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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JOSE A. HERRERA, Plaintiff and Appellant, v. SECURITAS SECURITY SERVICES USA, INC., Defendant and Respondent.	D075295 (Super. Ct. No. 37-2017-00007771-CU-PO-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Ronald L. Styn, Judge. Reversed and remanded.

Law Offices of Salim Khawaja and Salim Khawaja; Law Office of Holly L. Hostrop and Holly L. Hostrop for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Douglas W. Lewis, Jeffry A. Miller, and Mason T. Smith for Defendant and Respondent.

Jose A. Herrera appeals from a summary judgment entered against him in his lawsuit against Securitas Security Services USA, Inc. (Securitas), which alleges

negligence and negligent infliction of emotional distress arising from an assault committed by a security guard, Alfonso Preciado, who was employed by Securitas.

Herrera contends that the trial court erred in granting Securitas's motion for summary judgment because Securitas did not establish it was entitled to judgment as a matter of law on (1) Herrera's allegation that Securitas was liable under a theory of respondeat superior because Preciado was acting within the scope of his employment during the assault; and (2) Herrera's allegation that Securitas was directly liable for the injuries that Preciado caused because it negligently trained or negligently supervised him. We conclude that Herrera's challenge to the summary judgment ruling has merit as to both the respondeat superior and direct liability theories, and we accordingly reverse the judgment and remand for further proceedings

I.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Preciado's Assault of Herrera*

Preciado was employed as a security guard by Securitas beginning in May 2014. As a required condition of employment, Preciado maintained a valid California Security Guard License, which involved state mandated training.[1]

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[1] In support of its summary judgment motion, Securitas provided evidence of Preciado's security guard license as well as evidence of certain training courses that he completed. Securitas also submitted evidence that it performed a background check before it hired Preciado.

Defendants UETA of California, Inc., UETA, Inc., and Duty Free Americas, Inc. dba UETA Duty Free (collectively UETA) operate a store at a shopping center in San Diego adjacent to the United States/Mexico border, which sells duty-free merchandise for export. UETA contracted with Securitas for security guard services at its store, and Securitas assigned Preciado to work at the UETA location. Preciado's main duty at UETA was to walk with UETA customers to the United States/Mexico border to verify that they were exporting their duty-free merchandise out of the country. As the UETA manager described, "So when a customer is walking, he or she pays for the merchandise, and then the customer takes possession of the merchandise. Then Securitas walks down the street, over the bridge, make[s] sure that they go into Mexico, and then comes back. So by the time they come back, there's another escort waiting." When Preciado did not have a customer to escort to the border, he was posted inside the UETA store to discourage theft, but was instructed that he should not chase any shoplifters.[2] Preciado's job duties did not include monitoring the parking lot or enforcing parking rules.

On the afternoon of April 7, 2016, Preciado was on duty at UETA and was wearing his Securitas uniform. Specifically, Preciado was walking through the shopping center to return to the UETA store after having escorted a group of customers to the border. At the same time, Herrera was driving through the shopping center's parking lot to find a parking space so that he could transact business at a bank in the shopping center.

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[2] When a customer drives through the United States/Mexico border, instead of walking, a UETA employee follows in a vehicle, sometimes with a Securitas security guard in the passenger seat.

Herrera drove past Preciado in what Preciado apparently believed was an unsafe manner. Preciado yelled at Herrera, who ignored him, parked his car, and walked into the bank. Preciado followed Herrera into the bank, confronted him, and then grabbed and pushed him, causing Herrera to fall backward, hit his head, and become unconscious. Herrera regained consciousness and saw that he had blood dripping from the back of his head.

B. *The Litigation of Herrera's Complaint*

Herrera filed a complaint against Preciado, UETA and Securitas arising out of the assault. Against Preciado, the complaint alleged causes of action for assault, battery, negligence, intentional infliction of emotional distress and negligent infliction of emotional distress.[3] Against UETA and Securitas, the complaint alleged only causes of action for negligence and negligent infliction of emotional distress. The complaint also alleged that Preciado was an agent of the other defendants.[4]

The theory against Preciado in the negligence cause of action was that Preciado breached a duty to Herrera by assaulting him. As to UETA and Securitas, the theory in the negligence cause of action was that those defendants "negligently contracted, employed, hired or failed to hire, supervised, and trained their employees, and

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[3] Although not reflected in the appellate record, Herrera represents that he subsequently obtained a default judgment against Preciado.

[4] Specifically, the complaint alleged, "defendants, and each of them, were the agents, partners, officers, co-owners, servants, employees and/or joint venturers of their co-defendants and were, as such, acting within the scope, course and authority of said agency, partnership, employment and/or joint venture, in that each and every defendant, as aforesaid, acting as a principal, was negligent in the selection and hiring of each and every other defendant as agent, partner, servant, employee and/or joint venturer."

defendants, and each of them, negligently and carelessly maintained, managed, planned, controlled, operated, and serviced their premises, in that [Herrera] was harassed, threatened, molested, and assaulted." The cause of action for negligent infliction of emotional distress simply reincorporated the foregoing allegations of the complaint but alleged damages consistent with emotional distress.

The complaint does not expressly allege a cause of action against Securitas on a respondeat superior theory, although it does contain the general agency allegation we have described. Nevertheless, the trial court and the parties clearly assumed and accepted during the course of the summary judgment motion that Herrera's negligence and negligent infliction of emotional distress causes of action were pleaded under a theory of respondeat superior, and the ruling by the trial court from which Herrera appeals was premised on that assumption. For this reason, in our appellate analysis we too proceed under the premise that Herrera has asserted his negligence and negligent infliction of emotional distress causes of action against Securitas under the direct negligence theory that is more clearly pled in the complaint as well as under a respondeat superior theory.

After UETA prevailed on a summary judgment motion by obtaining a ruling that the undisputed evidence established Preciado was not acting within the scope of his agency relationship with UETA for the purposes of respondeat superior liability when he assaulted Herrera, Securitas filed its own motion for summary judgment.

In its summary judgment motion, Securitas addressed the negligence and negligent infliction of emotional distress causes of action together, observing that the grounds for summary judgement that it raised were applicable to both causes of action. Specifically,

Securitas argued (1) because Preciado was not acting within the scope of his employment with Securitas when he assaulted Herrera, summary judgment was warranted with respect to Herrera's respondeat superior theory of liability; and (2) "[s]ince Mr. Preciado was not within the course and scope of employment with Securitas, or his agency with UETA, at the time of the incident, Securitas owed no duty to Plaintiff."

In opposition, Herrera argued that a jury could reasonably find that Preciado was acting within the scope of his employment during the assault, as Preciado was on duty and was walking through the shopping center to return to the UETA store when he encountered Herrera. Herrera also pointed out that the complaint alleged liability against Securitas under the direct negligence theories of negligent supervision and negligent training, but that Securitas's summary judgment motion, which focused only on respondeat superior liability, did not address his direct negligence theories. To show that his negligent supervision and negligent training claims had merit and should be allowed to proceed to trial, Herrera submitted an expert declaration as well as relevant excerpts from deposition testimony. The expert declaration explained that Securitas's "post orders" to Preciado concerning his duties at UETA did not describe walking with customers to the border, and that Securitas had not instructed Preciado to wear a yellow safety vest. The expert opined that these alleged failures by Securitas in training and supervising Preciado caused Preciado to be in the parking lot without a visible safety vest where he encountered Herrera, leading to the assault. Explaining the basis for his negligent training and negligent supervision claims, Herrera stated, "There are no instructions to walk anyone, much less what route to take and the required safety

equipment (yellow vest). Preciado should have been using the public sidewalk, therefore the encounter between him and the plaintiff would not have occurred in the shopping center parking lot. . . . [¶] Therefore, Securitas' failure was below the industry standards, and its failure was a major contributing factor in this matter."

In reply, Securitas addressed Herrera's direct negligence claims for the first time, but the argument was cursory and undeveloped. First, Securitas contended that "Plaintiff is now alleging for the first time that Securitas was negligent in its hiring, training, and supervising of Mr. Preciado. However, these allegations were not alleged in Plaintiff's Complaint and cannot be raised now." Next, Securitas argued it had submitted evidence showing that Preciado had received the training necessary to obtain a security guard license and had been properly trained. Finally, apparently relying on its scope of employment argument, Securitas contended that "Plaintiff cites no facts or evidence to show that Securitas owed a duty to Plaintiff or breached any such duty."

The trial court granted Securitas's summary judgment motion, separately addressing the respondeat superior and direct negligence theories of liability. As to respondeat superior liability, the trial court observed that (1) Preciado's "only duty outside of the UETA store was to escort customers to the Mexico border;" (2) "at the time of the incident, Preciado was walking back from walking someone across the border;" and (3) "Preciado's job duties did not extend to the parking lot or to the bank where the subject incident occurred." The trial court concluded, "none of this evidence supports a finding of the required 'causal nexus' between Preciado's work as a security guard for Securitas and the alleged incident involving [Herrera]." Therefore, "[a]bsent establishing

that Preciado was acting within his scope of employment at the time of the alleged incident, there is no basis for a finding of liability under a respondeat superior/vicarious liability theory against Securitas."

With respect to the theories of negligent supervision and negligent training, the trial court concluded that those theories were sufficiently pled in the complaint, pointing out that the complaint expressly alleges that defendants "negligently contracted, employed, hired or failed to hire, supervised, and trained their employees." However, the trial court disposed of the negligent supervision and negligent training claims on a ground that was not briefed by the parties or discussed at the hearing on the summary judgment motion. Specifically, citing a string of cases, the trial court stated, "[L]iability under a negligent hiring/negligent training/negligent supervision theory 'is based upon the facts that the employer knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes.' . . . Thus, absent evidence establishing that Securitas had any advanced knowledge that Preciado [posed] a threat to Plaintiff or had any propensity for violence, there is no basis for a finding of liability under this theory."[5]

Herrera appeals from the judgment entered in favor of Securitas.

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[5] Because it is pled in the complaint, the trial court's ruling mentioned the theory of negligent *hiring*, but Herrera has consistently maintained that he is not proceeding on that theory, and that his direct negligence claims are limited to negligent supervision and negligent training.

II.

DISCUSSION

A. *Legal Standards Applicable to a Review of a Summary Judgment*

Code of Civil Procedure section 437c, subdivision (c) provides that summary judgment is to be granted "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A defendant "moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) A defendant may meet this burden either by showing that one or more elements of a cause of action cannot be established or by showing that there is a complete defense. (*Ibid.*; Code Civ. Proc., § 437c, subd. (p)(2).)

If the defendant's prima facie case is met, the burden shifts to the plaintiff to show the existence of a triable issue of material fact with respect to that cause of action or defense. (*Aguilar*, *supra*, 25 Cal.4th at p. 850; Code Civ. Proc., § 437c, subd. (p)(2).) "[T]o meet that burden, the plaintiff '. . . shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action . . . .' " (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476-477.) Ultimately, the moving party "bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar*, at p. 850.)

"In reviewing a grant of summary judgment, we independently evaluate the record, liberally construing the evidence supporting the party opposing the motion, and

resolving any doubts in his or her favor. . . . As the moving party, the defendant must show that the plaintiff has not established, and reasonably cannot be expected to establish, one or more elements of the cause of action in question." (*Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474, 499-500, citations omitted.)

"We exercise our independent judgment as to the legal effect of the undisputed facts . . . and must affirm on any ground supported by the record." (*Jimenez v. County of Los Angeles* (2005) 130 Cal.App.4th 133, 140, citations omitted.) Accordingly, "[w]e will affirm an order granting summary judgment or summary adjudication if it is correct on any ground that the parties had an adequate opportunity to address in the trial court, regardless of the trial court's stated reasons." (*Securitas Security Services USA, Inc. v. Superior Court* (2011) 197 Cal.App.4th 115, 120 (*Securitas Security Services*).)[6]

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6 In his appellate reply brief, Herrera points out that some of the evidence Securitas cites in its respondent's brief appears in the appellate record only because it was submitted in connection with UETA's summary judgment motion. Herrera contends that we should not rely upon such evidence in analyzing the appeal of the trial court's ruling on the summary judgment filed by Securitas to the extent that evidence does not separately appear in the record in connection with Securitas's summary judgment motion. Herrera also argues that to the extent we consider the text of the trial court's order granting UETA's summary judgment motion, which Securitas attached as an exhibit in support of its motion, we should consider only the *fact* of that ruling, and not the truth of any findings that the trial court made in that ruling to the extent those findings are not independently supported by evidence presented in connection with Securitas's summary judgment motion.

A ruling on a motion for summary judgment must be based solely on the evidence presented to the court in support or opposition to that motion, or any other evidence in the file specifically identified and incorporated by reference, which did not occur here. (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618 [" 'On review of an order granting or denying summary judgment, we examine the facts presented to the trial court' " and " 'consider[] all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained.' "];

B. *Herrera's Theory of Respondeat Superior Liability*

We first address Herrera's argument that the trial court erred in granting summary judgment as to his respondeat superior theory of liability. Herrera contends that summary judgment was improper because the facts presented in connection with the motion would allow a finder of fact to conclude that Preciado was acting within the scope of his employment at the time of the assault.

Herrera argues, "In the instant case, Preciado assaulted Herrera during the course of a series of acts which were authorized by Securitas, *i.e.*, Preciado was returning to the UETA duty-free store through the busy shopping center parking lot, after escorting UETA customers to the USA/Mexico border to verify exportation of duty-free merchandise, in order to be available to conduct the next escort, when Herrera nearly hit him with his car, enraging Preciado who yelled at Herrera and then followed him into the bank and assaulted him. Preciado and Herrera were strangers to each other and, thus, there could be no personal malice involved in the Assault. . . . Consequently, Preciado was acting within the course and scope of his employment at the time of his assault." Herrera explains, "At the time of the assault, . . . Preciado's main purpose for being in the busy shopping center parking lot was to return to the UETA store in order to conduct the

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Code Civ. Proc., § 437c, subd. (b)(7) ["An incorporation by reference of a matter in the court's file shall set forth with specificity the exact matter to which reference is being made and shall not incorporate the entire file."].) Accordingly, we have looked *only* to the evidence submitted in connection with Securitas's summary judgment motion in conducting our appellate review of the trial court's summary judgment ruling on Securitas's motion.

next escort of customers to the USA/Mexico border. This was clearly his employer's business and, thus, was within the course and scope of his employment."

Securitas disagrees, arguing that "the only rational inference that could be made is that Preciado, in attacking Herrera at the nearby bank, was acting outside the course and scope of his employment with Securitas." Securitas sets forth two arguments in support of its position. First, it contends that "in light of the special relationship between UETA and Preciado," UETA was Preciado's *sole* employer for the purpose of respondeat superior liability, precluding any liability for Securitas.[7] Second, Securitas argues that even if Securitas could be liable as Preciado's employer, "Preciado's actions signified a

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[7] Securitas touched on the issue of UETA's status as a special employer in its summary judgment motion, although the trial court did not address the issue in its ruling. Securitas argued, "When an employer—the 'general' employer—lends an employee to another employer and relinquishes to a borrowing employer all right of control over the employee's activities, a 'special employment' relationship arises between the borrowing employer and the employee. During this period of transferred control, the special employer becomes solely liable under the doctrine of respondeat superior for the employee's job-related torts. . . . [¶] In determining whether a special employment relationship exists, the primary consideration is whether the special employer has the right to control and direct the activities of the alleged employee or the manner and method in which the work is performed, whether exercised or not. Here, this Court has found that Mr. Preciado was an agent for UETA at the time of the incident, based on the undisputed facts and evidence presented by UETA, thereby making a special employment relationship, and logically imputing all undisputed findings with regard to respondeat superior liability as to UETA onto Securitas." Because Securitas made this argument in the trial court, we conclude that the issue of whether Securitas may obtain summary judgment for Herrera's respondeat superior claim based on the alleged special employment relationship between Preciado and UETA is one of the issues raised below that the parties had an adequate opportunity to address in the trial court. We accordingly proceed to address the issue on appeal. (*Securitas Security Services*, *supra*, 197 Cal.App.4th at p. 120 [in an appeal from a summary judgment, the reviewing court may base its ruling on any ground supported by the record "that the parties had an adequate opportunity to address in the trial court"].)

substantial deviation from his job duties such that imposing liability on Securitas under a respondeat superior theory is wholly inappropriate." Securitas argues that "Preciado's actions in no way were an inherent outgrowth of his employment as a security guard. In fact, Preciado's actions were completely contrary to his job duties." As Securitas points out, "Preciado confronted Herrera in the parking lot despite his lack of authority to address customers there. Further, Preciado followed Herrera into the nearby bank where he subsequently accosted Herrera, even though Securitas guards had no responsibilities in the nearby bank and were instructed not to follow customers."

1. *Securitas's Special Employment Relationship Argument Lacks Merit*

We first consider Securitas's contention that Herrera cannot prevail on his respondeat superior theory of liability because, under the special employment doctrine, UETA was Preciado's sole employer.

"Under the common law, a special employment relationship arises when a ' "general" employer . . . lends an employee to another employer and relinquishes to [the] borrowing employer all right of control over the employee's activities.' . . . 'During this period of transferred control, the special employer becomes solely liable under the doctrine of respondeat superior for the employee's job-related torts. . . .' Nevertheless, not all special employment relationships are exclusive. 'Where general and special employers share control of an employee's work, a "dual employment" arises, and the general employer remains concurrently and simultaneously, jointly and severally liable for the employee's torts.' " (*State ex rel. Dept. of California Highway Patrol v. Superior Court* (2015) 60 Cal.4th 1002, 1008, citations omitted.) Thus, "the general employer is

absolved of respondeat superior liability when it relinquishes total control to the special employer but it is jointly and severally liable with the special employer in respondeat superior if it relinquishes only partial control to the special employer." (*Brassinga v. City of Mountain View* (1998) 66 Cal.App.4th 195, 216 (*Brassinga*).)

" '[S]pecial employment is most often resolved on the basis of "*reasonable inferences* to be drawn from the circumstances shown." Where the evidence, though not in conflict, permits conflicting inferences, . . . " 'the existence or nonexistence of the special employment relationship barring the injured employee's action at law is generally a question reserved for the trier of fact.' . . . 'However, if neither the evidence nor inferences are in conflict, then the question of whether an employment relationship exists becomes a question of law which may be resolved by summary judgment.' " (*Brassinga*, *supra*, 66 Cal.App.4th at p. 217, citations omitted.)

Accordingly, in the context of its summary judgment motion, for Securitas to absolve itself of respondeat superior liability due to UETA's status as a special employer, it is not enough for Securitas to establish that, under the undisputed facts, UETA had a special employment relationship with Preciado. Securitas must also establish that the only permissible inference is that Securitas relinquished *total* control of Preciado to UETA. If Securitas reserved any *partial* control, a dual employment situation would exist, under which *both* UETA and Securitas might be liable under a respondeat superior theory.

In analyzing the existence of a special employment relationship, courts apply the following inquiry: "The special employment relationship and its consequent imposition

of liability upon the special employer flows from the borrower's power to supervise the details of the employee's work. Mere instruction by the borrower on the result to be achieved will not suffice." (*Marsh v. Tilley Steel Co.* (1980) 26 Cal.3d 486, 492.) In addition to the special employer's control, "[t]he existence of a special employment relationship may be supported by evidence that (1) the alleged special employer paid wages to the employee, (2) the alleged special employer had the power to discharge the employee, (3) the work performed by the employee was unskilled, (4) the work tools were provided by the alleged special employer, (5) the work was part of the alleged special employer's regular business, (6) the employee expressly or impliedly consented to a special employment relationship, (7) the parties believed they were creating a special employment relationship, and (8) the alleged special employment period was lengthy." (*Brassinga, supra*, 66 Cal.App.4th at p. 217.)

As the issue before us concerns Securitas's liability under a respondeat superior theory, the question is whether Securitas was a dual employer because it reserved at least partial control over Preciado. That issue depends on whether the "general and special employers *share control* of an employee's work," and whether the general employer has "relinquishe[d] total control to the special employer." (*Brassinga, supra*, 66 Cal.App.4th at p. 216.)

In this case, it was Securitas's initial burden of production, in its motion for summary judgment, to make a prima facie case that even though UETA might be Preciado's special employer, no dual employment situation existed under which Securitas had partial control over Preciado. (See *Aguilar, supra*, 25 Cal.4th at p. 850.) Securitas

failed to meet its initial burden. In support of its summary judgment motion, Securitas submitted a declaration from a vice president at the company stating, as relevant here, that Securitas hired Preciado, that Preciado underwent required training, and that Securitas provided security services to UETA. Securitas also submitted documentation showing Preciado's hiring by Securitas, his training and his licensing. None of those documents create a prima facie case that UETA had complete control over Preciado and that Securitas did not reserve partial control over him.

Moreover, even had Securitas carried its initial burden of production, in his opposition to the summary judgment motion, Herrera submitted evidence to support a finding that Securitas retained at least partial control over Preciado. As shown by deposition testimony from various witnesses: Securitas managers had responsibility for visiting clients' sites to check in on the security guards; Securitas provided "post orders" to security guards outlining their duties at a specific job site; Securitas undertook certain training responsibilities for the security guards; Securitas provided equipment for the security guards; and if UETA wanted to replace a security guard, it had to call Securitas to ask that a different security guard be assigned to the UETA job site, as it was not involved in the hiring process for security guards. These facts all support an inference that Securitas and UETA "share[d] control of [Preciado's] work," and that Securitas had not "relinquishe[d] total control to [UETA]." (*Brassinga*, *supra*, 66 Cal.App.4th at p. 216, italics omitted.)

Accordingly, we conclude that Securitas failed to meet its burden to establish that summary judgment was warranted with respondeat superior liability on the ground that UETA was Preciado's sole employer.

2 *Based on the Undisputed Facts, a Reasonable Finder of Fact Could Conclude That Preciado Was Acting Within the Scope of His Employment When He Assaulted Herrera*

We next consider whether Securitas established that summary judgment was warranted with respect to Herrera's respondeat superior allegations because Preciado was not acting within the scope of his employment when he assaulted Herrera.

a. *Applicable Legal Standards for Respondeat Superior Liability*

"The rule of respondeat superior is familiar and simply stated: an employer is vicariously liable for the torts of its employees committed within the scope of the employment." (*Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296 (*Lisa M.*).) " 'This includes willful and malicious torts as well as negligence.' " (*John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 447.) Indeed, "an employee's willful, malicious and even criminal torts may fall within the scope of his or her employment for purposes of respondeat superior, even though the employer has not authorized the employee to commit crimes or intentional torts." (*Lisa M.*, at pp. 296-297.) "[A]n employee's tortious act may be within the scope of employment even if it contravenes an express company rule and confers no benefit to the employer." (*Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1004 (*Farmers*).)

An employer may be held liable for an employee's torts even when the employee did not act "to further the employer's interests." (*Lisa M.*, *supra*, 12 Cal.4th at p. 297.)

However, "the employer will not be held liable for an assault or other intentional tort that did not have a *causal nexus* to the employee's work." (*Ibid*., italics added.) "The nexus required for respondeat superior liability" is "that the tort be engendered by or arise from the work." (*Id.* at p. 298.) "That the employment brought tortfeasor and victim together in time and place is not enough. . . . [T]he incident leading to injury must be an 'outgrowth' of the employment . . . ; the risk of tortious injury must be ' "inherent in the working environment" ' . . . or ' "typical of or broadly incidental to the enterprise [the employer] has undertaken[.]" ' " (*Ibid*.) "Stated another way, '[i]f an employee's tort is personal in nature, mere presence at the place of employment and attendance to occupational duties prior or subsequent to the offense will not give rise to a cause of action against the employer under the doctrine of respondeat superior.' " (*Farmers*, *supra*, 11 Cal.4th at p. 1005.)[8]

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8 Even though Herrera's complaint alleges only negligence-based causes of action against Securitas, we rely here on the principles applicable to determining whether an employer may be liable under a respondeat superior for an employee's *intentional* torts. The complaint clearly alleges intentional tortious conduct by Preciado, as it contains causes of action for assault and battery, although it also contains negligence-based causes of action against him. Therefore it is appropriate to conduct our respondeat superior analysis based on the premise that Preciado is alleged to have committed an *intentional* tort for which Herrera is attempting to assign vicarious liability to Securitas, and to therefore rely on the case law applicable to that type of situation. (See *Kephart v. Genuity, Inc.* (2006) 136 Cal.App.4th 280, 290, citations omitted ["Plaintiffs appear to believe that, through adroit pleading, they can limit the considerations that go into [a respondeat superior] determination" because "before trial, they dismissed all claims except negligence. . . . Plaintiffs cannot so control the issues. . . . . [¶] While the witnesses to the event provided varying perspectives, it would be virtually inconceivable that a reasonable jury would find [the employee's] conduct to have been mere negligence."].)

Applying this standard, "assaults that were not committed to further the employer's interests have been considered outgrowths of employment if they originated in a work-related dispute. . . . 'Conversely, vicarious liability [has been] deemed inappropriate where the misconduct does not arise from the conduct of the employer's enterprise but instead arises out of a personal dispute.' " (*Lisa M., supra*, 12 Cal.4th at pp. 300-301.) An assault "will not be considered engendered by the employment unless its motivating emotions were fairly attributable to work-related events or conditions." (*Id*. at p. 301.) Based on this principle, an assault by one employee *on another employee* has been found to be within the scope of employment if it arises from a dispute between employees in the workplace, as "[f]lare-ups, frustrations, and disagreements among employees are commonplace in the workplace and may lead to 'physical act[s] of aggression.' " (*Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1009; see also *Carr v. Wm. C. Crowell Co.* (1946) 28 Cal.2d 652, 657 (*Carr*) [based on a workplace disagreement, one employee threw a hammer at another employee].) Similarly, an assault by an employee *on a customer* arising from workplace interactions has been held to be within the scope of employment. (*Flores v. AutoZone West, Inc.* (2008) 161 Cal.App.4th 373, 380 [auto parts store employee assaulted customer after the customer criticized his attitude]; *Stansell v. Safeway Stores* (1941) 44 Cal.App.2d 822, 823 [grocery store manager assaulted a customer after becoming angry when harsh words were exchanged in a dispute about a grocery order]; *Hiroshima v. Pacific Gas & Electric Co.* (1936) 18 Cal.App.2d 24, 26-27 [utility employee assaulted customer based on dispute about payment after insults were traded.].) "The workplace stresses and strains which might

cause an employee to erupt in anger are not dependent upon whether the person who happens to be standing in the line of fire is a *coworker* or a *retail customer*." (*Flores*, at p. 381, italics added.)

"Looking at the matter with a slightly different focus, California courts have also asked whether the tort was, in a general way, foreseeable from the employee's duties. Respondeat superior liability should apply only to the types of injuries that ' "as a practical matter are sure to occur in the conduct of the employer's enterprise." ' . . . The employment, in other words, must be such as predictably to create the risk employees will commit intentional torts of the type for which liability is sought." (*Lisa M.*, *supra*, 12 Cal.4th at p. 299.) "[T]he tortious occurrence must be 'a generally foreseeable consequence of the activity.' In this usage . . . foreseeability 'merely means that in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business.' " (*Ibid*.)

" 'Ordinarily, the determination whether an employee has acted within the scope of employment presents a question of fact; it becomes a question of law, however, when 'the facts are undisputed and no conflicting inferences are possible." ' " (*Lisa M.*, *supra*, 12 Cal.4th at p. 299.) "In some cases, the relationship between an employee's work and wrongful conduct is so attenuated that a jury could not reasonably conclude that the act was within the scope of employment." (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 213.)

b. *The Undisputed Facts Could Support a Finding That Preciado Was Acting Within the Scope of His Employment*

Here, the facts are undisputed, although not well developed, concerning the details of Preciado's job duties and the circumstances of the assault on Herrera. Specifically, Preciado was on duty and walking in the shopping center's parking lot to return to the UETA store after escorting customers to the United States/Mexico border when he was angered by some aspect of Herrera's driving, so he yelled at Herrera, followed him into a bank in the shopping center, and assaulted him. Securitas emphasizes that, based on the undisputed facts, Preciado had no responsibility over the parking lot, such as monitoring parking or arranging for vehicles to be towed. However, we view it as equally significant, that Preciado's job duties included walking back and forth from the border. Preciado's path of travel apparently included going through the shopping center's parking lot if he chose to take that route. No evidence was presented showing that Preciado was told that his path of travel back and forth to the border should avoid the shopping center's parking lot. The question for us is whether those undisputed facts could support a finding, under the standards we have set forth above, that Preciado was acting within the scope of his employment when he assaulted Herrera.

As we have explained, an assault against an employee's co-worker or a customer may be found to fall within the scope of employment when arising out of a work-related circumstance. Here, however, that case law is not directly applicable because Herrera was neither a co-worker of Preciado nor a customer at UETA. Instead, Herrera was *a member of the public* who Preciado encountered while performing the job-related activity

of walking back from the border to the UETA store to pick up a new customer. Herrera relies on two opinions that present similar factual situations, in that the employee in those cases committed assaults *on members of the public* after an argument arose from a traffic incident while the employee was performing work-related duties.

In *Fields v. Sanders* (1947) 29 Cal.2d 834, 836-838, a delivery driver's truck collided with a car, leading to an altercation at the side of the road between the man driving the car and the truck driver. The truck driver hit the man with a wrench and knocked him unconscious. In a lawsuit brought by the victim against the truck driver's employer, *Fields* held that the trial court properly instructed the jury that the truck driver was acting within the scope of his employment during the assault for the purpose of respondeat superior liability. The court explained that the truck driver "was engaged in his employer's business while operating the truck along the highway to his appointed destination. In the course of such travel the collision with plaintiff's car allegedly occurred, with the result that the drivers of the respective vehicles were required by law to stop and each furnish the other with certain information and identification data. . . . Not only did the quarrel leading to plaintiff's injury arise solely over [the truck driver's] performance of his duties as the driver of the truck, but obviously [the truck driver's] entire association with plaintiff arose out of his use of the public highway on his employer's business." (*Id*. at pp. 839-840.)

In *Pritchard v. Gilbert* (1951) 107 Cal.App.2d 1 (*Pritchard*) two salesman, both of whom were returning home after calling on customers, passed each other on a highway, driving in opposite directions. (*Id*. at p. 2.) One salesman, Gilbert, who was in a

company-owned car, was forced off of the road due to the reckless driving of the other salesman. (*Ibid*.) Gilbert then *turned around* to drive in the direction he came from and chased down the salesman who had forced him off the road. (*Ibid*., italics added.) A fight ensued during which Gilbert severely beat and injured the other salesman. (*Ibid*.) The injured salesman sued Gilbert's employer. In its defense, the employer argued that it should not be liable in respondeat superior. As the employer pointed out, Gilbert was "admittedly in the course of his employment in returning from the sales meeting to his home," but Gilbert "left that employment *when he turned and pursued respondent*." According to the employer, Gilbert's "turning in pursuit and the following assault and battery were without the scope of his employment." (*Id*. at p. 3, italics added.) The court rejected the argument, stating "[t]he trial court was justified in concluding that Gilbert, angered by what he deemed to be the unlawful driving of [the other salesman], lost his temper and proceeded by a series of connected and uninterrupted acts to administer dire punishment. This conduct on his part was so intimately connected with his service to his employer and so clearly resulted from a dispute arising out of his employment that *his acts in turning, pursuing respondent and assaulting him must be held to have been within the scope of his employment*." (*Id*. at p. 5, italics added.)

Although *Pritchard* was decided in 1951 by an intermediate court of appeal, not our Supreme Court, we are not aware of any subsequent criticism of that opinion. On the contrary, in 1995 our Supreme Court favorably cited *Pritchard* as an example of "the case law disclos[ing] that an employer may be subject to vicarious liability for injuries

caused by an employee's tortious actions resulting or arising from pursuit of the employer's interests." (*Farmers*, *supra*, 11 Cal.4th at p. 1005.)

Herrera contends that *Pritchard* is closely on point and should control here. Specifically, Herrera argues that under the approach taken in *Pritchard*, even though Preciado diverged from his intended path of travel through the shopping center so he could confront Herrera in the bank, because the incident arose while Preciado was walking back to the store as part of his employment duties, his detour into the bank to pursue Herrera does not take him outside the scope of his employment. We find Herrera's reliance on *Pritchard* to be persuasive. Just as the salesman in *Pritchard* was acting within the scope of his employment when he turned and pursued a motorist who forced him off the road, a reasonable finder of fact could conclude that Preciado acted within the scope of his employment when he followed Herrera into the bank and assaulted him.

Further, in applying the foreseeability test that our Supreme Court has identified as another method for determining whether respondeat superior liability is appropriate, we conclude that a reasonable finder of fact could determine that the type of incident that occurred in this case is a foreseeable result of assigning security guards to work at the UETA store. In applying the foreseeability analysis, "the tortious occurrence must be 'a generally foreseeable consequence of the activity' " that is " "not so unusual or startling that it would seem unfair to include the loss resulting from it among other costs of the employer's business.' " (*Lisa M.*, *supra*, 12 Cal.4th at p. 299.) Security guards generally interact with members of the public, sometimes under tense circumstances. Further, the

security guards assigned to the UETA store specifically can be expected to encounter members of the public as they pass back and forth through the shopping center numerous times a day as part of their duties escorting customers to the border. Courts have long held that because of human nature, it is foreseeable that tempers might flare between employees or between an employee and a customer at a workplace, leading to an assault.[9] Applying that case law here, it is equally foreseeable that tempers might flare when a security guard encounters a member of the public in the course of walking to and from the border. Therefore, Securitas's assignment of a security guard to work at the UETA store, could reasonably be viewed "as predictably . . . creat[ing] the risk employees will commit intentional torts of the type for which liability is sought" (*Lisa M.*, at p. 299), warranting the imposition of respondeat superior liability under a foreseeability analysis.

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9 As our Supreme Court long ago observed, "In the present case, defendant's enterprise required an association of employees with third parties, attended by the risk that someone might be injured. 'The risk of such associations and conditions were risks of the employment.' . . . Such associations 'include the faults and derelictions of human beings as well as their virtues and obediences. Men do not discard their personal qualities when they go to work. Into the job they carry their intelligence, skill, habits of care and rectitude. Just as inevitably they take along also their tendencies to carelessness and camaraderie, as well as emotional makeup. In bringing men together, work brings these qualities together, causes frictions between them, creates occasions for lapses into carelessness, and for funmaking and emotional flareup. Work could not go on if men became automatons repressed in every natural expression. . . . These expressions of human nature are incidents inseparable from working together. They involve risks of injury and these risks are inherent in the working environment.' " (*Carr*, *supra*, 28 Cal.2d at p. 656, citation omitted.)

Securitas contends that the altercation between Herrera and Preciado cannot be within the scope of Preciado's employment because the dispute between the two men was purely personal. Although the principle upon which Securitas relies holds that respondeat superior liability is "inappropriate where the misconduct does not arise from the conduct of the employer's enterprise *but instead arises out of a personal dispute*," (*Lisa M.*, *supra*, 12 Cal.4th at p. 301, italics added), that expression of the principle does not indicate that an employee acts outside the scope of employment *any time* personal anger and hostility motivate the commission of an assault. The applicable rule is more exactly expressed by focusing on whether the personal dispute has a connection to employment: "if the employee 'inflicts an injury out of personal malice, *not engendered by the employment*' . . . or acts out of 'personal malice *unconnected with the employment*' . . . or if the misconduct is *not an 'outgrowth' of the employment* . . . the employee is not acting within the scope of employment." (*Farmers*, *supra*, 11 Cal.4th at p. 1005, italics added & citations omitted.) Indeed, most of the cases we have cited in which respondeat superior liability arose from an employee's commission of an assault, the employee clearly had anger and animosity toward the victim that led to the violence, making the dispute "personal" to some extent.

As the case law shows, instead of focusing on whether the assaulting employee experienced *personal anger* toward the victim, the proper approach to determining whether an assault was purely personal rather than connected with employment is to ask whether the employee had *preexisting* or *independent* animosity toward the victim of the assault that was not related to the employee's work-related duties. For example, in *Carr*,

supra, 28 Cal.2d 652, two employees were involved in a dispute about the best way to carry out their work duties, causing one employee to become angry and throw a hammer at the head of the other employee. (*Id*. at p. 653.) In *Carr*, respondeat superior liability was warranted, despite the personal anger that gave rise to the assault, because "the injury to plaintiff was an outgrowth of [the assailant's] employment." (*Id.* at p. 657.) The assailant "had never seen plaintiff before the day preceding the accident, and had never conversed with him before the dispute over the [work issue]. He . . . was not angry with plaintiff before the dispute [and] had no personal grudge against him." (*Id.* at p. 657.)

Similarly, in *Rodgers v. Kemper Constr. Co.* (1975) 50 Cal.App.3d 608, employees of a subcontractor, who were at a job site after hours, got into a dispute with employees of the general contractor over the unauthorized use of work equipment, leading to the subcontractor's employees assaulting the general contractor's employees. (*Id*. at pp. 614-616.) The court rejected the subcontractor's contention that it should avoid respondeat superior liability because the assault arose out of personal malice between the individuals involved. The court explained, "there was no evidence of personal malice unrelated to the employment. . . . [The victims], as they testified, were complete strangers to [the assailants]." (*Id*. at p. 621.) "[T]he quarrel on the job site, though between employees of different contractors, arose over the rights and privileges of [the subcontractor's] off-duty employees. It was manifestly an outgrowth of the employment relationship and a risk which may fairly be considered as typical of, or incidental to, the employment." (*Id*. at pp. 622-623.)

Here, Preciado did not know Herrera before encountering him while walking through the shopping center to get back to the UETA store. Although Preciado was clearly angered by Herrera and developed animosity toward him, making the dispute "personal" in that sense, the dispute arose out of Preciado's performance of his job duties, which consisted of walking back from the border to the UETA store. Accordingly, the fact that the assault may have been motivated by Preciado's personal anger toward Herrera does not preclude a finding that the assault was "engendered by" or "[arose] from" Preciado's work. (*Lisa M.*, *supra*, 12 Cal.4th at p. 298.)

Securitas also argues that Preciado was not acting within the scope of his employment because he substantially deviated from his duties to commit the assault. Securitas contends that "Preciado's actions were completely contrary to his job duties," pointing out that security guards at UETA had no responsibility for the parking lot or the bank where the assault occurred, and that "Securitas guards were merely intended to be passive observers." In applying respondeat superior liability, "[a]n exception is made when the employee has substantially deviated from his duties for personal purposes at the time of the tortious act. . . . While a minor deviation is foreseeable and will not excuse the employer from liability, a deviation from the employee's duties that is 'so material or substantial as to amount to an entire departure' from those duties will take the employee's conduct out of the scope of employment. . . . For example, when the employee leaves the employer's premises on a lunch break, to get lunch or run a personal errand, and the employee is not engaged in any errand or task for the employer, the employee is not acting within the scope of his or her employment." (*Halliburton Energy Services, Inc. v.*

Department of Transportation (2013) 220 Cal.App.4th 87, 95, citations omitted.) Here, relying on *Pritchard*, we cannot conclude as a matter of law that Preciado substantially deviated from his work duties in committing the assault. The confrontation between Preciado and Herrera began when Preciado was engaged in the performance of his work duties, namely walking back through the shopping center to the UETA store after escorting customers to the border. Preciado was not off the clock or on a break. Preciado yelled at Herrera in the parking lot and then immediately followed him to the bank, just as the salesman in *Pritchard* immediately followed the offending motorist by turning around on the road. (*Pritchard*, *supra*, 107 Cal.App.2d at p. 5.) As in *Pritchard*, the undisputed facts are therefore sufficient support a finding that Preciado was acting within the scope of his employment when he assaulted Herrera.

In sum, we conclude that the trial court erred in concluding that, under the undisputed facts, Herrera would under no circumstances be able to establish at trial that Preciado was acting within the scope of his employment during the assault. Instead, a reasonable finder of fact could make a finding in favor of Herrera on that issue. Accordingly, we reverse the summary judgment on both the negligence and negligent infliction of emotional distress causes of action against Securitas to the extent they are based on a respondeat superior theory.

To be clear, as this appeal is from a summary judgment brought by Securitas, the only issue before us is whether the trial court properly determined, *as a matter of law*, that Securitas was not liable on a respondeat superior theory. Whether Herrera ultimately

will be able to prevail in establishing that Preciado was acting within the scope of his employment will only be determined after further proceedings on remand.

C. *Herrera's Direct Negligence Theories of Liability*

The final issue is whether summary judgment was warranted with respect to Herrera's theory that Securitas is liable for negligence and negligent infliction of emotional distress under a direct negligence theory. Specifically, Herrera contends that Securitas is liable to Herrera for negligently supervising or negligently training Preciado.

As we have explained, although Securitas did not expressly challenge Herrera's direct negligence theories of liability when moving for summary judgment, Herrera identified them in his opposition to Securitas's summary judgment motion, and Securitas briefly addressed them in its reply memorandum. The trial court concluded that summary judgment was warranted with respect to the negligent supervision and negligent training claims on a ground not identified by Securitas. Specifically, the trial court explained that "absent evidence establishing that Securitas had any advanced knowledge that Preciado posted a threat to Plaintiff or had any propensity for violence, there is no basis for a finding of liability under" either a negligent supervision or negligent training theory.

The trial court based its ruling on the legal principle that "liability under a negligent hiring/negligent training/negligent supervision theory 'is based upon the facts that the employer knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes.' " Because this principle is at the heart of the trial court's ruling on the negligent supervision and negligent training

claims, we turn to the case law that the trial court cited in support of it. We also examine additional relevant authorities.

1. *Applicable Legal Principles*

To support its ruling on the negligent supervision and negligent training claims, the trial court relied mainly on *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038 (*Doe*). *Doe* states, "California case law recognizes the theory that an employer can be liable to a third person for negligently *hiring*, *supervising*, or *retaining* an unfit employee. [Citation] Liability is based upon the facts that the employer knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes." (*Id*. at p. 1054, italics added.)

As additional authority, the trial court cited three more cases, each of which discuss negligent hiring or negligent retention of an employee, but not negligent training. (*Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828 [negligent hiring]; *Delfino v. Agilent Technologies, Inc.* (2006) 145 Cal.App.4th 790, 815 [negligent hiring or retention]; *Federico v. Superior Court (Jenry G.)* (1997) 59 Cal.App.4th 1207, 1213 [negligent hiring or retention].) All three cases cite the Restatement Second of Agency for the governing rule. (*Evan F*., at p. 836; *Federico*, at pp. 1213-1214; *Delfino*, at p. 815.) As *Evan F.* explained, the Restatement Second of Agency states, " "The principal may be negligent because he has reason to know that the servant or other agent, because of his qualities, is likely to harm others in view of the work . . . entrusted to him. . . . [¶] An agent, although otherwise competent, may be incompetent because of his reckless or vicious disposition, and if a principal, without exercising due care in

selection, employs a vicious person to do an act which necessarily brings him in contact with others while in the performance of a duty, he is subject to liability for harm caused by the vicious propensity. . . . [¶] If . . . the risk exists because of the quality of the employee, there is liability only to the extent that the harm is caused by the quality of the employee which the employer had reason to suppose would be likely to cause harm.' " (*Evan F*., at p. 836, italics omitted, quoting Rest.2d Agency, § 213, com. d.)

As is apparent from the language we have quoted, the case law cited by the trial court *partially* supports the trial court's statement that "liability under a *negligent hiring/negligent training/negligent supervision theory* 'is based upon the facts that the employer knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes.' " (Italics added.) Specifically, the trial court was correct that *a negligent supervision claim* requires that the employer knew or should have known that the employee created a particular risk or hazard. (*Doe*, *supra*, 50 Cal.App.4th. at p. 1054.) The case law cited by the trial court supports this principle (*ibid*.), and other California authority is in agreement. (*Juarez v. Boy Scouts of America, Inc*. (2000) 81 Cal.App.4th 377, 395 (*Juarez*) ["there can be no liability for negligent supervision 'in the absence of knowledge by the principal that the agent or servant was a person who could not be trusted to act properly without being supervised' "]; *Alexander v. Community Hospital of Long Beach* (2020) 46 Cal.App.5th 238, 264 (*Alexander*) [" 'To establish negligent supervision, a plaintiff must show that a person in a supervisorial position over the actor had *prior* knowledge of the actor's propensity to do the bad act.' "].)

However, none of the case law cited by the trial court concerns a claim for *negligent training*. Securitas has not identified any case holding that, to prevail on a claim for negligent training, a plaintiff must establish that the employer knew or should have known that the particular employee posed a risk to third parties. Moreover, our independent research has revealed no case law supporting such a principle.

Having examined the case law applicable to Herrera's negligent supervision and negligent training claims, we now proceed to examine whether, as the trial court concluded, Securitas met its burden to establish, with respect to Herrera's direct negligence theories of liability, that Herrera could not prevail as a matter of law.

2. *Negligent Supervision*

As we have explained, the trial court applied the legal principle, supported by the case law we have discussed above, that Herrera would be able to prevail on a negligent supervision claim only if he established that Securitas knew or should have known that Preciado would pose a particular risk or hazard if not supervised. (*Doe*, *supra*, 50 Cal.App.4th. at p. 1054; *Juarez*, *supra*, 81 Cal.App.4th at p. 395; *Alexander*, *supra*, 46 Cal.App.5th at p. 264.)

In support of its motion for summary judgment, Securitas submitted a declaration by a company vice president, which stated, "Securitas had no prior knowledge of any similar incidents, violent behavior, or a propensity of violence with regard to Mr. Preciado, as his background check was clear and all prior employment references had no remote indication of prior violent acts." This declaration satisfied Securitas's burden of production to show that Herrera could not prevail on a claim for negligent

supervision.[10] Herrera submitted no evidence in opposition that would contradict Securitas's declaration. Therefore, based on the parties' summary judgment briefing, the trial court concluded that it was undisputed that Securitas had no knowledge that Preciado might lose his temper and commit a violent assault against a member of the public unless he was supervised. The trial court accordingly concluded that summary judgment was warranted on the negligent supervision claim.

We agree with the trial court's analysis. Based on the undisputed evidence submitted by Securitas, Herrera will not be able to prevail on a theory of negligent supervision because Securitas had no " 'knowledge . . . that [Preciado] was a person who could not be trusted to act properly without being supervised.' " (*Juarez, supra*, 81

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10 Securitas submitted its vice president's declaration to establish that Preciado was not acting within the scope of his employment for the purpose of *respondeat superior* liability. Specifically, the declaration concerned the issue of foreseeability as it relates to a respondeat superior analysis. (*Lisa M., supra*, 12 Cal.4th at p. 299 [to support respondeat superior liability, "the tortious occurrence must be 'a generally foreseeable consequence of the activity' "].) Because Securitas did not interpret Herrera's complaint as asserting a *negligent supervision* theory of liability, the declaration of Securitas's vice president was not submitted for the specific purpose of establishing that Herrera could not prevail on a negligent supervision claim. However, because Securitas stated as an undisputed fact in its moving papers that it had no prior knowledge of Preciado's propensity for violence, Herrera was on notice that he should develop evidence on that issue in his opposition to the summary judgment motion if he wished to dispute it. Instead, he responded, "Plaintiff cannot admit or deny this issue." Accordingly, even though Securitas did not expressly move for summary judgment on the negligent supervision claim, the trial court properly relied upon the evidence in the summary judgment record to dispose of the negligent supervision claim on the ground that Herrera would not be able to establish Securitas's knowledge that Preciado posed a risk of violence to the public if he was not supervised.

Cal.App.4th at p. 395.) Summary judgment was proper on the negligent supervision claim.

3. *Negligent Training*

As set forth above, the trial court relied on the same legal authority in granting summary judgment on the negligent training claim as it did for the negligent supervision claim. However, as we have explained, those authorities do not support the trial court's assertion that a plaintiff asserting a negligent training claim against an employer must show that the employer had knowledge that the employee posed a particular risk to the public. The case law establishing that rule applies only in cases of negligent hiring, negligent supervision and negligent retention of an employee, but not negligent training. Therefore, the trial court erred in granting summary judgment on the negligent training claim on the basis that the undisputed evidence showed Securitas did not have "any advanced knowledge that Preciado posted a threat to Plaintiff or had any propensity for violence."[11]

For the first time in its respondent's brief on appeal, Securitas argues that the negligent training claim also fails because Herrera cannot establish that any failure to train Preciado *was a cause in fact* of Herrera's injury. Securitas argues, "in order to establish causation, a plaintiff must demonstrate 'some substantial link or nexus' between

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[11] To be clear, we express no view on whether, on remand, Securitas might be able to establish that the negligent training claim fails on a ground not identified in the trial court's summary judgment ruling. Liability under the theory of negligent training " 'is limited by basic principles of tort law, including requirements of causation and duty.' " (*Phillips v. TLC Plumbing, Inc.* (2009) 172 Cal.App.4th 1133, 1140.)

the alleged omission and the plaintiff's injury. . . . [¶] Herrera provides no such link here." According to Securitas, "It is unreasonable to suggest that had Securitas trained and supervised Preciado to ensure he did not walk through the parking lot, the incident would not have occurred. . . . It is similarly unreasonable to conclude that had Securitas trained and supervised Preciado to wear a yellow security vest, Herrera would have seen him and the incident would never have occurred.

Although we may affirm a summary judgment on a ground not relied upon by the trial court, it must be a "ground that the parties had an adequate opportunity to address in the trial court." (*Securitas Security Services, supra*, 197 Cal.App.4th at p. 120.) We do not reach the causation issue raised by Securitas because (1) it was not set forth as a basis for Securitas's summary judgment motion, so that Securitas did not meet its burden on that issue to establish that summary judgment was warranted, and (2) the parties had no opportunity to present or develop evidence on the issue. It would therefore be improper for us to consider the issue of causation for the first time on appeal as an alternative ground for affirming the trial court's summary judgment ruling on the negligent training claim.[12]

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12 Because the issue of causation was not raised below, the parties did not develop the relevant facts. Among other things, the parties did not provide evidence about the aspect of Herrera's driving that angered Preciado, whether Herrera was aware of Preciado's presence, and where in the parking lot the two men originally crossed paths.

In sum, as Securitas's summary judgment motion did not establish as a matter of law that Herrera's negligent training claim lacks merit, we conclude that the trial court erred in its summary judgment on that issue.

DISPOSITION

The judgment is reversed, and the matter is remanded for further proceedings consistent with this opinion.

IRION, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.