’s cocaine use, for there is no indication in any way that it aided and abetted or conspired in Ms. Falk’s consumption of the illegal drug use (for there is no indication that Lafond actually furnished cocaine, nor any indication that it had knowledge that it was being used). Further, vicarious liability is not at issue in the current operative pleading, for there is no allegation that Mr. Mathieu at any time was acting within the scope of his employment. Additionally, the court has identified problems with plaintiff’s direct liability theory predicated on a “special relationship” Lafond allegedly had with either plaintiff or with Ms. Falk, both factually and legally. If plaintiff can adequately allege Lafond’s involvement/participation in Ms. Falk’s cocaine consumption, and thereafter correct the problems associated with the “special relationship” theories of direct liability, plaintiff *may* be able to state a cause of action that will overcome a demurrer, although the court is not making that determination at this time; those issues will have to be determined in the future. What seems clear, however, is that the social host immunity statutes preclude defendant’s direct liability if Ms. Falk’s alcohol consumption remains the touchstone or primary focus of this lawsuit.

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<sup>8</sup> Again, the story might be different if plaintiff relied on a vicarious liability theory more akin to that advanced in *Childers* (as discussed in footnote 2, *ante*), which held that social host immunity statutes do not apply when an employer serves alcohol to an employee who then injures a member of the public while intoxicated (i.e., meaning the employer has a special relationship and thus a duty to control the employee tortfeasor). The allegations in the operative pleading fall within the ambit of *Musgrove* and *Andre*, not *Childers*.

<sup>9</sup> Contrary to defendant’s argument in reply, a reasonable possibility exists that plaintiff can establish a basis of liability, assuming there are facts to support the claims and with a new focus, although the court admittedly remains a skeptical. (See, e.g., *Blank v. Kirwan* (1985) 39 Cal.3d 311, 319.) The court, out of an abundance of caution, will afford plaintiff one opportunity to amend.

In allowing leave to amend, the court reminds plaintiff's counsel of its obligation under Code of Civil Procedure section 128.7, subdivision (a)(3), to the effect that any new allegations or other new factual contentions *must have evidentiary support, or, if so specially identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.*

Plaintiff has 30 days to file an amended pleading.

The parties are directed to appear at the hearing either in person or by Zoom.