IN THE SUPREME COURT OF THE STATE OF GEORGIA

CASE NUMBER S19G1612

NANCY QUYNN, AS ADMINISTRATOR OF THE ESTATE OF BRANDON LANIER, DECEASED,
Appellant,

v.

RILEY JAKE HULSEY AND TRIEST AG GROUP, INC.,
Appellees.

COURT OF APPEALS CASE NO. A19A0689

BRIEF OF AMICUS CURIAE THE GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF APPELLEES' MOTION FOR RECONSIDERATION

Prepared by:

Brannon J. Arnold
Georgia Bar No. 218034
P. Shane O'Neill
Georgia Bar No. 297849
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
3344 Peachtree Road, Suite 2400
Atlanta, Georgia 30326
(404) 876-2700
barnold@wwhgd.com
soneill@wwhgd.com

On behalf of the Georgia Defense Lawyers Association

Jeffrey S. Ward, President
Elissa Haynes, Chair
Philip Thompson, Co-Vice Chair
Amicus Curiae Brief Committee
GEORGIA DEFENSE LAWYERS ASSOCIATION
P.O. Box 60967
Savannah, Georgia 31420
(912) 349-3169

INTEREST OF AMICUS CURIAE

The Georgia Defense Lawyers ("GDLA") is an association of more than 950 Georgia lawyers, including sole practitioners and members of law firms of all sizes, who engage in litigation, primarily for defendants in civil lawsuits. The GDLA is dedicated to, among other purposes, supporting and improving the civil defense bar, improving the adversary system of jurisprudence in our courts, eliminating court congestion and delay in litigation, and otherwise promoting improvements in the administration of justice. Pertinent here, the GDLA's membership consists of lawyers who regularly represent both employers and their employees facing direct and vicarious negligence claims.

Given its membership, the GDLA has a substantial interest in the question presented by Appellees' Motion for Reconsideration of the Court's Opinion, issued November 2, 2020 (**Ex. 1**): whether the Court should reconsider its holding that Georgia's apportionment statute abrogated the Respondeat Superior Rule.

INTRODUCTION

This brief focuses on a single issue upon which the Court's holding turns: whether the Court's conclusion that the Respondeat Superior Rule is not a "defense" under OCGA § 51-12-33(e) is correct. If it is not, the apportionment statute does not abrogate the Rule.

The Court concluded that the Rule is not a "defense" under OCGA § 51-12-33(e) because "it did not allow an employer-defendant to avoid liability for any portion of the plaintiff's damages." The GDLA respectfully submits that this conclusion is wrong for the following reasons.

First, the Court's conclusion that the Rule is not a "defense" under OCGA § 51-12-33(e) is inconsistent with its plain meaning. In interpreting "defense," the Court did not cite any sources—dictionaries, case law, or otherwise. Yet when those sources are considered, there can be only one conclusion: a "defense" defeats a claim, the Rule defeats claims, and thus the Rule is a "defense."

Second, under scrutiny, the Court's interpretation of "defense" to the contrary does not hold up. Rather, it violates various principles of statutory interpretation. It excludes affirmative defenses from the scope of "defense." It renders the Legislature's use of "immunities" in OCGA § 51-12-33(e) superfluous. And it will lead to absurd results, including the abrogation of statute of limitations and various other defenses.

Third, even under the Court's own incorrect interpretation of "defense," the Rule still constitutes a "defense" because it could (and arguably did) allow an employer-defendant to avoid liability for damages. In this case, the jury apportioned 50 percent fault to the plaintiff and 50 percent to the employee and vicariously liable employer. If the direct negligence claims against the employer had reached the jury, it may have caused the jury to allocate less fault to the plaintiff, which would have increased the employer's liability from zero to the entire judgment. This was the very reason why the Court concluded that the apportionment statute conflicted with the Rule.

Accordingly, the Court should determine that the Rule is a "defense" under OCGA § 51-12-33(e) and grant Appellees' Motion for Reconsideration. Leaving the Opinion as is will leave Georgia law in disarray.

FACTS

1. Brandon Lanier was struck and killed by a truck driven by Riley Hulsey and owned by Hulsey's employer, TriEst Ag Group, Inc. Ex. 1, p. 2. Nancy Quynn, as administrator of Lanier's estate, asserted negligence claims against Hulsey and TriEst. *Id.* Prior to trial, the court granted partial summary judgment to TriEst on Quynn's claims for punitive damages and negligent entrustment, hiring, training, and supervision. *Id.*

After a trial on Quynn's remaining negligence claims, the jury found Hulsey and TriEst 50 percent at fault and Lanier 50 percent at fault. *Id.* As a result, Georgia's apportionment statute precluded Quynn from recovering damages on behalf of Lanier's estate. *Id.*

2. On appeal, the Court of Appeals affirmed. In doing so, it relied on the Respondeat Superior Rule ("Rule"), which provides:

> [I]f a defendant employer concedes that it will be vicariously liable under the doctrine of respondeat superior if its employee is found negligent, the employer is entitled to summary judgment on the plaintiff's claims for negligent entrustment, hiring, training, supervision, and retention, unless the plaintiff has also brought a valid claim for punitive damages against the employer for its own independent negligence.

Hosp. Auth. of Valdosta v. Fender, 342 Ga. App. 13, 21 (2017).

3. On certiorari, this Court looked to determine whether Georgia's apportionment statute, OCGA § 51-12-33, abrogated the Rule. It concluded that it did and reversed the Court of Appeal's decision.

At the onset, the Court concluded that the Rule conflicts with the apportionment statute because it can affect the allocation of fault:

> Adherence to the Respondeat Superior Rule would preclude the jury from apportioning fault to the employer for negligent entrustment, hiring, training, supervision and retention. Any allocation of relative fault among those persons at fault, which may include the plaintiff, could differ if one person's fault was excluded from consideration. It follows that the Respondeat Superior

> Rule is inconsistent with the plain language of the apportionment statute.

Ex. 1, pp. 8-9.

In reaching its holding, the Court had to decide whether the Rule constituted either a "defense or immunity" under OCGA 51-12-33(e), which provides that "[n]othing in this Code section shall eliminate or diminish any defenses or immunities which currently exist, except as expressly stated in this Code section."

The Court concluded that the Rule was not a "defense or immunity." Despite the importance of this conclusion, the Court addressed it in one uncited sentence, stating "[t]he Respondeat Superior Rule cannot be fairly understood as a defense or immunity as it did not allow an employer-defendant to avoid liability for any portion of the plaintiff's damages." *Id.* at p. 17.

Consequently, if the Court were to conclude on reconsideration that the Rule constitutes a "defense" under OCGA § 51-12-33(e), it would have to revise its holding—the apportionment statute would not abrogate the Rule.

ARGUMENT

The Court's conclusion that the Respondeat Superior Rule does not constitute a "defense" under OCGA § 51-12-33(e) is inconsistent with the statute's plain language, violates principles of statutory interpretation, and will lead to absurd results.

A. The Court's conclusion that the Respondeat Superior Rule does not constitute a "defense" under OCGA § 51-12-33(e) is inconsistent with its plain meaning.

In Georgia, the "cardinal rule" for statutory interpretation is to ascertain and apply the General Assembly's intent. *Judicial Council of Georgia v. Brown & Gallo, LLC*, 288 Ga. 294, 296 (2010). If the statutory text is "clear and unambiguous," this endeavor can begin and end with the statute's plain language. *Deal v. Coleman*, 294 Ga. 170, 173 (2013). In performing a plain language reading, a court must afford the statutory text its "plain and ordinary meaning," "view the statutory text in the context in which it appears," and "read the statutory text in its most natural and reasonable way." *Id.*

To aid in this effort, courts can look to "other provisions of the same statute," "the structure and history of the whole statute," "other law," and additional sources, including dictionaries. *See Fed. Deposit Ins. Corp. v. Loudermilk*, 305 Ga. 558, 562 (2019). In fact, when it comes to Georgia's apportionment statute, this Court has consulted Black's Law Dictionary on at least two separate occasions to aid in its plain language interpretation of certain terms. *See Loudermilk*, 305 Ga. at 563 (citing Black's Law Dictionary to interpret the meaning of "property" in OCGA § 51-12-33(b)); *Zaldivar v. Prickett*, 297 Ga. 589, 596 (2015) (citing Black's Law Dictionary to interpret the meaning of "fault" in OCGA § 51-12-33).

Here, after performing this inquiry with the assistance of additional sources, the result is clear: the Rule is a "defense" under OCGA § 51-12-33(e). To reach this conclusion, there are two questions to address: what does "defense" mean and does it include the Rule?

First, to determine what "defense" means, one should start with the statute. Georgia's apportionment statute, enacted in 2005, created a new framework for apportioning fault in the State. *See* OCGA § 51-12-33. In doing so, the General Assembly was careful not to "eliminate or diminish" any "defenses or immunities" already in existence:

> Nothing in this Code section shall eliminate or diminish any defenses or immunities which current exist, except as expressly stated in this Code section.

OCGA § 51-12-33(e). The statute does not define "defenses."

Fortunately, other sources provide guidance. Black's Law Dictionary defines "defense" as "a defendant's stated reason why the plaintiff or prosecutor has no valid case." Black's Law Dictionary (11th ed. 2019). Webster's Dictionary provides similar meanings in the context of the law: "the denial, answer, or plea" or "the collected facts and method adopted by a defendant to protect and defend against a plaintiff's action."[1] These definitions counsel a broad scope of the term.

[1] "Defense," *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/defense (last accessed November 12, 2020).

What is more instructive, however, is to look to the meaning of "affirmative defense," as there can be no doubt that the General Assembly intended for "defenses" to include "affirmative defenses." Said another way, the definition of "defenses" cannot exclude "affirmative defenses."

An "affirmative defense" is a reason for defeating a claim, even if all the allegations in the complaint are true. *Fed. Deposit Ins. Corp. v. Bulldog Truck & Equip. Sales, LLC*, No. 1:12-CV-4039-CAP, 2014 WL 12623016, at *6 (N.D. Ga. Jan. 17, 2014) (providing that an affirmative defense is "a defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's claim, even if all of the allegations in the complaint are true"). Likewise, Black's Law Dictionary defines "affirmative defense" as "[a] defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true." Black's Law Dictionary (11th ed. 2019).

As such, a "defense" must be interpreted as a reason for defeating a claim. To do otherwise, say interpreting it to require an employer-defendant to avoid liability for a portion of the plaintiff's damages (as the Court did here), would necessarily exclude "affirmative defenses" from its scope, as discussed more below.

Second, with the definition of "defense" settled, the next question is whether the Rule falls under its scope—it does. The Rule defeats claims; it is not merely an

evidentiary rule. Specifically, once vicarious liability is conceded and the plaintiff does not have a claim for punitive damages against the employer, the employer is "entitled to *summary judgment* on the plaintiff's claims for negligent entrustment, hiring, training, supervision, and retention." *Terry v. Old Hat Chimney, LLC*, 351 Ga. App. 673, 674 (2019) (emphasis added).

In practical terms, the Rule acts no different from an affirmative defense. Assume a plaintiff alleged negligence against a driver and negligent hiring against the driver's employer, but (for some reason) did not want the employer to be vicariously liable for the driver's actions, and thus, did not allege that the employer was vicariously liable. Once the employer established that the driver was acting in the course and scope and vicarious liability applied, the employer would be entitled to summary judgment on the negligent hiring claim under the Rule.

Given this, the Court should reconsider its Opinion and conclude that the Rule constitutes a "defense" under OCGA § 51-12-33(e). This interpretation is consistent with the term's plain meaning and the General Assembly's intent. It also will not lead to any absurd or unintended negative consequences in the law. In fact, as shown below, this is the only viable option, as the current interpretation violates principles of statutory interpretation and will leave Georgia law in disarray.

B. The Court's interpretation of "defense" under OCGA § 51-12-33(e) does not withstand scrutiny.

The Court concluded that "[t]he Respondeat Superior Rule cannot be fairly understood as a defense or immunity" because "it did not allow an employer-defendant to avoid liability for any portion of the plaintiff's damages." Ex. 1, p. 17. This means that the Court defined "defense" as something that "allow[s] a [defendant] to avoid liability for any portion of the plaintiff's damages." *Id.*

In addition to being inconsistent with the statute's plain meaning, as explained above, this definition cannot stand because it excludes affirmative defenses from its scope, renders the statute's use of "immunities" superfluous, and will lead to absurd results.

1. It excludes "affirmative defenses."

The Court's definition of "defense" excludes "affirmative defenses" because an affirmative defense does not always "allow a defendant to avoid liability for any portion of the plaintiff's damages." This is true of all defenses. Defenses defeat claims, as shown above, not necessarily damages. For example, a defendant could prevail on a statute of limitations motion for summary judgment on one claim, while another claim entitles the plaintiff to the exact same damages. There can be no question that the General Assembly did not intend to exclude "affirmative defenses" from its use of "defenses" in OCGA § 51-12-33(e).

2. It renders the statute's use of "immunities" superfluous.

In interpreting statutes, courts "should give a sensible and intelligent effect to every part of a statute and not render any language superfluous." *Berryhill v. Georgia Cmty. Support & Sols., Inc.*, 281 Ga. 439, 442 (2006). In *Berryhill*, this Court concluded that a broad construction of the term "includes" in OCGA § 9-11-11.1(b) would render other phrases in OCGA § 9-11-11.1(c) superfluous and, as such, construed the term narrowly. *Id.*

Here, the Court should follow *Berryhill's* lead. When the General Assembly wrote OCGA § 51-12-33(e) to include both "defenses" and "immunities," it did so for a reason—it did not intend for both to mean the same thing. Yet, in interpreting the meaning of "defenses or immunities," the Court attributed the same definition to both. That cannot be, as it renders one of the terms superfluous.

In giving both terms the same definition, it is clear that the Court defined "defenses" to mean "immunities." Black's Law Dictionary defines "immunity" as "[a]ny exemption from a duty, liability, or service of process; esp., such an exemption granted to a public official or governmental unit." Black's Law Dictionary (11th ed. 2019); *see also, e.g.*, *Dep't of Pub. Safety v. Johnson*, 343 Ga. App. 22, 22 (2017) (providing that "[a]ny suit against the State barred by sovereign immunity is subject to dismissal . . . for lack of subject matter jurisdiction"); OCGA § 50-21-24 ("the state shall have no liability for losses resulting from"

certain acts). This definition nearly mirrors the definition the Court afforded to both "defenses" and "immunities." Thus, the Court's definition of "defenses" renders the statute's use of "immunities" superfluous.

To avoid this result, "defenses" and "immunities" must be interpreted to mean different things. The interpretation of "defenses" offered above would accomplish that. And, candidly, it would be consistent with most attorneys' initial reaction to the terms. An "immunity" insulates a defendant from liability (damages). A "defense" defeats a claim. These definitions are similar, but materially different.

3. It will lead to absurd results.

Courts have a "duty to reject a construction of a statute which will result in unreasonable consequences or absurd results not contemplated by the legislature." *Haugen v. Henry Cty.*, 277 Ga. 743, 746 (2004). Yet, the Court's interpretation of "defense" would do just that.

If left unaltered, the Court's interpretation of "defense" would result in the abrogation of the statute of limitations for a negligence claim. For instance, assume the following fact pattern:

A plaintiff files suit against a driver for negligence and seeks to hold the driver's employer vicariously liable. Later, the plaintiff amends her complaint to assert direct negligence claims against the driver's employer. But those direct

negligence claims were untimely under the applicable statute of limitations. As a result, the employer receives partial summary judgment on the direct negligence claims. The plaintiff goes to trial on the negligence/vicarious liability claim. The jury returns a verdict apportioning 50 percent of fault to the plaintiff and 50 percent to the driver/employer.

This scenario would put the case in the exact same procedural posture as the instant matter. The plaintiff would argue that the apportionment statute abrogated the statute of limitations for the same reasons. The defendant would argue that the statute of limitations is a "defense" under OCGA § 51-12-33(e). Yet under the Court's reasoning, it would not be. Just as the Court reasoned that here the Rule was not a "defense" because it "did not allow an employer-defendant to avoid liability for any portion of the plaintiff's damages," in the scenario above, the statute of limitations also "did not allow an employer-defendant to avoid liability for any portion of the plaintiff's damages." Therefore, the Court would be left with no choice but to conclude that the apportionment statute abrogated the statute of limitations. Obviously, such a result would be absurd and not what the General Assembly intended.[2]

[2] The GDLA also submits that the Court's interpretation of "defense" in OCGA § 51-12-33(e) is neither in harmony with the existing law nor strict, given that it is in derogation of the common law. *See Heard v. Neighbor Newspapers, Inc.*, 259 Ga. 458, 458 (1989) ("Statutes in derogation of the common law are construed strictly."); *Grange Mut. Cas. Co. v. Woodard*, 300 Ga. 848, 852 (2017) (statutes are to be "construed in connection and in harmony with the

C. Even if left unaltered, the Court's interpretation of "defense" under OCGA § 51-12-33(e) actually leads to the opposite holding.

For the reasons stated above, the Court must reconsider its interpretation of "defense" under OCGA § 51-12-33(e). Yet, even if it does not, it should still reach the opposite result here based on its own reasoning.

The Court's reasoning for why the Rule is not a "defense" and why the Rule conflicts with the apportionment statute clash. On one hand, the Court concluded that the Rule is not a "defense" because it does "not allow the employer-defendant to avoid liability for any portion of the plaintiff's damages." Ex. 1, p. 17.

On the other hand, however, the Court concluded that the Rule conflicts with the apportionment statute because it can affect the allocation of fault: "[a]dherence to the Respondeat Superior Rule would preclude the jury from apportioning fault to the employer for negligent entrustment, hiring, training, supervision, and retention." *Id.* at pp. 8-9

But if the Rule can affect the allocation of fault, then it can also "allow the employer-defendant to avoid liability." The case at issue exemplifies this. The jury apportioned 50 percent fault to Hulsey/TriEst and 50 percent fault to Lanier. If the direct negligence claims had not been summarily adjudicated under the Rule, the jury might have attributed more fault to Hulsey and TriEst, which would have

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existing law"). But since the Court addressed both of these arguments in the Opinion, the GDLA will not rehash them here.

significantly changed TriEst's liability—it would have gone from zero to the entire judgment. The Court based its holding on this very possibility. Thus, under the Court's own reasoning, it must conclude that the Respondeat Superior Rule constitutes a "defense" under OCGA § 51-12-33(e).

CONCLUSION

In determining that the Respondeat Superior Rule is not a "defense" under OCGA § 51-12-33(e), the Court, respectfully, erred. Under the statute's plain language, the Rule is a "defense" because it defeats claims. The Court's conclusion to the contrary does not hold up under scrutiny and would leave Georgia law in disarray. Appellee's Motion for Reconsideration should be granted.

Respectfully submitted this the 13th day of November, 2020.

GEORGIA DEFENSE LAWYERS ASSOCIATION

Jeffrey S. Ward, President
Elissa B. Haynes, Chair
Philip Thompson, Co-Vice Chair
Amicus Curiae Brief Committee
P.O. Box 60967
Savannah, Georgia 34120
(912) 349-3169

WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

/s/ Brannon J. Arnold
Brannon J. Arnold
Georgia Bar No. 218034
P. Shane O'Neill
Georgia Bar No. 297849
3344 Peachtree Road, Suite 2400
Atlanta, Georgia 30326
(404) 876-2700
barnold@wwhgd.com
soneill@wwhgd.com

On behalf of Amicus Curiae
Georgia Defense Lawyers Association

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the foregoing **BRIEF OF AMICUS CURIAE THE GEORGIA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF APPELLEES' MOTION FOR RECONSIDERATION** upon all parties electronically via the Court's SCED system under Georgia Supreme Court Rule 14 and by depositing a copy of same in the United States Mail, postage pre-paid, addressed as follows:

Katherine L. McArthur, Esq.
Caleb Walker, Esq.
THE MCARTHUR LAW FIRM
6055 Lakeside Commons Drive
Suite 400
Macon, Georgia 31210

Matthew G. Moffett, Esq.
Chris J. Perniciaro, Esq.
GRAY, RUST, ST. AMAND, MOFFETT & BRIESKE, L.L.P.
950 East Paces Ferry Road
Suite 1700-Salesforce Tower Atlanta
Atlanta, Georgia 30326

This 13th day of November, 2020.

GEORGIA DEFENSE LAWYERS ASSOCIATION

Jeffrey S. Ward, President
Elissa B. Haynes, Chair
Philip Thompson, Co-Vice Chair
Amicus Curiae Brief Committee
P.O. Box 60967
Savannah, Georgia 34120
(912) 349-3169

WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

/s/ Brannon J. Arnold
Brannon J. Arnold
Georgia Bar No. 218034
P. Shane O'Neill
Georgia Bar No. 297849
3344 Peachtree Road, Suite 2400
Atlanta, Georgia 30326
(404) 876-2700
barnold@wwhgd.com
soneill@wwhgd.com

On behalf of Amicus Curiae
Georgia Defense Lawyers Association

EXHIBIT 1

In the Supreme Court of Georgia

Decided: November 2, 2020

S19G1612. QUYNN v. HULSEY et al.

ELLINGTON, Justice.

We granted certiorari in this wrongful death and personal injury case to consider whether the Court of Appeals erred by holding that TriEst Ag Group, Inc., the employer of the driver whose truck struck and killed the decedent, was entitled to summary judgment on the estate's claims of negligent entrustment, hiring, training, and supervision because TriEst admitted the applicability of respondeat superior and the estate was not entitled to punitive damages. For the reasons set forth below, we conclude that OCGA § 51-12-33, also known as the apportionment statute, has abrogated the decisional law rule on which the Court of Appeals relied in affirming the trial court's grant of summary judgment. Accordingly, we reverse.

The record shows that Brandon Lanier was struck and killed by a truck driven by Riley Hulsey and owned by Hulsey's employer, TriEst, while Lanier was attempting to cross a street in Tifton. Nancy Quynn, as administrator of Lanier's estate, brought this wrongful death and personal injury action against Hulsey and TriEst. The trial court granted partial summary judgment to TriEst on Quynn's claims for punitive damages and for negligent entrustment, hiring, training, and supervision. After a trial on Quynn's remaining negligence claims, the jury found Hulsey and TriEst 50 percent at fault and Lanier 50 percent at fault, and the trial court entered judgment on the verdict. Quynn was therefore precluded from recovering damages on behalf of Lanier's estate. See OCGA § 51-12-33 (g) ("[T]he plaintiff shall not be entitled to receive any damages if the plaintiff is 50 percent or more responsible for the injury or damages claimed.").

Quynn appealed to the Court of Appeals and contended, among other things, that the trial court erred in granting partial summary judgment to TriEst on its claims for negligent entrustment, hiring,

training and supervision. In an unpublished opinion, the Court of Appeals affirmed, relying on that court's precedent to hold that TriEst was entitled to partial summary judgment

> [b]ecause TriEst admitted the applicability of respondeat superior, and the trial court granted summary judgment to TriEst on the estate's punitive damages claim against TriEst,[1] TriEst was entitled to summary judgment on the estate's negligent entrustment, hiring, training and supervision claims[.]

The court rejected Quynn's argument that the apportionment statute required the trier of fact to consider the fault of all persons who contributed to the injury and so superseded the decisional law rule on which the trial court relied.

The decisional law rule at issue, which we will refer to as the "Respondeat Superior Rule," provides:

> [I]f a defendant employer concedes that it will be vicariously liable under the doctrine of respondeat superior[2] if its employee is found negligent, the

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[1] Quynn did not contend on appeal that the trial court erred in granting summary judgment to TriEst on her punitive damages claim.

[2] Under the doctrine of respondeat superior, "[w]hen a servant causes an injury to another, the test to determine if the master is liable is whether or not the servant was at the time of the injury acting within the scope of his employment and on the business of the master." *Hicks v. Heard*, 286 Ga. 864, 865 (692 SE2d 360) (2010) (citation and punctuation omitted). See also OCGA

> employer is entitled to summary judgment on the plaintiff's claims for negligent entrustment, hiring, training, supervision, and retention, unless the plaintiff has also brought a valid claim for punitive damages against the employer for its own independent negligence.

Hosp. Auth. of Valdosta v. Fender, 342 Ga. App. 13, 21 (2) (802 SE2d 346) (2017) (citations omitted). The Respondeat Superior Rule was first adopted by the Court of Appeals in *Willis v. Hill*, 116 Ga. App. 848, 853-868 (5) (b) (159 SE2d 145) (1967), reversed on other grounds, 224 Ga. 263 (161 SE2d 281) (1968). That court has explained as a basis for the rule that because "the employer would be liable for the employee's negligence under respondeat superior, allowing claims for negligent entrustment, hiring, [training] and retention would not entitle the plaintiff to a greater recovery, but would merely serve to prejudice the employer." *MasTec North Am.*

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§ 51-2-2 ("Every person shall be liable for torts committed by his . . . servant by his command or in the prosecution and within the scope of his business, whether the same are committed by negligence or voluntarily."); *Chorey, Taylor & Feil, P.C. v. Clark*, 273 Ga. 143, 144 (539 SE2d 139) (2000) ("When an employee causes an injury to another, the test to determine if the employer is liable [under respondeat superior] is whether the employee was acting within the scope of the employee's employment and on the business of the employer at the time of the injury.").

v. Wilson, 325 Ga. App. 863, 865 (755 SE2d 257) (2014) (citations and punctuation omitted).[3]

To assess whether the Respondeat Superior Rule has been abrogated by the apportionment statute, we first consider the text of OCGA § 51-12-33, which was enacted in its current form in 2005. See Ga. L. 2005, p. 1, § 12. In the construction of "a statute, we afford the text its plain and ordinary meaning, viewed in the context in which it appears, and read in its most natural and reasonable way." *Carpenter v. McMann*, 304 Ga. 209, 210 (817 SE2d 686) (2018) (citation and punctuation omitted).

OCGA § 51-12-33 provides, in pertinent part:

> (a) Where an action is brought against one or more persons for injury to person or property and the plaintiff is to some degree responsible for the injury or damages claimed, the trier of fact, in its determination of the total amount of damages to be awarded, if any, shall determine the percentage of fault of the plaintiff and the judge shall reduce the amount of damages otherwise awarded to the plaintiff in proportion to his or her percentage of fault.

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[3] This Court has not had occasion to either adopt or reject the Respondeat Superior Rule as applied by *Fender, Willis, MasTec* and other decisions of the Court of Appeals. But for the purposes of this opinion only, we will assume that it was a valid doctrine at least before the apportionment statute was enacted.

(b) Where an action is brought against more than one person for injury to person or property, the trier of fact, in its determination of the total amount of damages to be awarded, if any, shall after a reduction of damages pursuant to subsection (a) of this Code section, if any, apportion its award of damages among the persons who are liable according to the percentage of fault of each person. Damages apportioned by the trier of fact as provided in this Code section shall be the liability of each person against whom they are awarded, shall not be a joint liability among the persons liable, and shall not be subject to any right of contribution.

(c) In assessing percentages of fault, the trier of fact shall consider the fault of all persons or entities who contributed to the alleged injury or damages, regardless of whether the person or entity was, or could have been, named as a party to the suit.[4]

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[4] The remainder of OCGA § 51-12-33 provides:
(d) (1) Negligence or fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice not later than 120 days prior to the date of trial that a nonparty was wholly or partially at fault.
(2) The notice shall be given by filing a pleading in the action designating the nonparty and setting forth the nonparty's name and last known address, or the best identification of the nonparty which is possible under the circumstances, together with a brief statement of the basis for believing the nonparty to be at fault.
(e) Nothing in this Code section shall eliminate or diminish any defenses or immunities which currently exist, except as expressly stated in this Code section.
(f) (1) Assessments of percentages of fault of nonparties shall be used only in the determination of the percentage of fault of named parties.
(2) Where fault is assessed against nonparties pursuant to this

These provisions require that "once liability has been established and the damages sustained by the plaintiff have been calculated, the trier of fact must then assess the relative fault of all those who contributed to the plaintiff's injury—including the plaintiff himself—and apportion the damages based on this assessment of relative fault." *Martin v. Six Flags Over Georgia II, L.P.*, 301 Ga. 323, 338 (III) (801 SE2d 24) (2017) (citation omitted).

Where "an action is brought against more than one person for injury to person or property," OCGA 51-12-33 (b) directs that the jury apportion its damage award among persons who are liable according to the percentage of their fault. "Fault," for purposes of OCGA § 51-12-33 (b), "refers to a breach of a legal duty that a defendant owes with respect to a plaintiff that is a proximate cause of the injury for which the plaintiff now seeks to recover damages."

> Code section, findings of fault shall not subject any nonparty to liability in any action or be introduced as evidence of liability in any action.
> (g) Notwithstanding the provisions of this Code section or any other provisions of law which might be construed to the contrary, the plaintiff shall not be entitled to receive any damages if the plaintiff is 50 percent or more responsible for the injury or damages claimed.

Zaldivar v. Prickett, 297 Ga. 589, 595 (1) (774 SE2d 688) (2015).

The claims that are subject to summary judgment based on the Respondeat Superior Rule constitute claims that an employer-defendant breached a legal duty owed to the plaintiff that proximately caused the plaintiff's injury. In the case of negligent entrustment of a vehicle by an employer to an employee, liability is predicated "on a negligent act of the owner in lending his vehicle to another to drive, with actual knowledge that the driver is incompetent or habitually reckless." *CGL Facility Mgmt. v. Wiley*, 328 Ga. App. 727, 731 (2) (b) (760 SE2d 251) (2014) (citation and punctuation omitted). Similarly, claims for negligent hiring, training, supervision, and retention are based on the alleged negligent acts of the employer. See, e. g., *Munroe v. Universal Health Svcs., Inc.*, 277 Ga. 861, 863 (1) (596 SE2d 604) (2004); *Leo v. Waffle House, Inc.*, 298 Ga. App. 838, 841 (2) (681 SE2d 258) (2009).

Thus, the claims encompassed by the Respondeat Superior Rule are claims that the employer is at "fault" within the meaning of the apportionment statute. Adherence to the Respondeat Superior

Rule would preclude the jury from apportioning fault to the employer for negligent entrustment, hiring, training, supervision, and retention. Any allocation of relative fault among those persons at fault, which may include the plaintiff, could differ if one person's fault was excluded from consideration.[5] It follows that the Respondeat Superior Rule is inconsistent with the plain language of the apportionment statute. "[A]s long as legislation does not violate the Constitution, when the Legislature says something clearly — or even just implies it — statutes trump cases." *Couch v. Red Roof Inns, Inc.*, 291 Ga. 359, 364 (729 SE2d 378) (2012). See also *Johns v. Suzuki Motor of Am., Inc.*, ___ Ga. ___ (Case No. S19G1478, decided Oct. 19, 2020) (holding that OCGA § 51-12-33 supplanted pre-2005 decisional law prohibiting comparative negligence in strict product liability claims).

Hulsey and TriEst contend that removing the Respondeat

[5] "[O]nce liability has been established, the calculation of total damages sustained by the plaintiff is the first step, and the allocation of relative fault and award of damages according to that allocation is a distinct second step." *Martin*, 301 Ga. at 338-339 (III).

Superior Rule would undermine Georgia's comparative negligence doctrine. They argue that where an employer admits agency and scope of employment, the plaintiff may recover all the damages to which she is entitled by showing that the employee was negligent and that the employee was more negligent than the plaintiff. See OCGA § 51-12-33 (g). They maintain that evidence necessary to show the employer's negligence, such as its knowledge of its employee's prior misconduct, is not relevant to whether its employee was negligent and that Quynn's claims against TriEst are no more than an attempt to increase the jury damage award through introduction of inflammatory evidence.

We are not persuaded by these arguments. Evidence tending to establish the employer's fault would be of consequence to the determination of the action as the jury is required to consider fault of "the persons who are liable"[6] and "all persons or entities who

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[6] As we recently explained in *Atlanta Women's Specialists, v. Trabue*, __ Ga. __ (3) (Case No. S19G1138, decided Sept. 28, 2020):

> The text of the apportionment statute distinguishes "liability" from "fault." See, e.g., OCGA § 51-12-33 (f) (2) . . . . The text also

contributed to the alleged injury or damages." OCGA § 51-12-33 (b), (c). The evidence of the employer's fault is neither irrelevant nor required to be excluded in all cases as unfairly prejudicial. See OCGA § 24-4-401 ("[T]he term 'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); OCGA § 24-4-403 ("Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]"). See also *State v. Orr*, 305 Ga. 729, 738 (3) (827 SE2d 892) (2019) (holding that OCGA § 24-4-403 "provides no authority for an appellate court to direct the exclusion of entire categories of evidence," as such authority must come from "the specific and detailed exclusionary rules included in the new [Evidence] Code.").

Hulsey and TriEst further contend that the apportionment

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distinguishes between "named parties," OCGA § 51-12-33 (f) (1) – that is, "the plaintiff" or "a defending party," OCGA § 51-12-33 (a), (d), (g) – and "nonparties," OCGA § 51-12-33 (d), (f), and provides specific rules for how each is to be treated in the apportionment process.

statute does not apply because compensatory damages should not be apportioned between the employer and employee under claims derivative of the agency relationship. They ask this Court to accept the reasoning of the Court of Appeals in *Fender*, which held that the Respondeat Superior Rule was not superseded by the apportionment statute because claims subject thereto "are derivative of the underlying tortious conduct of the employee" and "merely duplicative of the respondeat superior claim." 342 Ga. App. at 23 (2) (citation and punctuation omitted).

Even accepting that claims for negligent entrustment, hiring, training, supervision, and retention, in those cases where the employer concedes that it will be vicariously liable under the doctrine of respondeat superior if its employee is found negligent, are derivative of the employee's tortious conduct to some extent, that would not relieve the jury from apportioning fault under the plain language of the apportionment statute.

> When fault is divisible and the other requirements of OCGA § 51-12-33 (b) are met, then the trier of fact "shall" apportion. If fault is indivisible, then the trier of fact

> cannot carry out the statute's directive of awarding damages "according to the percentage of fault of each person" and the apportionment statute does not govern how damages are awarded.

FDIC v. Loudermilk, 305 Ga. 558, 572 (2) (826 SE2d 116) (2019) (citation omitted).

Applying that test, claims that an employer was negligent are divisible from claims that its employee was negligent, and so are capable of being assigned percentages of fault. For example, in this case, while Quynn's claims against TriEst may have required Hulsey to have been negligent, and so are derivative of its employee's negligence to that extent, a jury would still be able to assign fault to TriEst on account of TriEst's own alleged negligence. As we explained in *Zaldivar*, "[p]roof of the essential elements of negligent entrustment—including actual knowledge of the incompetence or recklessness of the person to whom the instrumentality in question is entrusted—necessarily proves that the negligence of the person entrusted was foreseeable to the one who entrusted that person," such that "the negligence of the person entrusted could not be an intervening act that would break the

causal connection between the negligent entrustment and the injury sustained." 297 Ga. at 602 (2). The evidence required to prove the employer was negligent would not be the same as the evidence required to prove that the employee was negligent, and so the claims are not duplicative to that extent. As for damages, we may assume that an *employer* would be liable for the negligence of its employee acting within the course of his employment as well as its own negligence. But the *employee* would not necessarily be responsible for the satisfaction of damages apportioned by the jury to his employer based on the employer's negligence. See OCGA § 51-12-33 (b) ("Damages apportioned by the trier of fact . . . shall not be a joint liability among the persons liable[.]").

Hulsey and TriEst argue that there is nevertheless no rational basis for apportioning fault between a negligent employer and a negligent employee when the Respondeat Superior Rule applies because the plaintiff's injury is the product of the alleged tortfeasors "working toward a common goal—the employer's business." It is true that "the fault resulting from concerted action (in its traditional,

common-law form) is not divisible as a matter of law and, therefore, cannot be apportioned." *Loudermilk*, 305 Ga. at 574 (2). However, concerted action is "a legal theory of mutual agency in tort." Id. at 572 (2). It is well established that an employee acting within the scope of the employer's business is an agent of the employer, but not that the employer must be an agent of such an employee. The acts of an employer in negligently entrusting, hiring, training, supervising, and retaining an employee are the independent acts of the employer separable from the actions of the employee, not necessarily a concerted act between an employer and its employee.

This Court also suggested in *Loudermilk* that legal theories other than concerted action may "preclude division of fault as a matter of law — perhaps, for instance, vicarious liability or other agency-based or derivative theories of liability." 305 Ga. at 575 (2) n.20. However, Hulsey and TriEst do not show that vicarious liability precludes apportionment of fault to the employer where the Respondeat Superior Rule would apply. Application of the Respondeat Superior Rule arises when the employer's own

negligence is alleged to be a proximate cause of the plaintiff's injuries.[7] Thus, apportionment of fault to the employer on account of its own negligence is not an apportionment of vicarious liability.[8]

Lastly, we consider Hulsey and TriEst's argument that by enacting the apportionment statute, the General Assembly did not

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[7] Far from supporting the dissent, *Loudermilk* previewed why the Respondeat Superior Rule is no longer valid. As *Loudermilk* explained, before the enactment of OCGA § 51-12-33, if separate acts of negligence by several persons combined naturally and directly to produce a single indivisible injury, then the actors were deemed to have joint and several liability. See *Loudermilk*, 305 Ga. at 570 (2). Under that prior law, if the negligence of an employee acting within the scope of his employment injured a plaintiff, then even if the employer had engaged in separate negligent acts with regard to the entrustment, hiring, training, supervision, or retention of the employee that also led to the plaintiff's injury, then respondeat superior claims and negligence claims against the employer would generally be wholly duplicative in their import, because the plaintiff could recover no more than the full damages for her single injury and the employee and employer would be jointly and severally liable for the full amount of those damages. But the language of OCGA § 51-12-33 shifted the paradigm from damages analysis based on injury to damages analysis based on fault, requiring damages to be apportioned in cases where separate negligent acts by separate persons combined to cause a single injury. See *Loudermilk*, 305 Ga. at 571-572 (2). See also *Couch*, 291 Ga. at 366 (rejecting the plaintiff's argument that her "single, indivisible" injury caused by separate intentional and negligent tortfeasors could not be apportioned, holding that "[w]hile the injury may be singular, the damages flowing from that injury may be apportioned among the tortfeasors responsible for causing it").

[8] It also follows that we need not reach the issue of whether a party's vicarious liability is subject to a division of fault. See *Loudermilk*, 305 Ga. at 575 n.20 (2) (leaving issue open). But see *PN Express, Inc. v. Zegel*, 304 Ga. App. 672, 680 (697 SE2d 226) (2010) (apportionment does not apply when a defendant's liability is solely vicarious).

intend to abrogate the Respondeat Superior Rule. They point to OCGA § 51-12-33 (e), which provides: "Nothing in this Code section shall eliminate or diminish any defenses or immunities which currently exist, except as expressly stated in this Code section." The Respondeat Superior Rule was not abrogated by the apportionment statute, they contend, because the Respondeat Superior Rule was well-established as the "common law" of this State when the current version of the apportionment statute was enacted in 2005, and because the apportionment statute does not expressly eliminate or diminish the rule.

The Respondeat Superior Rule cannot be fairly understood as a defense or immunity as it did not allow an employer-defendant to avoid liability for any portion of the plaintiff's damages. We are also doubtful that a series of decisions of our Court of Appeals commencing in the 1960's rises to the level of the common law of this State for the purposes of assessing whether a statute has been enacted in derogation of the common law. Assuming dubiously that the Respondeat Superior Rule constituted the "common law" of this

State when the apportionment statute was enacted, "statutes in derogation of the common law . . . must be limited strictly to the meaning of the language employed, and not extended beyond the plain and explicit terms of the statute." *Couch*, 291 Ga. at 364-365 (citation and punctuation omitted). Even construing the statute strictly, however, a plaintiff's claims for an employer's negligent entrustment, hiring, training, supervision, and retention are allegations of fault within the meaning of the apportionment statute, and OCGA § 51-12-33 mandates that the jury be allowed to consider the fault of all persons who contributed to the alleged injury or damages.[9] Adherence to the plain and explicit terms of OCGA § 51-12-33 requires the elimination of the Respondeat Superior Rule.

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[9] Thus, we are unpersuaded by the dissent's argument that the apportionment statute may be construed consistently with the Respondeat Superior Rule. Further, the dissent's suggestion that the apportionment statute can only be applied at trial is overbroad in that legal issues regarding the application of OCGA § 51-12-33 may be decided on summary judgment. See, e.g., *Zalvidar*, 297 Ga. at 590. Nor are we persuaded by the decisions of the courts of other states relied upon by the dissent. Those decisions do not involve express interpretation of statutory language and largely reflect adherence to a "majority" rule based on decisional law.

For the foregoing reasons, we conclude that the Respondeat Superior Rule has been abrogated by OCGA § 51-12-33,[10] and that the Court of Appeals erred in holding otherwise.

Judgment reversed. All the Justices concur, except Bethel, J., who concurs in judgment only, and McMillian, J., who dissents. Warren, J., not participating.

[10] The decisions of the Court of Appeals that hold to the contrary are overruled. See *Terry v. Old Hat Chimney, LLC*, 351 Ga. App. 673 (832 SE2d 650) (2019); *City of Kingsland v. Grantham*, 342 Ga. App. 696, 700 (805 SE2d 116) (2017); *Fender*, 342 Ga. App. at 21 (2).

MCMILLIAN, Justice, dissenting.

Because I do not believe that OCGA § 51-12-33, which apportions fault at the verdict stage of a trial, has abrogated the Respondeat Superior Rule, which often serves to dismiss duplicative claims at the summary judgment stage, as was the case here, I must respectfully dissent.

We have consistently announced that "all statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it . . . [and] are therefore to be construed in connection and in harmony with the existing law." *Grange Mut. Cas. Co. v. Woodard*, 300 Ga. 848, 852 (2) (a) (797 SE2d 814) (2017) (citations and punctuation omitted). See also *Plummer v. Plummer*, 305 Ga. 23, 27-28 (2) (a) (823 SE2d 258) (2019) (concluding nothing in newly enacted statute inconsistent with general jurisdictional background rule); *In the Interest of M. D. H.*, 300 Ga. 46, 53 (4) (793 SE2d 49) (2016) ("[W]e presume that the General Assembly enacted the statute with reference to our decision in [*In the Interest of R. D. F.*, 266 Ga. 294

(466 SE2d 572) (1996)]); *Roberts v. Cooper*, 286 Ga. 657, 660 (691 SE2d 875) (2010) ("Certainly our legislature is presumed to enact statutes with full knowledge of existing law, including court decisions." (citation and punctuation omitted)); *Botts v. Southeastern Pipe-Line Co.*, 190 Ga. 689, 700-01 (10 SE2d 375) (1940) ("All statutes are . . . to be construed in connection and in harmony with the existing law, and as a part of a general and uniform system of jurisprudence, and their meaning and effect is to be determined in connection, not only with the common law and the constitution, but also with reference to other statutes and the decisions of the courts." (citation and punctuation omitted)).

Georgia's Respondeat Superior Rule has long provided that where a defendant employer concedes that it will be vicariously liable for claims on which its employee is found negligent, the employer is entitled to summary judgment on any duplicative claims, including negligent hiring, training, supervision, entrustment, and retention ("negligent hiring claims"), unless the plaintiff also asserts a valid claim for punitive damages against the

employer for the employer's own independent negligence. See *Terry v. Old Hat Chimney, LLC*, 351 Ga. App. 673, 674 (832 SE2d 650) (2019) (where employer admitted applicability of respondeat superior doctrine and punitive damages were not at issue, plaintiff's claims against employer for negligent hiring, training, and supervision were duplicative of respondeat superior claim and could not proceed to trial); *Hosp. Auth. of Valdosta/Lowndes County v. Fender*, 342 Ga. App. 13, 23 (2) (802 SE2d 346) (2017) ("Like claims based on respondeat superior, claims against a defendant employer for the negligent hiring, training, supervision, and retention of an employee are derivative of the underlying tortious conduct of the employee.").

The plain language of OCGA § 51-12-33 does not expressly or by necessary implication contravene this rule. The Respondeat Superior Rule, which has been adopted by the majority of jurisdictions to directly address this issue,[11] acts as an exception to

[11] See generally Richard A. Mincer, *The Viability of Direct Negligence Claims Against Motor Carriers in the Face of an Admission of Respondeat*

the general rule that a party may assert alternative or duplicative claims, allowing a defendant employer under certain circumstances to obtain dismissal of duplicative negligent hiring claims. See OCGA § 9-11-8 (e) (2) ("A party may . . . state as many separate claims or defenses as he has, regardless of consistency and whether based on legal or on equitable grounds or on both."). When the duplicative claims are dismissed before trial, as they were in this case, the negligent hiring claims are never presented to the trier of fact.

On the other hand, OCGA § 51-12-33 provides in pertinent part:

> (a) Where an action is brought against one or more persons for injury to person or property and the plaintiff is to some degree responsible for the injury or damages claimed, the *trier of fact*, in its determination of the total amount of damages to be awarded, if any, shall determine the percentage of fault of the plaintiff and the judge shall reduce the amount of damages otherwise awarded to the plaintiff in proportion to his or her percentage of fault.
>
> (b) Where an action is brought against more than one person for injury to person or property, the *trier of fact*, in its determination of the total amount of damages to be

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Superior, 10 Wyo. L. Rev. 229 (2010) (providing overview of those states which have specifically addressed whether direct negligence claims should be dismissed where the employer has admitted vicarious liability).

> awarded, if any, shall after a reduction of damages pursuant to subsection (a) of this Code section, if any, apportion its award of damages among the persons who are liable according to the percentage of fault of each person. Damages apportioned by the *trier of fact* as provided in this Code section shall be the liability of each person against whom they are awarded, shall not be a joint liability among the persons liable, and shall not be subject to any right of contribution.
>
> (c) In assessing percentages of fault, the *trier of fact* shall consider the fault of all persons or entities who contributed to the alleged injury or damages, regardless of whether the person or entity was, or could have been, named as a party to the suit.

(emphasis added). A fair and reasonable reading of the text of OCGA § 51-12-33 shows that apportionment only comes into play at trial, where the trier of fact must determine the percentage of fault of the named parties and properly designated non-parties for the damages awarded for the claims presented at trial. Therefore, I fail to see how the apportionment statute necessarily abrogates the Respondeat Superior Rule when it is applied to dismiss claims before trial. I also note that this construction of the apportionment statute is consistent with OCGA § 51-12-33 (e), which makes clear that "[n]othing in this Code section shall eliminate or diminish any

defenses or immunities which currently exist, except as expressly stated in this Code section."

Moreover, even if it could be said that OCGA § 51-12-33 reaches the pretrial application of the Respondeat Superior Rule, the reasoning in *Fed. Deposit Ins. Co. v. Loudermilk*, 305 Ga. 558, 560 (826 SE2d 116) (2019), supports that the Respondeat Superior Rule can be applied consistently with the apportionment statute. In that case, we explained that "where the fault of one person is legally imputed to another person who is part of the same joint enterprise," there is no "legal means of dividing fault among the persons who are liable." *Loudermilk*, 305 Ga. at 573 (2) (citation and punctuation omitted). And "[i]f fault is indivisible, then the trier of fact cannot carry out the statute's directive of awarding damages according to the percentage of fault of each person and the apportionment statute does not govern how damages are awarded." Id. at 572 (2) (citation and punctuation omitted). In fact, this Court specifically noted in *Loudermilk* that other legal theories, such as vicarious liability or other agency-based or derivative theories of liability, may preclude

division of fault as a matter of law such that the apportionment statute does not apply. Id. at 575 (2) n.20.

Here, both TriEst and Hulsey were listed on the verdict form for the trier of fact to apportion fault, albeit on the same line. This was appropriate because TriEst had admitted respondeat superior liability, and under OCGA § 51-12-33 (c), the trier of fact must consider the "fault" of all parties and properly designated non-parties who contributed to the injury. See *Zaldivar v. Prickett*, 297 Ga. 589, 593 (1) (774 SE2d 688) (2015). But due to TriEst's admission of respondeat superior liability, its contribution to the decedent's injury could be no more and no less than that of its employee even if the negligent hiring claims had been presented to the jury. Thus, there is not a "legal means of dividing fault 'among the persons who are liable.'" *Loudermilk*, 305 Ga. at 573 (2).

And although not dispositive, I am further persuaded by the majority of courts that have considered the issue and concluded that the Respondeat Superior Rule can be applied consistently with principles of comparative negligence and comparative fault statutes.

In particular, in Colorado, a jurisdiction that we have repeatedly described as having a similar apportionment scheme[12] and twice said "refers to 'fault' in much the same way as our own statute,"[13] the Colorado Supreme Court held that the Respondeat Superior Rule is compatible with Colorado's apportionment statute because it prevents the fault of one party from being assessed twice, thereby avoiding a plainly illogical result. See *Ferrer v. Okbamicael*, 390 P3d 836, 845-47 (III) (A) (2) (Colo. 2017). Courts in California and Wyoming, which we have also described as having similar appointment statutes,[14] have likewise held that the Respondeat Superior Rule can be applied compatibly with their respective

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[12] See *Atlanta Women's Specialists, LLC v. Trabue*, ___ Ga. ___, ___ (3) 2020 Ga. LEXIS 670, at *20 (Case No. S19G1138, decided September 28, 2020) (referring to Colorado's apportionment statute as "similar to ours"); *Wilkes & McHugh, P.A. v. LTC Consulting, L.P.*, 306 Ga. 252, 258 (2) (830 SE2d 119) (2019) (listing jurisdictions with similar apportionment statutes "in interpreting Georgia's apportionment statute, including California, Colorado, Florida, Kansas, Michigan, New Hampshire, and Wyoming"); *Martin v. Six Flags Over Georgia II, L.P.*, 301 Ga. 323, 340 (III) n.11 (801 SE2d 24) (2017) (referring to California, Colorado, and Florida as jurisdictions with "similar apportionment schemes").

[13] See *Zaldivar*, 297 Ga. at 598-99 (1); *Couch v. Red Roof Inns, Inc.*, 291 Ga. 359, 362 (1) n.6 (729 SE2d 378) (2012).

[14] See *Wilkes & McHugh*, 306 Ga. at 258 (2) (citing *Zaldivar*, 297 Ga. at 598-600 (1)).

apportionment statutes. See *Diaz v. Carcamo*, 253 P3d 535, 544 (V) (Cal. 2011) (where employer admits vicarious liability for its employee's negligent driving, plaintiff cannot pursue a negligent entrustment claim under the state's system of allocating comparative fault); *Bogdanski v. Budzik*, 408 P3d 1156, 1163 (A) (Wyo. 2018) ("Under either theory, the liability of the principal is dependent on the negligence of the agent. If it is not disputed that the employee's negligence is to be imputed to the employer, there is no need to prove that the employer is liable. Once the principal has admitted its liability under a respondeat superior theory . . . the cause of action for negligent entrustment is duplicative and unnecessary. To allow both causes of action to stand would allow a jury to assess or apportion a principal's liability twice." (citation omitted)).

And a number of other jurisdictions have held that the Respondeat Superior Rule is consistent with comparative negligence principles and their comparative fault regimes. See, e.g., *Gant v. L.U. Transport, Inc.*, 770 NE2d 1155, 1159–60 (Ill. App. 2002)

("Notwithstanding the fact that Illinois is a comparative negligence jurisdiction, a plaintiff who is injured in a motor vehicle accident cannot maintain a claim for negligent hiring, negligent retention or negligent entrustment against an employer where the employer admits responsibility for the conduct of the employee under a *respondeat superior* theory."); *Landry v. Nat. Union Fire Ins. Co.*, 289 S3d 177, 186 (La. App. 2019) (because employer stipulated its employee was acting in the course and scope of his employment and it was therefore liable if its employee is liable, employer's partial motion for summary judgment on negligent hiring claim was properly granted); *McHaffie v. Bunch*, 891 SW2d 822, 826 (II) (A) (Mo. 1995) ("The majority view is that once an employer has admitted respondeat superior liability for a driver's negligence, it is improper to allow a plaintiff to proceed against the employer on any other theory of imputed liability. . . . This is true regardless of the 'percentage of fault' as between the party whose negligence directly caused the injury and the one whose liability for negligence is derivative."); *Ryans v. Koch Foods, LLC*, 2015 U.S. Dist. LEXIS

193054, at *25 (E.D. Tenn. 2015) (Tennessee's recognition that the doctrine of respondeat superior requires exceptions to the general rule of allocation of fault under the comparative fault system weighs in favor of the majority rule, and the employer, who admitted respondeat superior liability, is therefore entitled to summary judgment on plaintiff's negligent hiring claim); *Loom Craft Carpet Mills, Inc. v. Gorrell*, 823 SW2d 431, 432 (Tex. App. 1992) ("We believe the better rule is to apportion fault only among those directly involved in the accident, and to hold the entrustor liable for the percentage of fault apportioned to the driver.").

In sum, where, as here, both the employer and the employee are joined in a lawsuit as defendants with no viable claim for punitive damages based on the employer's own independent act of negligence, the defendants' liability is coextensive as a matter of law, and where the negligent hiring claims are dismissed prior to trial, the apportionment statute does not clearly abrogate the Respondeat Superior Rule by implication. I would therefore affirm the judgment of the Court of Appeals, albeit for somewhat different

reasons.