



ASSOCIATION OF
SOUTHERN CALIFORNIA
DEFENSE COUNSEL

2520 Venture Oaks Way, Suite 150 • Sacramento, CA 95833
(800) 564-6791 • (916) 239-4082 • (916) 924-7323 – Fax
ascdc@camgmt.com • www.ascdc.org

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May 10, 2023

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Re: ***Romero v. Los Angeles Rams***

Court of Appeal Case No. B310152

Request for Publication; Opinion filed April 27, 2023

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Dear Presiding Justice Stratton and Associate Justices:

Pursuant to California Rules of Court, rules 8.1105 and 8.1120, the Association of Southern California Defense Counsel (ASCDC) requests that this court publish its opinion in *Romero v. Los Angeles Rams* (Apr. 27, 2023, No. B310152) (*Romero*).

Interest of the Association of Southern California Defense Counsel

ASCDC is the nation's largest and preeminent regional organization of lawyers who specialize in defending civil actions. It has over 1,100 attorneys in Central and Southern California, among whom are some of the leading trial and appellate lawyers of California's civil defense bar. The ASCDC is actively involved in assisting courts on issues of interest to its members. In addition to representation in appellate matters, the ASCDC provides its members with professional fellowship, specialized continuing legal education, representation in legislative matters,

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and multifaceted support, including a forum for the exchange of information and ideas. ASCDC's members routinely defend clients involved in cases where defendants seek summary judgment in personal injury actions. As such, they have a strong interest in development of the law regarding the proper causation standard for a motion for summary judgment and the trial courts' discretion to grant summary judgment on this basis.

No party has paid for or drafted this letter.

The Romero decision merits publication because it provides useful guidance to courts regarding when summary judgment is appropriate on causation principles.

A Court of Appeal opinion should be certified for publication if it explains an existing rule of law, contributes to the legal literature explaining a common law rule, or reaffirms a principle of law not applied in a recently reported decision. (Cal. Rules of Court, rule 8.1105(c)(3), (7) & (8).) This court's opinion satisfies all of these criteria.

The court's opinion contains a thorough and detailed analysis of the law regarding when summary judgment is appropriate on causation principles in a nonmedical context and will provide guidance to courts on this issue. Additionally, the opinion demonstrates that the trial court properly granted summary judgment on this basis. As such, it would contribute to the legal literature on these issues and should be published. (See Cal. Rules of Court, rule 8.1105(c)(7).)

The court's discussion of the causation standard to be applied on summary judgment warrants publication because the court explains an existing rule of law. (See Cal. Rules of Court, rule 8.1105(c)(3).) This court's opinion clearly states the proper standard for causation in a personal injury action on a motion for summary judgment. (Typed opn. 12–13.) The court assumed that defendants had a duty to take measures put forth by plaintiff—training staff to enforce the Fan Code of Conduct, maintaining physical separation between plaintiff and assailants, and having better communication between defendant and law enforcement—to prevent an altercation between plaintiff and assailants from occurring, and that defendants breached that duty by failing to take such measures. (Typed opn. 10, 12.) The court affirmed the trial court's finding of no causation. While plaintiffs agreed that proving causation required showing that defendant's actions were a “substantial factor” in causing plaintiff's injuries, they argued that the trial court applied the wrong standard, and that the test was a broad one, “‘requiring only that the contribution of the individual cause be more than negligible or theoretical’” where

“a very minor force that does cause harm is a substantial factor.” (Typed opn. 12.) The court disagreed with this standard and held the proper standard to be, that “[t]he plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant.” (Typed opn. 13, quoting *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205–1206.) Thus, in this case, the plaintiff was required “to prove it was “more probable than not” that additional security precautions would have prevented the attack.” (*Ibid.*, quoting *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 776.)

When applying this standard, the court looked at the record and facts of the case to determine whether there was room for a reasonable difference of opinion, based on the undisputed facts, that it was “more likely than not” that defendant’s conduct was a cause in fact of plaintiff’s harm. (See typed opn. 15, 17, 19.) *Romero* offers guidance to other courts by explaining the proper standard on which to grant a summary judgment motion based on causation in this context.

The Romero decision reaffirms that summary judgment may be granted based on causation principles.

This opinion also warrants publication because it demonstrates that the trial court properly granted summary judgment based on causation, a principle that has not been applied in a recently reported decision. (See Cal. Rules of Court, rule 8.1105(c)(8).) Published Court of Appeal opinions affirming summary judgment based on causation are rare. We have been unable to find a published opinion in the past five years where summary judgment was affirmed based on causation principles in this context. However, there have been multiple unpublished opinions in the past five years that have affirmed summary judgment on this basis. (See, e.g., *Graham v. Fehr & Peers* (Feb. 23, 2022, H046067) 2022 WL 535211 [nonpub. opn.]; *Thompson v. Crusader Insurance Company* (Mar. 1, 2019, B280559) 2019 WL 987928 [nonpub. opn.]; *Schneider v. Ralphs Grocery Company* (Oct. 2, 2018, B282692) 2018 WL 4709690 [nonpub. opn.].) Published case law is unrepresentative of how the Court of Appeal is deciding these cases, and this decision would demonstrate to trial courts that summary judgment can be appropriate based on causation principles.

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Associate Justice Elizabeth A. Grimes
Associate Justice Victor Viramontes
May 10, 2023

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In sum, it is rare that summary judgment is affirmed based on causation in a published opinion. This opinion explains the proper standard for granting summary judgment based on causation principles and will offer guidance to courts when deciding similar cases in the future. For these reasons, this court should publish its opinion in *Romero*.

Respectfully submitted,

**ASSOCIATION OF SOUTHERN CALIFORNIA
DEFENSE COUNSEL**

By: 

Nicole P. Hood

STEVEN S. FLEISCHMAN (SBN 169990)
Horvitz & Levy LLP
3601 West Olive Ave., 8th Floor
Burbank, CA 91505

NICOLE P. HOOD (SBN 345986)
Horvitz & Levy LLP
505 Sansome Street, Suite 375
San Francisco, CA 94111

cc: See attached Proof of Service

PROOF OF SERVICE

**Romero v. Los Angeles Rams
Case No. B310152**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On May 10, 2023, I served true copies of the following document described as **Publication Request** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 10, 2023, at Burbank, California.



Ryan McCarthy

SERVICE LIST
Romero v. Los Angeles Rams
Case No. B310152

<p>Heather L. Mills Skane Wilcox LLP 1055 West 7th St., Ste. 1700 Los Angeles, CA 90017 T: (213) 452-1200 F: (213) 452-1201 E: hmills@skanewilcox.com</p> <p>Gina E. Och Murchison & Cumming 801 South Grand Ave., 9th Fl. Los Angeles, CA 90017 T: (213) 623-7400 F: (213) 623-6336 E: goch@murchisonlaw.com</p>	<p>Counsel for Defendant and Respondent CONTEMPORARY SERVICES CORPORATION</p> <p><i>via TrueFiling</i></p>
<p>Jeffrey M. Lenkov Manning & Kass, Ellrod, Ramirez, Trestler LLP 801 South Figueroa St., 15th Fl. Los Angeles, CA 90017-5554 T: (213) 624-6900 F: (213) 624-6999 E: jml@manningllp.com</p>	<p>Counsel for Defendant and Respondent LOS ANGELES RAMS</p> <p><i>via TrueFiling</i></p>
<p>Oscar Ramirez Blair & Ramirez LLP 515 S. Flower St., 19th Fl. Los Angeles, CA 90071 T: (213) 568-4000 F: (213) 568-4100 E: oscar@blairramirez.com</p>	<p>Counsel for Plaintiffs and Appellants ENRIQUE ROMERO; KARINA ROMERO; ALLANAH ROMERO</p> <p><i>via TrueFiling</i></p>