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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF MULTNOMAH

6 HENRY MICHAEL FUHRER,

7 Plaintiff,

8 vs.

9 AVIS BUDGET GROUP, INC., AVIS  
10 BUDGET CAR RENTAL, LLC., PV  
11 HOLDING CORP, AB CAR RENTAL  
12 SERVICES, INC., AVIS RENT A CAR  
13 SYSTEM, LLC, CONTINENTAL  
14 CASUALTY COMPANY, GASPAR DAVID  
MATEO, GASPAR DAVID PABLO, and  
TADASHI DAVID EMORI,

Defendants.

Case No. 19CV38807

PLAINTIFF'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT

Oral Argument Requested

15 **UTCR 5.050 INFORMATION**

16 Time requested for argument: 30 minutes  
17 Telephone attendance requested: Yes  
18 Counsel located more than 25 miles from the court: No  
Recording services requested: Yes

19 **MOTION**

20 Plaintiff Henry Michael Fuhrer, by and through his attorneys, hereby moves the Court for  
21 an order granting partial summary judgment and dismissing Defendants Avis Budget Group,  
22 Inc., Avis Budget Car Rental LLC., PV Holding Corp, and Avis Rent A Car System, LLC's  
23 ("Avis Defendants") Third Affirmative Defense, which asserts:

1 **“THIRD AFFIRMATIVE DEFENSE**

2 **(Exclusive Remedy – ORS 656.018)**

3 Defendants Avis Budget Group, Inc., Avis Budget Car Rental, LLC, PV Holding  
4 Corp. \* \* \* and Avis Rent A Car System, LLC are immune from liability given  
5 that they were in compliance with the Workers’ Compensation Law.”

6 *See Stokes Decl. in Supp. of Pl.’s Mot. for Partial Summ. J. (“Stokes Decl.”), Ex. 1, Am. Ans. &*  
7 *Affirmative Defs. to 1st Am. Compl. ¶ 23.*

8 Plaintiff requests that this Court rule as a matter of law that the Avis Defendants do not  
9 meet the statutory definition of “employer” under ORS 656.005(13)(a), and thus, cannot claim  
10 Worker’s Compensation immunity in this matter. In support of this motion, Plaintiff relies upon  
11 the court file in its entirety, the Declaration of Sean J. Stokes and its attached exhibits, and the  
12 points and authorities cited herein.

13 **BACKGROUND**

14 This case stems from injuries Mr. Fuhrer sustained in an automobile crash that occurred  
15 on September 12, 2019. *See Stokes Decl, Ex. 2, Emori Dep. 65:12-19, 66:16-67-13.* Mr. Fuhrer  
16 was a passenger in a Ford Transit van owned by PV Holding Corp. and operated by David  
17 Tadashi Emori. *See id., Ex. 3, Pratt Dep. 27:21-28:6.* The crash occurred when Mr. Emori  
18 negligently pulled the passenger van out at an angle from City Dump Road across several lanes  
19 of N. Columbia Boulevard in an attempt to make a left turn. *Id.* The Emori passenger van pulled  
20 out directly in front of an oncoming car causing the T-bone collision between the two vehicles.  
21 *Id.* Mr. Fuhrer was sitting behind the driver side seat of the van and took the brunt of the forces  
22 of the crash, thereby causing his catastrophic injuries. *Id., Ex. 2, Emori Dep. 58:10-59:22, 60:7-*  
23 *9.*

1 At the time of the subject collision, Plaintiff was working as a “shuttler” as part of a  
2 group tasked with moving cars held within the Avis portfolio from location to location. Stokes  
3 Decl., Ex. 3, Pratt Dep. 22:3-5. Defendant Emori was the “lead driver” of the group and was  
4 transporting the “shuttlers,” including Plaintiff, back to another Avis location when the crash  
5 occurred. *Id.* at 21:22-22:15. Both Plaintiff and Emori were being paid for their work by AB Car  
6 Rental Services, Inc., an entity within the Avis Budget Group umbrella. *See* Stokes Decl., Ex. 4,  
7 Fuhrer payroll records, *see also* Ex. 5, Emori payroll records.

8 Neither Plaintiff nor Emori were paid for their work by the remaining Avis Defendants.  
9 Despite their involvement within the Avis Budget Group, the remaining Avis Defendants are  
10 distinct and independent entities and not Plaintiff’s statutory employer under Oregon’s Worker’s  
11 Compensation laws. *See* discussion *infra*.

## 12 ARGUMENT

### 13 I. SUMMARY JUDGMENT STANDARD

14 Summary judgment is intended as a tool to make litigation more efficient by allowing the  
15 court to determine legal issues prior to the expense of a trial. *Garrison v. Cook*, 280 Or 205, 209-  
16 10, 570 P2d 646 (1977). Summary judgment is appropriate only if there are no genuine disputes  
17 of material fact. *Garrison v. NW Pac Bell*, 45 Or App 523, 533-34, 608 P2d 1206 (1980). For  
18 purposes of summary judgment, “[a] material fact is one that, under applicable law, might affect  
19 the outcome of a case.” *Zygar v. Johnson*, 169 Or App 638, 646, 10 P3d 326 (2000). The  
20 question of a person’s employment status is for the trier of fact, if the facts surrounding the  
21 arrangement between the parties are in dispute. When there is no dispute, and the parties merely  
22 disagree about the legal consequences of the agreed facts, the question is one for the court.

23 *Blacknall v. Westwood Corp., Developers & Contractors*, 89 Or App 145, 147, 747 P2d 412, 414  
24 (1987), *aff’d*, 307 Or 113, 764 P2d 544 (1988).

{00487305;13}

1 The conditions under which a court must grant a motion for summary judgment are  
2 delineated in ORCP 47 C. A party moving for summary judgment has the initial burden of  
3 showing that there is no genuine issue as to any material fact and that the party is entitled to  
4 judgment as a matter of law. ORCP 47 C; *Thompson v. Estate of Pannell*, 176 Or App 90, 100,  
5 29 P3d 1184, *rev denied*, 333 Or 655, 45 P3d 448 (2002). If the moving party meets this initial  
6 burden, the nonmoving party must set forth specific facts showing that there is a genuine issue as  
7 to any material fact for trial. If the nonmoving party fails to do so, summary judgment must be  
8 entered against the nonmoving party. ORCP 47 D; *see also McKinley v. DMV*, 179 Or App 350,  
9 357-58, 39 P3d 920 (2002).

10 **II. THE AVIS DEFENDANTS ARE NOT PLAINTIFF’S STATUTORY**  
11 **“EMPLOYERS” PURSUANT TO ORS 656.018, AND THEREFORE NOT**  
12 **ENTITLED TO IMMUNITY.**

13 **A. ORS 656.018 Immunity.**

14 Under Oregon’s Worker’s Compensation scheme, immunity is conferred upon an  
15 employer who satisfies its duty to provide Worker’s Compensation benefits to its workers. ORS  
16 656.018. For purposes of immunity, “employer” is statutorily defined by a two part test. ORS  
17 656.005(13)(a). An entity is an immune “employer” when it (1) pays or contracts to pay  
18 remuneration to a worker, and (2) secures the right to direct and control the services of that  
19 worker. ORS 656.005(13)(a).

20 “[T]he immunity conferred by ORS 656.018 is available only to one who fills the role of  
21 the plaintiff’s employer.<sup>1</sup>” *Osborn v. Crane Equip. Mfg. Corp.*, 135 Or App. 176, 179-80, 897  
22 P2d 1192, 1194 (1995). Under Oregon’s Worker’s Compensation scheme, “employer” is  
23 statutorily defined as one that “contracts to pay a remuneration for **and** secures the right to direct

24 <sup>1</sup> ORS 656.018(3) extends immunity to individuals and entities not at issue here.

1 and control the services of any person.” ORS 656.005(13)(a) (emphasis added). Thus, the  
2 determination of whether a particular entity enjoys immunity turns on who pays the worker and  
3 who directs and controls work at issue. *Martelli v. R.A. Chambers & Assocs.*, 310 Or 529, 537,  
4 800 P2d 766, 771 (1990).

5 This is a two part test, and each prong must be satisfied to claim ORS 656.018 immunity.  
6 *See Liberty v. Nw. Ins. Corp. v. Church*, 106 Or App 477, 808 P.2d 106 (1991).

7 “[t]he **two elements necessary** to create an employment relationship for the  
8 purposes of worker’s compensation are **a contract to pay remuneration for**  
**services and the right to direct and control the services of the worker.**”

9 *Id.* (emphasis added).

10 In *Liberty*, the Court of Appeals overturned a finding of the Worker’s Compensation  
11 Board, which determined that a realty management company, rather than the property owner,  
12 was the “employer” of a Worker’s Compensation claimant. *Id.* at 481. Before the Board, the  
13 property owner had argued that the claimant himself believed he was an employee of the realty  
14 management company. *Id.* The Court of Appeals rejected this argument, and focused on the  
15 relevant inquiry: which entity **paid** the claimant, and which entity **controlled** the claimant:

16 “The Board’s findings support only the conclusion that claimant was employed by  
17 [owner], not [realty management company]. Although claimant may not have  
18 realized it, his written contract of employment was with [owner]. Although he  
19 may not have known it, **he was paid by** [owner], and [owner] **exercised its**  
**power to control his daily work activities through its agent**, [realty  
company]... The Board erred in holding that claimant was employed by [realty  
company].”

20 *Id.* (emphasis added).

1                   **B.       The Related Entities Within The Avis Budget Group Do Not Enjoy**  
2                   **Immunity Under ORS 656.018.**

3                   It is undisputed that the only entity that paid Plaintiff is AB Car Rental Services, Inc. *See*  
4                   Stokes Decl., Ex. 4, Fuhrer payroll records; *see also id.*, Ex. 5, Ans. to RFAs. Thus, AB Car  
5                   Rental Services, Inc. is the only entity that can satisfy both **necessary elements** of the immunity  
6                   test. Indeed, in their answers to Requests for Admission, Avis Budget Car Rental, LLC, PV  
7                   Holding Corp., and Avis Rent a Car System LLC all **denied** that they contracted for Plaintiff’s  
8                   services in exchange for remuneration. *See id.*, Ex. 6, Ans. to RFA No. 13, at pp. 4, 9, 15.  
9                   Because the Avis Defendants do not satisfy the statutory test, they are not entitled to ORS  
10                  656.018 immunity.

11                  For the purposes of ORS 656.018, each entity claiming immunity is treated as separate  
12                  and distinct from others, and only those who satisfy the statutory definition of employer, or those  
13                  who belong to the limited universe of entities outlined in ORS 656.018(3), are immune. “[T]he  
14                  employment relationship exists for the purpose of immunity under ORS 656.018 **only** if there is  
15                  an employment relationship between the plaintiff and the defendant as defined in the Workers’  
16                  Compensation Law.” *Osborn v. Crane Equip. Mfg. Corp.*, 135 Or App 176, 180, 897 P.2d 1192,  
17                  1194 (emphasis added). The Avis Defendants do not qualify for the extension of immunity found  
18                  at ORS 656.018 (3). *See Nancy Doty, Inc. v. WildCat Haven, Inc.*, 297 Or App 95, 119, 439 P3d  
19                  1018, 1030, *rev den*, 365 Or 556, 451 P3d 1003 (2019) (describing “discrete group” to which  
20                  ORS 656.018(3) extension applies and refusing to extend ORS 656.018 immunity to holding  
21                  company solely because officer of holding company was immune).

22                  Thus, it is of no consequence that the Avis Defendants fall under the same group or  
23                  corporate family, because they are not Plaintiff’s statutory employer. The Court of Appeals  
24                  addressed this very question in *Osborn* and reversed a trial court ruling that Niedermeyer-Martin

1 Company (“NMC”), a closely related entity to Plaintiff’s statutory employer, Pacific Wood  
2 Treating Corporation (“PWTC”), also enjoyed ORS 656.018 immunity. *Osborn*, 135 Or App at  
3 179-80. That the two entities were so closely related that Plaintiff could have successfully  
4 pierced the corporate veil did not alter the analysis. *Id.* The only question was whether each  
5 entity met the definition of “employer” under our Worker’s Compensation statutes.

6 “[T]he immunity conferred by ORS 656.018 is available only to one who fills the  
7 role of the plaintiff’s **employer**, by virtue of the direction and control of the  
8 worker’s services. The record supports the trial court’s determination that under  
9 that test, plaintiff was a subject worker of PWTC, not of NMC. Additionally,  
10 NMC does not fit within any of the other categories of persons entitled to  
11 immunity under ORS 656.018. **That is the extent of our inquiry. We reject the  
12 contention that NMC should be treated as claimant’s employer for the  
13 purpose of immunity because of the nature of its relationship with PWTC.**”

14 *Id.* (emphasis added).

15 Presumably, the Avis Budget Group chose its corporate structure for specific business  
16 purposes. Whatever benefit was obtained from that choice is not relevant here. As recognized in  
17 *Osborn*, under the plain language of ORS 656.005(13)(a) and ORS 656.018, the Avis Defendants  
18 do not enjoy the immunity of Plaintiff’s statutory employer.

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1 **CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's  
3 motion for partial summary judgment, dismissing the Avis Defendants' Third Affirmative  
4 Defense and finding as a matter of law that those entities are not entitled to immunity from  
5 liability under Oregon's Workers' Compensation laws.  
6

7 DATED this 9th day of July, 2021.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the below date, I served a true and correct copy of the foregoing

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8 *Car Rental Services, Inc., Avis Rent A Car System, LLC*  
9 *and Tadashi David Emori*

DATED this 9th day of July, 2021.

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