TO: Attorney Liberatore at Beetem, Fletcher & Beck

FROM: Erin Grummel

DATE: April 25, 2026

RE: Johnson v. Farley, et al. - Potential liability & viability of claims

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STATEMENT OF ASSIGNMENT

I have been asked to prepare a memorandum addressing the following questions: Can a lawsuit be filed against each Pat Farley, a permitted learning driver, and Jim Dugan, a driving instructor? What is the theory of liability of each Farley and Dugan? The following memo analyzes liability under California law.

ISSUES

Issue I: Under California law, can a minor or permitted learning driver be held liable for damages caused by a vehicle collision under negligence or negligence per se doctrine?

Issue II: Under California law, can a driving instructor be held liable for damages caused by a vehicle collision for failing to intervene under negligence or negligence per se doctrine?

Issue III: Under California law, can a driving instructor be held vicariously liable for the negligent acts of a learning driver in a vehicle collision under respondeat superior doctrine?

BRIEF ANSWERS

Issue I: Yes. A permitted learner driver is subject to the same California traffic statutes applicable to all drivers, and a violation of such a statute may support a presumption of negligence under the negligence per se doctrine.

Issue II: Yes. A driving instructor owes a duty of reasonable care in supervising a permitted driver and failure to adequately supervise or intervene may constitute a breach of duty under negligence principles.

Issue III: No. A driving instructor is not vicariously liable under respondeat superior doctrine for the negligent acts of a student driver absent a principal-agent relationship and liability cannot be imputed as a matter of law.

FACTS

This matter arises from a motor vehicle collision that occurred on March 21, 2026, at the intersection of Main Street and 5th Avenue. Bobbie Johnson was traveling northbound on Main Street and entered the intersection on a green light, intending to proceed straight. Pat Farley, a 16-year old learning driver, was operating a Honda Accord that was owned by Dugan Driving Academy and equipped with a lighted "Student Driver" sign and exterior advertisements for Dugan Driving Academy. Jim Dugan, the owner of Dugan Driving Academy, was in the front passenger seat acting as a driving instructor. While traveling southbound on Main Street during her second in-car driving lesson, at Mr. Dugan's instruction, Ms. Farley attempted a left turn but failed to see Mr. Johnson's oncoming vehicle and turned in front of him. The vehicle also had a second passenger side brake, which was not engaged at any time prior to or during the collision, according to available data. As a result, Mr. Johnson's vehicle struck the Accord, and Mr. Johnson suffered a fractured leg, a strained neck and a concussion.

ANALYSIS

Issue I

Under California law, to establish negligence, a plaintiff must show they were owed a legal duty, that duty was breached, and that breach was a proximate cause of their damages. See *Lugtu v. Cal. Highway Patrol.* 26 Cal. 4th 703 (2001). Duty is generally established as a matter of law, while breach and causation are determined by a defendant's conduct and whether that conduct falls below a standard of reasonable care under the circumstances. California also recognizes the doctrine of negligence per se, which allows a statutory violation to establish a presumption of negligence.

Under *Cal. Evid. Code* § 669 (Deering 2026), a presumption of negligence exists when a statute is violated, the violation proximately causes injuries, the injuries occurred from an incident the statute was intended to prevent, and the plaintiff is part of the protected class the statute was designed to protect. However, not all violations constitute negligence per se but

instead create a rebuttable presumption of negligence. See *Gilmer v. Ellington*, 159 Cal. App. 4th 190 (2008). Additionally, under *Cal. Veh. Code* § 21801(a) (Deering 2026), any driver making a left turn has a duty to yield to oncoming traffic approaching from the opposite direction that are close enough to constitute an immediate hazard when making a left turn. The driver must yield until the turn can be made with reasonable safety. Furthermore, California operates under a comparative negligence system established in *Liv v. Yellow Cab Co.*, 13 Cal. 3d 804 (1975), where recovery may be reduced to the extent of plaintiff's own conduct that contributed to the collision.

In *In re Kirk*, 202 Cal. App. 2d 288 (1962), a 17-year old licensed driver failed to yield while turning left at an intersection on a green light, resulting in a collision with oncoming traffic. The court treated the minor's conduct under the same statutory standards as applied to adult drivers and held that a minor driver is subject to the same statutory rules of the road as an adult, including the duty to yield the right of way when making a left turn.

In Mr. Johnson's case, Pat Farley, is a minor driver operating under a learner's permit and not a fully licensed minor as in *In re Kirk.* Licensing status governs the authorization and supervision requirements to operate a vehicle, but does not alter the standard of care or statutory duties imposed on drivers once they are operating a vehicle on public roadways. Ms. Farley attempted a left turn at an intersection on a green light and failed to yield to Mr. Johnson, who constituted an immediate hazard, resulting in a collision. This constitutes a violation of *Cal. Veh. Code* § 21801(a).

The violation falls within the scope of *Cal. Evid. Code* § 669 because *Cal. Veh. Code* § 21801 is designed to prevent collisions involving improper left turns at intersections, Mr. Johnson is within the class of drivers the statute seeks to protect, and the damages incurred is the type of harm the statute is intended to prevent.

So if evidence shows Ms. Farley had already safely entered and started executing her turn when Mr. Johnson's vehicle became an immediate hazard, presumption of negligence could be rebutted. Although the presumption of negligence is rebuttable, there are no facts indicating Ms. Farley's violation was justified under the circumstances currently known. Additionally, the presence of the lighted "Student Driver" sign and exterior advertisements for Dugan Driving Academy may be relevant to whether Mr. Johnson exercised reasonable care when approaching the intersection, but it does not relieve Ms. Farley of her statutory duty to yield.

Therefore, under California law, Mr. Johnson has a viable cause of action against Pat Farley for negligence per se based on her failure to yield while making a left turn in direct violation of *Cal. Veh. Code* § 21801(a). The statutory violation creates a rebuttable presumption of negligence under *Cal. Evid. Code* § 669, and no facts presently indicate a valid legal excuse for the violation. Her designation as a learner driver does not relieve Ms. Farley from her statutory duty to yield, and there are currently no facts indicating a legally valid reason for her failure to yield.

Issue II

Under California law, a licensed supervising driver accompanying a permitted driver owes a duty to exercise reasonable care in supervising the student driver and preventing foreseeable harm. *Cal. Veh. Code* § 12509(d) requires a licensed driver over 18 years of age accompanying a permit holder to be positioned and attentive enough to exercise immediate supervision and control and be prepared to provide assistance to the driver when necessary. Under *Kostecky v. Henry*, 113 Cal. App. 3d 362 (1980), the standard governing the conduct of the licensed driver was the common law duty of due care; that is, what a reasonably prudent instructor would have done under the same or similar circumstances (*Roberts v. Craig* 124 Cal.App.2d 202, 208 (1954)).

In *Kostecky v. Henry*, the court held that a supervising licensed driver could be held liable for negligent supervision where they failed to observe an oncoming vehicle that posed an immediate hazard and warn the student driver before the student executed an unsafe left turn. In this case, a student driver, being supervised by his father, collided with oncoming traffic when attempting a left turn at an intersection on a green light. The supervising driver was found negligent for failing to provide instruction to prevent the maneuver and avoid the collision. The duty of reasonable care requires a supervising driver to actively monitor the student driver's conduct, surrounding roadway conditions and to be capable of responding to foreseeable hazards in real time. Because the standard is of reasonable care under the circumstances, the level of vigilance required depends on the foreseeability and the risk involved in the driving situation.

In Mr. Johnson's case, unlike the supervising driver in *Kostecky*, who was a parent, Jim Dugan was a licensed driving instructor. Mr. Dugan's status as an instructor, as well as licensing requirements under *Cal. Veh. Code* § 11104 (Deering 2026) or *Cal. Veh. Code* § 11105.1 does not alter his duty of care but does inform what conduct is considered reasonable supervision under

the circumstances. Because driving schools are required to provide a vehicle equipped with proper training equipment including a functional foot brake on the passenger side under *Cal. Veh. Code* § 11102(a)(2)(A) (Deering 2026), a reasonably prudent instructor could be expected to utilize such means of intervention when a hazard is foreseeable. It could also be expected to exercise greater attentiveness during foreseeable moments of heightened risk, such as during known risky maneuvers like left turns across oncoming traffic. In *Kostecky,* a parent supervising a permitted driver was found potentially liable for failing to intervene to prevent unsafe driving. Here, Mr. Dugan was not a lay supervising passenger but a trained driving instructor with both specialized knowledge and access to dual-control safety equipment. A trier of fact could find that a reasonably prudent instructor would have recognized the developing hazard and intervened through verbal warning or the use of the secondary brake in order to prevent the collision.

Defense may argue that Mr. Dugan satisfied his duty of care by providing adequate instruction and supervision under the circumstances. Depending on evidence, a trier of fact could find that Mr. Dugan reasonably relied on Ms. Farley to safely complete the turn after providing adequate instruction, including only to proceed when the intersection was clear. Additionally, defense may argue that the instructor's decision not to engage the secondary brake was a reasonable response to a rapidly developing situation. A sudden application of the brake during Ms. Farley's turn could have interfered with the vehicle's trajectory mid turn, causing it to stop in a position that increased the risk of collision. Faced with competing hazards, a reasonable instructor could have surmised that refraining from utilizing the secondary brake was the safer of the two choices. A trier of fact could find that Mr. Dugan's conduct did not fall below the standard of duty to supervise or intervene. Under these defenses, Mr. Dugan's conduct may be viewed as consistent with that of a reasonably prudent instructor.

Mr. Dugan may have breached his duty of care by failing to adequately supervise and intervene when Ms. Farley initiated an unsafe left turn into oncoming traffic. As in *Kostecky*, the failure to observe the approaching hazard in time to respond may support a finding of negligence. However, the reasonableness of Mr. Dugan's conduct will likely be disputed. Therefore, while Mr. Johnson does have a possible cause of action against Mr. Dugan for negligence based on his failure to provide adequate supervision and intervening, it will depend on whether a trier of fact finds his responses and actions fell below the standard of a reasonable instructor.

Issue III

Vicarious liability is governed by the doctrine of respondeat superior which provides that an employer or principal is liable for the negligent acts of its employee or agent that were committed within the course and scope of employment or agency. See *Le Elder v. Rice*, 21 Cal. App. 4th 1604 (1994). The doctrine requires an employee-employer or principal-agent relationship and does not apply where the alleged tortfeasor is not acting as an employee or agent of the defendant at the time of the negligent acts.

Vicarious liability requires a recognized legal relationship, such as agency or employment, and is not established solely by a supervisory or instructional relationship. In *Roberts v. Craig*, 124 Cal. App. 2d 202 (1954), the court declined to extend imputed liability based on a supervising driving arrangement and instead treated the relationship as giving rise only to common law duty of reasonable care, measured by what a reasonably prudent instructor would have done under the same or similar circumstances, not an agency relationship sufficient to establish vicarious liability.

In Mr. Johnson's case, Pat Farley, a student driver operating under a learner's permit, was not acting as an agent or employee of Jim Dugan or the Dugan Driving Academy at the time of the incident, but instead was operating the vehicle for her own training and license requirement purposes. Because the driving supervisory relationship does not create any agency relationship for purposes of liability, there is no basis to impute Farley's negligence to Dugan under respondeat superior principles.

Defense may argue, as in *Roberts v. Craig,* that Dugan was a passenger in the vehicle and therefore should not be held liable for Ms. Farley's actions or a failure to intervene. Under this reasoning, liability should not be imposed due to lack of agency. However, as in *Roberts v. Craig,* this argument is likely unpersuasive. Mr. Dugan was a licensed driving instructor actively supervising a permitted driver and was under a statutory obligation to exercise immediate supervision under *Cal. Veh. Code* § 12509. A court would likely reject this characterization of Mr. Dugan's role in the vehicle at the time of the incident.

Therefore, vicarious liability cannot be imposed to Mr. Dugan for Ms. Farley's negligent acts or omissions as a matter of law.

CONCLUSION

Mr. Johnson has viable causes of action against both Pat Farley and Jim Dugan. Ms. Farley may be found negligent per se under *Cal. Veh. Code* § 21801(a) and *In re Kirk*. Her statutory violation gives rise to a rebuttable presumption of negligence under *Cal. Evid. Code* § 669. Vicariously liability cannot be imputed to Mr. Dugan as a matter of law. However, he may be subject to direct liability for negligent supervision under *Cal. Veh. Code* § 12509(d) and *Kostecky v. Henry.* Under this standard, a trier of fact could find liability if a reasonably prudent instructor would have intervened by providing clear instruction to avoid the hazard or using additional safety measures available, such as the secondary brake. At the same time, a trier of fact could also find Mr. Dugan's response under the escalating situation to be reasonable. Therefore, while Ms. Farley's liability is grounded in negligence per se and supported by a statutory violation, Mr. Dugan's potential liability for negligent supervision is much more fact-dependent and subject to further scrutiny. Ultimately, under California's comparative negligence system established in *Liv v. Yellow Cab*, any recovery against both Ms. Farley and Mr. Dugan may be reduced to the extent of Mr. Johnson's own conduct that contributed to the collision.

RECOMMENDATIONS

1. Before recommending the client files claims against Ms. Farley and Mr. Dugan, the office should ascertain the following information regarding Mr. Johnson.
    a. The speed at which Mr. Johnson was traveling at the time of the incident.
    b. Mr. Johnson's driving history and record including any previous major citations or involvement in major collisions prior to this incident.
    c. Any evasive measures taken by Mr. Johnson to avoid colliding with Ms. Farley.

    Under California's comparative negligence system, any actions of Mr. Johnson that may have contributed to the accident may reduce Ms. Farley and Mr. Dugan's fault proportionally. See *Liv v. Yellow Cab Co*.

2. The office should request copies of Mr. Johnson's medical records.
3. The office should determine if Mr. Dugan holds a valid instructor license. Under *Cal. Veh. Code* § 11105.1, a driving school instructor is subject to holding a valid license issued by the DMV, and qualification requirements under *Cal. Veh. Code* § 11104. Lack of proper licensing could strengthen claims. More research is needed.
4. The office should evaluate if Mr. Johnson has a viable cause of action against Dugan Driving Academy under *Cal. Civ. Code* § 2338. More research is needed.
5. The office should determine whether the secondary brake was operational at the time of the collision and whether its use would have been reasonable under the circumstances as this could heavily inform whether breach of duty of supervision occurred. An inoperable secondary brake may constitute a statutory violation and possibly strengthen claims against Dugan Driving Academy. More research is needed.
6. The office should determine and establish who signed Pat Farley's application for a license. Under *Cal. Veh. Code* § 17707 and 17708, the parents and/or signatory of a minor learning driver may be held jointly liable for damages proximately resulting from the negligent act of the minor and determine if making such signatory jointly liable is necessary.