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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

LILIT HAKOBYAN, an individual, and KHACHATUR ASPOYAN, an individual,

Plaintiffs,

vs.

UBER TECHNOLOGIES, INC., a California Limited Liability Company; LASHANE PHILIPS, an individual, and DOES 1 to 10, inclusive,

Defendants

Case No.: 23STCV17782

PLAINTIFFS' OPPOSITION TO DEFENDANT'S DEMURRER TO PLAINTIFFS' COMPLAINT

Hearing Date: October 4, 2023
Time: 1:30 P.M.
Dept.: 28

Complaint filed: July 28, 2023
Trial date: January 24, 2025

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I. INTRODUCTION

Defendant Uber Technologies, Inc. ("Uber") has reshaped the way people travel, advertising itself as a convenient and efficient alternative to traditional taxi services. To give assurance to riders, Uber touts its commitment to "[p]rovidng a safe way home when and where people need it most."[1] However, this was far from the case with Plaintiffs Lilit Hakobyan and Khachatur Aspoyan ("Plaintiffs") who were brutally attacked, and stabbed, by their Uber driver.

On September 25, 2022, Plaintiffs, after a night out with friends, sought a safe ride to go home to their three children. (Complaint at ¶¶ 10-13.) Naturally, Plaintiffs ordered a ride from Uber, and Defendant Lashane Philips was their driver. During the ride, Plaintiff Lilit Hakobyan grew nauseous and vomited in the back seat of the vehicle. (*Id*.) This escalated into a dispute as to whether Ms. Philips would continue to drive Plaintiffs to their destination. (*Id*. at ¶¶ 10-16.) Namely, Ms. Philips inappropriately began to argue and antagonize the Plaintiffs. Plaintiffs protested and asked the driver to finish the job she had accepted via the Uber application and was set to be compensated for. (*Id*.) This proved unsuccessful as Ms. Philips shockingly, and unlawfully, proceeded to pull out a knife and stab both Plaintiffs, multiple times. (*Id*.)

Uber demurred to Plaintiffs' first, third, and fourth causes oof action, arguing that the doctrine of *respondeat superior* is inapplicable and Uber cannot be liable for their driver's actions. In doing so, Uber: (i) exceeds the four-corners of Plaintiff's Complaint and inappropriately argues that Uber drivers are independent contractors, a matter of factual dispute that cannot be decided on a demurrer; (ii) incorrectly states that the subject incident driver was outside the scope of her employment, which she was not; and (iii) incorrectly asserts that Defendant cannot be vicariously held liable for the injuries as alleged. Notwithstanding Defendant Uber's contentions, Plaintiffs have adequately alleged facts sufficient to impute vicarious liability upon Uber, and Uber's Demurrer should be overruled in its entirety.

[1] *Preventing Impaired driving*, UBER TECHNOLOGIES INC. https://www.uber.com/us/en/community/safety/drunk-driving-prevention/ (last visited Sept. 15, 2023).

II. LEGAL STANDARD

A demurrer lies where "the pleading does not state facts sufficient to constitute a cause of action." Code Civ. Proc., 430.10(e). A demurrer admits "all material facts properly pleaded but not contentions, deductions, or conclusions of fact or law." (*Blank v. Kirwan* (1985) 29. Cal.3d 311, 318). The complaint is given a reasonable interpretation, reading it as a whole and its parts in their context. (*Id.*) The court accepts as true, and liberally construes, all properly pleaded allegations of material fact, as well as those facts which may be implied or reasonably inferred from those allegations; its sole consideration is whether the plaintiff's complaint is sufficient to state a cause of action under any legal theory. (*O'Grady v. Merchant Exchange Prods., Inc.* (2019) 41 Cal.App.5th 771, 776-777).

The existence of an employment relationship is a question for the trier of fact but can be decided by the court as a matter of law if the evidence supports only one reasonable conclusion. (*Beaumont-Jacques v. Farmers Group*, *Inc.* (2013) 217 Cal.App.4th 1138, 1142-43). Similarly, "the existence of agency is a factual question within the province of the trier of fact" and "[o]nly when the essential facts are not in conflict will an agency determination be made as a matter of law. (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1576).

Under California law, an employer/principal is only vicariously liable for negligent conduct committed by employees/agents if it occurred within the course and scope of the employment or agency. (*See Musgrove v. Silver* (2022) 82 Cal.App.5th 694, 707.) If the misconduct is an outgrowth of the employment, the employee is acting within the scope of employment. (*See Farmers Ins. Group v. County of Santa Clara*, (1995) 11 Cal.4th 992, 1005.) The California Supreme Court has held that "an employee's willful, malicious and even criminal torts may fall within the scope of his or her employment for purposes of *respondeat superior* even though the employer has not authorized the employee to commit crimes or intentional torts." (*Lisa M. v. Henry Mayo Newhall Memorial Hospital,* (1994) 12 Cal. 4th 291, 297); (*see* also *Torres v. Parkhouse Tire Service, Inc.*, (2001) 26 Cal. 4th 995, 1008 [holding employees' "willful, malicious and even criminal torts" may be committed within the scope of employment]). Additionally, the

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Supreme Court has stated that, nonsexual assaults that "were not committed to further the employer's interest have been considered outgrowths of employment if they originated in a work-related dispute." (*Lisa M*, 12 Cal. 4th at 300-301).

II. ARGUMENT

a. Plaintiffs' First, Third, and Fourth Causes of Action Properly Plead That Defendant Is Liable Under Vicarious Liability Under the Doctrine of Respondeat Superior.

1. Uber Drivers are Employees for Purposes of Vicarious Liability and Defendant Cannot Use Facts Outside of Pleadings to Create a Factual Dispute.

Plaintiffs have sufficiently alleged that Ms. Philips was an employee of Uber for the purposes of *respondeat superior*. As a matter of law, this issue cannot be determined at this stage because the evidence does not support one reasonable conclusion. Namely, Uber has made the conclusory assertion that Defendant's drivers are independent contractors, and thereby an independent contractor standard should be applied. This is wholly inappropriate, as (i) the facts alleged in Plaintiffs' Complaint—which must be taken as true—do not support such a conclusion; (ii) the distinction between an independent contractor and an employee is a matter of factual dispute that must be left to a trier of fact; and (iii) Uber's drivers are undoubtably employees as it relates to vicarious liability.

Uber incorrectly cites to Proposition 22, an initiative that was brought forth for **labor laws**, not for Defendant's tort liability. While Plaintiffs recognize the *Castellanos v. State of California*, (2023) 89 Cal. App. 5th 131, 196, decision upholding of the *constitutionality* of Proposition 22, it is notable that Prop. 22 is about wages and benefits and does not address whether Defendant's drivers would be considered independent contractors for the purposes of vicarious liability.[2] Therefore, it is unclear as to what basis and/or relevance the constitutional of Proposition 22 has to do with this case herein. The general rule is that "[u]nless expressly provided, statutes should not be interpreted to alter the common law and should be construed to avoid conflict with common

[2] *California Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative* (2020), BALLOTPEDIA, https://ballotpedia.org/California_Proposition_22,_App-Based_Drivers_as_Contractors_and_Labor_Policies_Initiative_(2020) (last visited Sept. 15, 2023).

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law rules. A statute will be construed in light of common law decisions, unless its language 'clearly and unequivocally discloses an intention to depart from, alter, or abrogate the common-law rule concerning the particular subject matter.'" (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 297).

Notably, "[t]he common law and statutory purposes of the distinction between 'employees' and 'independent contractors' are substantially different." (*Dynamex Operations W. v. Superior Court*, (2018) 4 Cal. 5th 903, 903). "[A]t common law the problem of determining whether a worker should be classified as an employee, or an independent contractor initially arose in the tort context—in deciding whether the hirer of the worker should be held vicariously liable for an injury that resulted from the worker's actions." (*Id.* at 927). In the vicarious liability context, "'[t]he extent to which the employer had a right to control [the details of the service] activities was … highly relevant to the question whether the employer ought to be legally liable for them … .'" (*Id.*). "For this reason, the question whether the hirer controlled the details of the worker's activities became the primary common law standard for determining whether a worker was considered to be an employee or an independent contractor." (*Id.*).

Here, Plaintiffs are not interested in whether Ms. Philips was an independent driver for the purposes of Proposition 22, rather, Plaintiffs are seeking to prove Ms. Philips was working for Uber in the common law tort context. In such context, Plaintiffs have adequately pled facts to show that Uber "had the power, ability, authority, and duty to so intervene, supervise, prohibit, regulate, discipline, and/or penalize" and was therefore the employer of Ms. Philips, subject to vicarious liability. (Complaint, ¶¶ 7).

Therefore, as Plaintiffs' alleged, Defendant's driver was an employee for the purposes of vicarious liability. Defendant's attempts at pointing to Proposition 22 is both misguided, as Proposition 22 does not codify the Defendant's drivers for purposes of vicarious liability, and is a blatant attempt to circumvent the factfinding process. Should Defendant Uber wish to contest the factual dispute as it relates to the status of their employees, they may not do so through a Demurrer. For purposes of this Demurrer, Defendant's drivers are unequivocally employees.

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2. In the Alternative, Uber Drivers are Agents of Uber Irrespective of their status as Independent Contractors, Sufficient for Vicarious Liability.

As sufficiently stated in the complaint, Ms. Philips acted as a "driver and/or agent of Uber" and was an "unfit agent." (Complaint, ¶¶ 6, 8). Uber contends that Ms. Philips is an independent contractor, and therefore they cannot be liable. As California courts have recognized "[a]gency and independent contractors are not necessarily mutually exclusive legal categories…[i]n other words, an agent may also be an independent contractor." (*Jackson v. AEG Live, LLC* (2015) 233 Cal.App.4th 1156, 1184; *see* also *Ralphs Grocery Co. v. Victory Consultants, Inc*., (2017) 17 Cal. App. 5th 245, 262). Therefore, even assuming Ms. Philips is an independent contractor, this alone is insufficient to prove Plaintiffs failed to plead facts to show Uber is vicariously liable. (*Secci v. United Independant Taxi Drivers, Inc.*, (2017) 8 Cal. App. 5th 846, 859 ["general common law rule of nonliability for negligence of an independent contractor is subject to exceptions so numerous as to render the rule a mere preface. . ."]). As a result, at this stage, Plaintiffs have sufficiently met their burden as an allegation of agency constitutes an averment of ultimate fact, which is accepted as true on a demurrer. (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 437; *City of Industry v. City of Fillmore* (2011) 198 Cal.App.4th 191, 212; *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 886).

3. The Assault was Within the Scope of the Driver's Employment because It Was an Outgrowth of the Relationship Between Plaintiffs and Defendant.

Whether an employee was acting in the course of his employment at the time of the accident is generally a question of fact to be determined in light of the circumstances of the particular case and is thereby wholly inappropriate for purposes of a demurrer. (*Lockheed Aircraft Corp. v. Industrial Acc. Com*., 28 Cal.2d 756, 758; *Loper v. Morrison*, 23 Cal.2d 600; *California Cas. Indem. Exch. v Industrial Acc. Com*., 21 Cal.2d 751, 760; *Industrial Indem. Co. v. Industrial Acc. Com*., 108 Cal.App.2d 632, 635; *McChristian v. Popkin*, 75 Cal.App.2d 249, 255; *Cain v. Marquez*, 31 Cal.App.2d 430, 434; *Torosian v. Industrial Acc. Com*., supra, 11 Cal.App.2d 204, 207; *Gammon v. Wales*, 115 Cal.App. 133, 137; *Kruse v. White Brothers*, 81

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Cal.App. 86, 94.) Whether an employee's deviation from his course of duty was so material or substantial as to constitute a complete departure is usually a question of fact. (*Dolinar v. Pedone*, 63 Cal.App.2d 169, 175.)

Defendant Uber cites to the following authorities as to why Uber driver's actions cannot be within the scope of the employment or agency: *Farmers Ins. Grp. v. Cnty. of Santa Clara* (1995) 11 Cal. 4th 992, 1006, *Lisa M. v. Henry Mayo Newhall Mem'l Hosp*. (1995) 12 Cal. 4th 291, 296-99, and *Debbie Reynolds Prof. Rehearsal Studios v. Superior Ct*. (1994) 25 Cal. App. 4th 222, 227. The intentional torts at issue in these actions involved sexual assault, not assault as is the case here. These cases are therefore not determinative of the case at hand because even though "sexual assaults are not per se beyond the scope of employment…courts have rarely held an employee's sexual assault or sexual harassment of a third party falls within the scope of the employment." (*Daza v. Los Angeles Community College Dist*., (2016) 247 Cal. App. 4th 260, 268-69). This is because the appropriate analysis is whether the alleged tort is an outgrowth of the employment relationship, and sexual harassment rarely is. The physical battery and assault that occurred in our current dispute arose solely from the professional relationship between Plaintiffs and Defendant's Uber driver, a dispute that is undoubtedly an outgrowth of the Uber driver's professional duties.

Uber incorrectly cites *Monty v. Orlandi* (1959) 169 Cal.App2d 620, 624 to show that incidents involving a **personal**, rather than **professional** agreement, fall outside the course and scope of the business relationship. However, the facts at hand are distinguishable. In *Monty*, a bartender got into an altercation with a patron after the patron commented on the bartender's treatment of his wife. (*Monty*, 169 Cal.App2d at 624). As outlined in the Complaint, here the argument that occurred before the assault revolved around whether Ms. Philips would continue driving after Plaintiff Lilit Hakobyan vomited. This is a direct outgrowth and dispute arising out of the Defendant Uber driver's **professional** duties. Contrary to Defendant's allegations, the Plaintiffs did not make a personal plea, rather they made a professional request for the driver to continue the job that she accepted via her employment and agency with Uber, and that she was set to be compensated for accordingly. Unlike in *Monty* where the assault arose from a dispute that

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Los Angeles, CA 90024

had nothing to do with the bartender's role as an employee, here whether or not Ms. Philips would continue to drive Plaintiffs had everything to do with her role as an Uber driver. Despite Uber's attempts to neatly compartmentalize the dispute as personal, it should be highlighted that California courts have been reluctant to do so. (*See Flores v. AutoZone West, Inc*., (2008) 161 Cal. App. 4th 373, 381, [holding that as a matter of law, anger generated between employee and customer cannot be so tidily compartmentalized as "personal"]. The very dispute was relating to the Uber drive in nature. Moreover, the Plaintiffs had no prior knowledge and/or familiarity with the Uber driver, prior to the subject incident. Their sole contact with the Uber driver was for the purposes of a ride home, nothing more.

The Defendant further alleges that the ride was "canceled" and thereby the subject incident was outside the scope of employment. This is flawed in that: (i) Plaintiffs' did not allege that the ride was cancelled, and it is a matter of factual dispute whether the ride was still active or not, (ii) Defendant Uber exceeds the four-corners of Plaintiffs' complaint in making such an argument, (iii) a "canceled ride" is a mere technicality, as an Uber driver continues to interact with, and provide services to, after a ride is completed. Therefore, Defendant Uber's odd attempt at asserting that passengers who were mid-ride in an Uber car were no longer under the scope of Uber's employment is neither based in law nor fact. (Complaint at ¶¶ 9-17.) Furthermore, the fact that the ride was allegedly canceled prior to the stabbings is not dispositive in determining whether the dispute was personal. (*See Rodgers v. Kemper Constr. Co*. (1975) 50 Cal.App.3d 608, 124 Cal. Rptr. [holding subcontractor vicariously liable for employees even though assault occurred after work was completed and workers' shift had ended]).

Additionally, courts have continuously recognized that nonsexual assaults that were not committed to further the employer's interest have been considered outgrowths of employment if they originated in a work-related dispute. (*See Carr v. Wm. C. Crowell Co.* (1946) 28 Cal.2d 652, 657, 171 P.2d 5 [employer was vicariously liable where one employee threw a hammer at another employee after a workplace disagreement]). Critically, this extends to workplace interactions between an employee and a non-employee. (*See Stansell v. Safeway Stores* (1941) 44 Cal.App.2d

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822, 823, 113 P.2d 264 [grocery store held vicariously liable when manager assaulted a customer after becoming angry after harsh words were exchanged in a dispute about a grocery order]; *Fields v. Sanders*, (1947) 29 Cal. 2d 834, 836 [an employer may also be vicariously liable for its truck driver's assault on another motorist following a collision]; *Flores,* 161 Cal.App.4th at 380, 74 Cal. Rptr. 3d 178 [store may be vicariously liable when store employee assaulted customer after the customer criticized his attitude]).

Because the complaint highlights that Uber's agent and employee committed the intentional tort within the scope of her agency, Plaintiffs have pleaded sufficient facts to hold Uber vicariously liable. Notably, Plaintiffs and Ms. Philips: met each other solely through ordering an Uber ride; Ms. Philips became outraged and/or furious at Plaintiffs for causing vomit in her vehicle during the ride; Ms. Philips attempted to drop Plaintiffs off at a location that was not their destination; the argument solely arose regarding whether Ms. Philips will complete the contracted to car ride; and a knife attack occurred thereafter regarding an argument solely based around the Ms. Philips employment with Uber, namely the car ride to Plaintiffs' destination. (Complaint at ¶¶ 9-17.) Thereby, given the facts at hand, it cannot be reasonably disputed that this attack was a sole outgrowth of the Ms. Philips employment with Uber, and there were no personal matters exceeding beyond that scope. The relationship between said driver and Plaintiffs were professional, and any attempt to mischaracterize the facts are patently frivolous.

Therefore, Uber's demurrers as to the first, third, and fourth causes of action should be overruled.

4. Defendant Ratified The Driver's Conduct Because of Their Systemic Failure to Investigate and/or Ensure that Uber Drivers are Suitable For The Job.

Defendants may be liable for unauthorized intentional torts through a theory of vicarious liability, authorization, or subsequent ratification. (*C.R. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1110). Because ratification is only an alternative theory to *respondeat superior*, Plaintiffs do not need to establish ratification in order to hold Defendant Uber liable. Nonetheless, Plaintiffs have sufficiently alleged facts to support ratification. Contrary to Uber's assertions,

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Plaintiff did allege that Defendant "took no measures whatsoever to investigate the nature of the driver's dangerous and violent propensities." (Complaint at ¶ 6). Accordingly, at this stage in the litigation, there are sufficient articulated facts to demonstrate Uber ratified Ms. Philips' conduct through its actions. (*Samantha B. v. Aurora Vista Del Mar, LLC,* (2022) 77 Cal. App. 5th 85, 109 ["failure to investigate or respond to charges that an employee has committed an intentional tort…may be evidence of ratification"]). This is a system-wide problem in Defendant Uber's hiring process as they regularly fail to investigate, vet, and/or implement hiring practices that ensure all drivers are adequately suited to transport individuals, without conflict. (Complaint at ¶ 32.)

5. Plaintiffs' Intentional Infliction of Emotion Distress Claim is Recognized by California Law.

Uber demurs to the Fourth Cause of Action for Intentional Infliction of Emotional Distress on grounds that there is no vicarious liability. In the alternative, it appears that Uber alleges that Plaintiffs' fourth cause of action is not recognized by California law. Unfortunately, Defendant Uber mistakes Plaintiffs' fourth cause of action of Intentional Infliction of Emotional Distress with Negligent Infliction of Emotional Distress. Under California law, Intentional Infliction of Emotional Distress is recognized as a cause of action. (*See Hughes v. Pair*, (2009) 46 Cal. 4th 1035, 1050). Accordingly, the demurrer as to the fourth cause of action should be overruled on the ground that there are sufficient facts in the Complaint to show Uber is vicariously liable, and Plaintiffs sufficiently pleaded facts to show Intentional Infliction of Emotional Distress.

III. LEAVE TO AMEND

Should the Court sustain Defendant's Demurrer, Plaintiffs respectfully request to leave to amend the complaint to cure any purported deficiencies. (*Price v. Dames & Moore,* (2001) 92 Cal. App. 4th 355, 360 ["leave to amend is routinely and liberally granted"]). As set forth in *Eghtesad v. State Farm General Ins. Co.*, (2020) 51 Cal. App. 5th 406, 411, the general rule is that it is an abuse of discretion to sustain a demurrer without leave to amend the original complaint unless the complaint shows on its face that it is incapable of amendment.

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Here, on its face, the complaint does not show that it is incapable of amendment. Rather additional facts can be asserted to indicate Uber's driver is an agent of Uber and the intentional tort occurred within the scope of the agency relationship. For example, in *Secci*, a taxi association supplied drivers with a manual with detailed rules of conduct, provided training, and retained the authority to terminate its relationship with any of its drivers. (8 Cal. App. 5th at 849). The court held this to be sufficient evidence to establish agency and hold the association vicariously liable. (*See id.*). Like the taxi association, Plaintiffs in their amended complaint will be able to show that Uber provides resources and training to their drivers and retains the authority to terminate the relationship with its drivers.[3] Thus, a leave to amend would not be futile. (*See La Jolla Homeowners' Assn. v. Superior Court* (1989) 212 Cal.App.3d 1131, 1141).

Additionally, the Plaintiffs will be able to show that the Defendant suffers from systemic issues in which members of the general public are constantly interacting with criminals and/or dangerous members of society due to Defendant's egregious and unlawful hiring, training, and/or supervision policies. Namely, Defendant Uber takes no action to ensure that their drivers are suitable and free from dangerous propensities.

IV. CONCLUSION

For the foregoing reasons, Defendants' Demurrer should be overruled in its entirety. In the alternative, Plaintiffs request leave to amend the Complaint.

Dated: September 21, 2023

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By: _____
Alex Farzan, Esq.
Attorney for Plaintiffs,
LILIT HAKOBYAN AND KHACHATUR ASPOYAN

[3] See *Getting Your Car Ready*, UBER TECHNOLOGIES INC., https://www.uber.com/us/en/drive/basics/getting-your-car-ready/?uclick_id=13dd4e4d-62db-48d1-9a47-8e67feb2a3c9 (last visited Sept. 15, 2023); *The Basics of Driving With Uber*, UBER TECHNOLOGIES INC., https://www.uber.com/us/en/drive/basics/?uclick_id=13dd4e4d-62db-48d1-9a47-8e67feb2a3c9 (last visited Sept. 15, 2023); *Understanding why drivers and delivery people lose account access*, UBER TECHNOLOGIES INC., https://www.uber.com/us/en/drive/safety/deactivations/#:~:text=A%20-driver%20or%20delivery%20person%20can%20lose%20access%20to%20their,characteristic%20protected%20under%20relevant%20law (last visited Sept. 15, 2023).

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CALIFORNIA STATE COURT PROOF OF SERVICE

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. My business address is 10866 Wilshire Blvd., Suite 400, Los Angeles, California 90024.

On **September 21, 2023** I served true copies of the following document(s):

OPPOSITION TO DEFENDANTS' DEMURRER TO PLAINTIFF'S COMPLAINT

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

SEE ATTACHED SERVICE LIST

The documents were served by the following means:

_____X____ONLY BY ELECTRONIC SERVICE (E-MAIL): Only by emailing the document(s) to the persons at the e-mail address(es). This is necessitated during the declared National Emergency due to the Coronavirus (COVID-19) pandemic because this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission. We will provide a physical copy, upon request only, when we return to the office at the conclusion of the national emergency.

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

Executed on **September 21, 2023** at Los Angeles, California.

Alex Farzan

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