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13 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA**  
14 **UNLIMITED JURISDICTION**

15 WEICHIAO KU and PI-LIEN KUO, )

Case No. 21CV376210

16 Plaintiffs, )

17 v. )

18 HARALD HERCHEN, *et al.* )

19 Defendants. )

**PLAINTIFFS' RESPONSE TO  
DEFENDANT'S SEPARATE  
STATEMENT OF UNDISPUTED  
MATERIAL FACTS  
AND EVIDENCE IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT,  
OR IN THE ALTERNATIVE,  
SUMMARY ADJUDICATION**

20 Dept.: 20

Judge: Hon. Socrates Manoukian

21 Hearing Date: December 8, 2022

22 Hearing Time: 9:00 a.m.

23 )  
24 )  
25 Plaintiffs Weichiao Ku and Pi Lien Kuo (hereinafter "Plaintiffs") hereby submit the following  
26 Response to Defendant's Separate Statement of Undisputed Material Facts and Supporting Evidence  
27 in support of his Motion for Summary Judgment, or in the Alternative, Summary Adjudication,  
28 pursuant to California Rule of Court 3.1350, as amended January 1, 2016. As to any fact to which  
Plaintiffs assert "Undisputed," such response is not to be taken as an admission for any purpose in

1 this case, nor is such to be utilized against Plaintiffs as a judicial admission pursuant to principles of  
 2 judicial estoppel. *Wright v. Stang Mfg. Co.* (1997) 54 Cal.App.4<sup>th</sup> 1218, 1224, 1227. The  
 3 “Undisputed” response is posed only for purposes of opposing this Motion filed by Defendant.  
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<b>Supporting Statement:            Moving Party’s Undisputed Material            Facts and Supporting Evidence:</b>	<b>Opposing Party’s Response and            Supporting Evidence:</b>
5 6 7 8 1. On or about January 12, 2021, Plaintiff 9 GEORGE KU, the brother of ALICE 10 KU, filed an unverified Complaint for 11 Wrongful Death, Negligence and False 12 Personation against Defendant 13 HARALD HERCHEN. Attached to 14 GEORGE KU’s unverified Complaint 15 was a purported assignment, wherein 16 WEICHIAO KU and PI-LIEN KUO, 17 the parents of ALICE KU, attempted to 18 assign their rights for a wrongful death 19 action to GEORGE KU.  GEORGE KU’s unverified Complaint for Wrongful Death, Negligence and False Personation against Defendant HARALD HERCHEN is attached to the Declaration of Louis F. Doyle as <u><b>Exhibit A.</b></u>	Undisputed.
20 2. Plaintiffs WEICHIAO KU and PI-LIEN 21 KUO filed an unverified First Amended 22 Complaint for Wrongful Death, 23 Negligence and False Personation 24 against Defendant on June 8, 2021.  Plaintiffs WEICHIAO KU and PI-LIEN KUO’s First Amended Complaint is attached to the Declaration of Louis F. Doyle as <u><b>Exhibit B.</b></u>	Undisputed.
26 3. Plaintiffs WEICHIAO KU and PI-LIEN 27 KUO’s First Amended Complaint 28 asserts three causes of action against this Defendant, specifically Wrongful Death, Negligence and False Personation with respect to the	Undisputed.

<p>1 disappearance of ALICE KU, who is 2 Plaintiffs' daughter and Defendant's 3 spouse.</p> <p>4 Plaintiffs WEICHIAO KU and PI-LIEN 5 KUO's First Amended Complaint is 6 attached to the Declaration of Louis F. 7 Doyle as <u>Exhibit B</u>.</p>	
<p>8 4. On October 6, 2021, Defendant 9 HARALD HERCHEN filed an Answer 10 to Plaintiffs' First Amended Complaint, 11 denying Plaintiffs' claims.</p> <p>12 Defendant HARALD HERCHEN 13 Answer to Plaintiff's First Amended 14 Complaint is attached to the 15 Declaration of Louis F. Doyle as 16 <u>Exhibit C</u>.</p>	<p>Undisputed.</p>
<p>17 5. Harald Herchen and Alice Ku were 18 married on October 6, 2017 19 (Declaration of Harald Herchen 20 ("Herchen Decl."), ¶ 4.)</p> <p>21 The Declaration of Harald Herchen is 22 filed concurrently with this Separate 23 Statement Undisputed Facts and 24 Supporting Evidence.</p>	<p>Undisputed.</p>
<p>25 6. Harald Herchen and Alice Ku were 26 happily married, and Harald loves 27 Alice. (Herchen Decl., ¶¶ 4, 6.)</p>	<p>Undisputed that Alice and Harald were married.</p> <p>Disputed as to Defendant's self-serving characterization that their marriage was happy; Disputed as to Defendant's self- serving characterization that he loved Alice. Defendant made no efforts to locate his missing wife and brazenly lied to his family, Alice's family, and others about his non- efforts and other matters. He destroyed Alice's computers and electronic devices before Plaintiffs' could examine them.</p> <p><b>Proof:</b> Excerpts from the Deposition of Harald Herchen, attached to the Declaration</p>

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	<p>of Todd K. Davis at ¶ 4-5, <b>Exhibit A, B</b>; Declaration of George Ku, ¶ 4-18.)</p> <p>Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant's own self-serving conclusion; (2) Lacks Foundation/Inadmissible Opinion/Conclusion: The credibility and admissibility of Defendant's testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 5003; <i>Nelson v. Black</i> (1954) 43 Cal.2d 612; <i>People v. Lavergne</i> (1971), 4 Cal. 3d 735).]</p>
<p>7. On or about November 11, 2021, Defendant HARALD HERCHEN propounded Form Interrogatories, Set One, to Plaintiff WEICHIAO KU.</p> <p>Defendant HARALD HERCHEN's Form Interrogatories, Set One, to Plaintiff WEICHIAO KU are attached to the Declaration of Louis F. Doyle as <b><u>Exhibit D.</u></b></p>	<p>Undisputed.</p>
<p>8. On or about February 2, 2022, Plaintiff WEICHIAO KU propounded Amended Responses to Form Interrogatories, Set One; a verification to those responses was signed by GEORGE KU, who is not a party to this action; a verification to those responses signed by WEICHIAO KU on February 9, 2022, was forwarded by Plaintiffs' counsel to defense counsel.</p> <p>Plaintiff WEICHIAO KU's Amended Responses to Form Interrogatories, Set One, and Verifications thereto are collectively attached to the Declaration of Louis F. Doyle as <b><u>Exhibit E.</u></b></p>	<p>Undisputed.</p>

<p>1 9. On or about February 9, 2022, 2 Defendant HARALD HERCHEN 3 propounded Form Interrogatories, Set 4 Three, to Plaintiff PI - LIEN KUO. 5 6 Defendant HARALD HERCHEN's 7 Form Interrogatories, Set Three, to 8 Plaintiff PI - LIEN KUO are attached to 9 the Declaration of Louis F. Doyle as 10 <u>Exhibit F</u>.</p>	<p>Undisputed.</p>
<p>11 10. On or about March 15, 2022, Plaintiff 12 PI - LIEN KUO propounded Responses 13 to Form Interrogatories, Set Three; a 14 verification to those responses signed 15 by Plaintiff PI - LIEN KUO on March 16 21, 2022 was subsequently forwarded 17 by Plaintiffs' counsel to defense 18 counsel. 19 20 Plaintiff PI - LIEN KUO's Responses 21 to Form Interrogatories, Set Three, and 22 her Verification thereto are collectively 23 attached to the Declaration of Louis F. 24 Doyle as <u>Exhibit G</u>.</p>	<p>Undisputed.</p>
<p>25 11. The Form Interrogatories 26 comprehensively define "incident" to 27 include "the circumstances and events 28 surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding." Form Interrogatories, Section 1(a).  The Form Interrogatories to both Plaintiffs are attached to the Declaration of Louis F. Doyle as <u>Exhibits D and F</u>.</p>	<p>Undisputed.</p>
<p>12. <b>In WEICHIAO KU's Amended Response to the Form Interrogatories, Set One, and in PI - LIEN KUO Responses to the Form Interrogatories, Set Three, both Plaintiffs admit they know of no witnesses to the incident other than</b></p>	<p>Undisputed.</p>

<p>1 <b>Defendant. Neither Plaintiff indicates</b>  2 <b>they witnessed Defendant with</b>  3 <b>respect to the incident.</b> (Plaintiffs'  4 Responses to Form Interrogatories No.  5 12.1.)</p> <p>6 Plaintiff WEICHIAO KU's Amended  7 Responses to Form Interrogatories, Set  8 One, and Verifications thereto are  9 collectively attached to the Declaration  10 of Louis F. Doyle as <u>Exhibit E.</u>  11 Plaintiff PI - LIEN KUO's Responses  12 to Form Interrogatories, Three, and her  13 Verification thereto are collectively  14 attached to the Declaration of Louis F.  15 Doyle as <u>Exhibit G.</u></p>	
<p>16 <b>13. Defendant had nothing to do with</b>  17 <b>Alice Ku's disappearance or alleged</b>  18 <b>injury or alleged death.</b></p> <p>19 (Herchen Decl., ¶ 5).</p>	<p>20 Disputed. Defendant made no efforts to  21 locate his missing wife and brazenly lied to  22 his family, Alice's family, and others about  23 his non-efforts and other matters. He lied  24 under oath. He destroyed Alice's computers  25 and electronic devices before Plaintiffs'  26 could examine them. Defendant Herchen sent  27 himself a cover-up email from Decedent's  28 email account to cover up her death.  29 Defendant Herchen failed to cooperate with  30 investigators searching for Alice.</p> <p><b><i>Proof:</i></b> Excerpts from the Deposition of  31 Harald Herchen, attached to the Declaration  32 of Todd K. Davis at ¶ 4-5, <b>Exhibit A, B;</b>  33 Declaration of George Ku, ¶ 4-18;  34 Declaration of Li Tsung Su, ¶¶ 1-7;  35 Declaration of Yang Chi Lee, ¶¶ 1-4;  36 Declaration of Dr. Tal Lavian, ¶¶1-38.)</p> <p>37 Objection: (1) Lacks foundation [Evid. Code  38 §702], this is not a material fact supported by  39 admissible evidence but rather Defendant's  40 own self-serving conclusion; (2) Lacks  41 Foundation/Inadmissible  42 Opinion/Conclusion: The credibility and  43 admissibility of Defendant's testimony is in  44 question given he is an admitted perjurer.  45 [The trier of fact may disregard all of the</p>

<p>1</p> <p>2</p> <p>3</p> <p>4</p>	<p>testimony of a party if it determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 5003; <i>Nelson v. Black</i> (1954) 43 Cal.2d 612; <i>People v. Lavergne</i> (1971), 4 Cal. 3d 735)].</p>
<p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>14. <b>Defendant categorically denies that he caused, contributed to or had anything to do with Alice Ku’s disappearance or alleged injury or death. Alice was alive and well when Defendant dropped her off at the train station on November 29, 2019, and that was the last time Defendant saw her.</b> (Herchen Decl., ¶¶ 5, 6.)</p> <p>Disputed that this is a material fact; it is not. It is Defendant’s self-serving conclusions unsupported by admissible, credible evidence.</p> <p>Disputed that Alice was alive and well when Defendant dropped her off at the train station on November 29, 2019.</p> <p>Defendant has offered <b>no</b> proof that he dropped Alice off at the train station as he reports. Defendant Herchen made no efforts to locate his missing wife and brazenly lied to his family, Alice’s family, and others about his non-efforts and other matters. He lied under oath. He destroyed Alice’s computers and electronic devices before Plaintiffs’ could examine them. Defendant Herchen sent himself a cover-up email from Decedent’s email account to cover up her death. Defendant Herchen failed to cooperate with investigators searching for Alice.</p> <p><b>Proof:</b> Excerpts from the Deposition of Harald Herchen, attached to the Declaration of Todd K. Davis at ¶ 4-5, <b>Exhibit A, B</b>; Declaration of George Ku, ¶ 4-18; Declaration of Li Tsung Su, ¶¶ 1-7; Declaration of Yang Chi Lee, ¶¶ 1-4; Declaration of Dr. Tal Lavian, ¶¶ 1-38.)</p> <p>Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant’s own self-serving statements/conclusions; (2) Lacks Foundation/Inadmissible Opinion/Conclusion: The credibility and admissibility of Defendant’s testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it determines that he</p>

	testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 5003; <i>Nelson v. Black</i> (1954) 43 Cal.2d 612; <i>People v. Lavergne</i> (1971), 4 Cal. 3d 735)].
15. Plaintiffs have produced no photographs, films, or videotapes depicting or evidencing the alleged injury or death of Alice Ku. (Herchen Decl., ¶ 18.)	Undisputed.
16. Plaintiffs have no personal knowledge that such photographs, films, or videotapes exist. (See Plaintiff WEICHIAO KU's Amended Responses to Form Interrogatories, Set One, No. 12.2.)  Plaintiff WEICHIAO KU's Amended Responses to Form Interrogatories, Set One, and Verifications thereto are collectively attached to the Declaration of Louis F. Doyle as <u>Exhibit E.</u>	Undisputed.
17. Plaintiffs admit they have not obtained a written or recorded statement from anyone concerning the alleged injury or death of Alice Ku. (Plaintiff WEICHIAO KU's Amended Responses to Form Interrogatories, Set One, No. 12.3; Plaintiff PI - LIEN KUO's Responses to Form Interrogatories, Set Three, No. 12.3.)  Plaintiff WEICHIAO KU's Amended Responses to Form Interrogatories, Set One, and the Verifications thereto are collectively attached to the Declaration of Louis F. Doyle as <u>Exhibit E.</u> Plaintiff PI - LIEN KUO's Responses to Form Interrogatories, Set Three and Verification, are collectively attached to the Declaration of Louis F. Doyle as <u>Exhibit G.</u>	Undisputed that <i>as of</i> the date of the Interrogatory Responses Plaintiff had not obtained any statement concerning Alice's disappearance and death.  Disputed, as of the present time.  <b><i>Proof:</i></b> Taiwan law enforcement officials have declared that they presume Alice Ku is dead, and that they are investigating her disappearance and death as a homicide. Special Investigator Li Tsung Su of the Criminal Investigation Bureau of Taiwan's National Police Agency confirmed that Taiwan is investigating Alice's disappearance as a homicide, that they believe Alice is dead, and that she was killed by homicide. Defendant Harald Herchen has an outstanding warrant in Taiwan in connection with Alice's homicide. (Declaration of Li Tsung Su, ¶¶ 1-7; Declaration of Yang Chi Lee, ¶¶ 1-4. )
18. On or about November 11, 2021,	



<p>1 2 3 4 5 6 7</p>	<p>Defendant HARALD HERCHEN propounded Special Interrogatories, Set One, directed to Plaintiff WEICHIAO KU.</p> <p>Defendant HARALD HERCHEN's Special Interrogatories, Set One, directed to Plaintiff WEICHIAO KU is attached to the Declaration of Louis F. Doyle as <b><u>Exhibit H.</u></b></p>	<p>Undisputed</p>
<p>8 9 10 11 12 13 14 15 16</p>	<p>19. On or about January 31, 22, Plaintiff WEICHIAO KU propounded Responses to Special Interrogatories, Set One; a verification to those responses signed by WEICHIAO KU on February 8, 2022 was subsequently forwarded by Plaintiffs' counsel to defense counsel.</p> <p>Plaintiff WEICHIAO KU's Responses to Special Interrogatories, Set One and the Verifications thereto are collectively attached to the Declaration of Louis F. Doyle as <b><u>Exhibit I.</u></b></p>	<p>Undisputed</p>
<p>17 18 19 20 21 22</p>	<p>20. Defendant HARALD HERCHEN propounded Special Interrogatories, Set Three, directed to Plaintiff PI - LIEN KUO.</p> <p>Defendant HARALD HERCHEN's Special Interrogatories, Set Three, directed to Plaintiff PI - LIEN KUO is attached to the Declaration of Louis F. Doyle as <b><u>Exhibit J.</u></b></p>	<p>Undisputed</p>
<p>23 24 25 26 27 28</p>	<p>21. On or about March 15, 2022, Plaintiff PI - LIEN KUO propounded Responses to Special Interrogatories, Set Three; a verification to those responses signed by PI - LIEN KUO on March 21, 2022 was subsequently forwarded by Plaintiffs' counsel to defense counsel.</p> <p>Plaintiff PI - LIEN KUO's Responses to Special Interrogatories, Set Three, and the Verification thereto are</p>	<p>Undisputed</p>

<p>1 collectively attached to the Declaration 2 of Louis F. Doyle as <b>Exhibit K.</b></p>	
<p>3 22. The sole concrete item Plaintiffs have 4 relied on for causation pertains to an 5 email dated November 30, 2019, from 6 Alice Ku to Defendant Harald Herchen, 7 which Plaintiffs <i>allege</i> was transmitted 8 through the Taiwan hotel IP address. 9 Hereinafter, for clarity the subject email 10 will be referred to as "the Email." A 11 true copy of the Email is attached to the 12 Declaration of Louis F. Doyle, as 13 <b>Exhibit L.</b></p>	<p>Undisputed that an email was sent from Alice's computer to Defendant Harald Herchen on or about November 29, 2019 through the Taiwan hotel's IP address.</p> <p>Disputed as to Defendant's interpretation and characterization of Plaintiff's claim with respect to the email; Disputed as to Defendant's opinions and interpretation of evidence relied Plaintiff has and will rely on to prove the stated claims.</p> <p>The Nov. 29 Email was, with certainty, not sent from Decedent's parents' area of Taiwan. The Nov. 29 Email was sent from the hotel in Hualien where Defendant and Decedent were staying when Alice purportedly left by train on November 29, 2019. The IP address of the email is that of the hotel Wi-fi in Hualien, which is where the victim's email account was still logged in to her Google Gmail account, using the web interface of Gmail. The timestamp of the Email is consistent with most of the other emails that Alice sent from Taiwan, in that the device that sent the email was not on the Taiwan time zone; It was on the Pacific time zone (UTC -8), rather than the Taiwan time zone (UTC +8), which is confirmed by the email headers and the Google-produced mailbox file for the victim's email account. In addition, Decedent did not have her computer with her at that time, according to Defendant, she had left it in the hotel.</p> <p><b>Proof:</b> Plaintiff's claims are set forth in the operative First Amended Complaint, on file with this Court; Excerpts from the Depositions of Harald Herchen, attached to the Declaration of Todd K. Davis at ¶ 4-5, <b>Exhibit A, B</b>; Declaration of Dr. Tal Lavian, ¶¶ 1-38.</p>

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	<p>Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant's own self-serving conclusion; (2) Lacks Foundation/Inadmissible</p> <p>Opinion/Conclusion: The credibility and admissibility of Defendant's testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 5003; <i>Nelson v. Black</i> (1954) 43 Cal.2d 612; <i>People v. Lavergne</i> (1971), 4 Cal. 3d 735)].</p>
<p>23. After Harald dropped Alice off at the train station in Taiwan for her to go to see her parents, he returned to the hotel. After a while Harald sent an email to Alice suggesting that he and Alice would meet at the airport lounge the next day to take their flight back home. Alice responded to Harald's email with the Email stating that she wanted to stay in Taiwan an extra week and to please change her flight to accommodate same. (Herchen Dep., pages 148-153; Herchen Decl., ¶ 16.)</p>	<p>Sentence one of Statement #23: Disputed.</p> <p>Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant's own self-serving conclusion; (2) Lacks Foundation/Inadmissible</p> <p>Opinion/Conclusion: The credibility and admissibility of Defendant's testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 5003; <i>Nelson v. Black</i> (1954) 43 Cal.2d 612; <i>People v. Lavergne</i> (1971), 4 Cal. 3d 735)].</p> <p>Sentence two of Statement #23: Disputed.</p> <p>Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant's own self-serving conclusion; (2) Lacks Foundation/Inadmissible</p> <p>Opinion/Conclusion: The credibility and admissibility of Defendant's testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI</p>

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5003; *Nelson v. Black* (1954) 43 Cal.2d 612; *People v. Lavergne* (1971), 4 Cal. 3d 735)]; (3) Lacks Foundation: Defendant has failed to produce the email he alleges he sent to Alice referred to in sentence two.

Sentence three of Statement #23: Undisputed that an email was sent from the decedent's computer from the Taiwan hotel IP address; Disputed that it was sent by Alice.

- Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant's own self-serving conclusion; (2) Lacks Foundation / Inadmissible Opinion/Conclusion: The credibility and admissibility of Defendant's testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 5003; *Nelson v. Black* (1954) 43 Cal.2d 612; *People v. Lavergne* (1971), 4 Cal. 3d 735).]

The Nov. 29 Email was, with certainty, not sent from Decedent's parents' area of Taiwan. The Nov. 29 Email was sent from the hotel in Hualien where Defendant and Decedent were staying when Alice purportedly left by train on November 29, 2019. The IP address of the email is that of the hotel Wi-fi in Hualien, which is where the victim's email account was still logged in to her Google Gmail account, using the web interface of Gmail. The timestamp of the Email is consistent with most of the other emails that Alice sent from Taiwan, in that the device that sent the email was not on the Taiwan time zone; It was on the Pacific time zone (UTC -8), rather than the Taiwan time zone (UTC +8), which is confirmed by the email headers and the Google-produced mailbox file for the victim's

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p>	<p>email account. In addition, Decedent did not have her computer with her at that time, according to Defendant, she had left it in the hotel.</p> <p>Defendant has offered <b>no</b> proof that he dropped Alice off at the train station as he reports.</p> <p><b>Proof:</b> Excerpts from the Deposition of Harald Herchen, attached to the Declaration of Todd K. Davis at ¶ 4-5, <b>Exhibit A, B</b>; Declaration of George Ku, ¶ 4-18; Declaration of Dr. Tal Lavian, ¶¶ 1-38.</p>
<p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>Sentence one of Statement 24: Undisputed.</p> <p>Sentence two of Statement 24: Undisputed.</p> <p>Sentences three and four of Statement 24: Disputed.</p> <p>Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant's own self-serving conclusion; (2) Lacks Foundation/Inadmissible Opinion/Conclusion: The credibility and admissibility of Defendant's testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 5003; <i>Nelson v. Black</i> (1954) 43 Cal.2d 612; <i>People v. Lavergne</i> (1971), 4 Cal. 3d 735)]; (3) Improper Expert Opinion from Lay Witness (Cal. Evid. Code §§ 720, 800-803; <i>Greshko v. County of Los Angeles</i> (1987) 194 Cal. App. 3d 822, 834.</p> <p>The Nov. 29 Email was, with certainty, not sent from Decedent's parents' area of Taiwan. The Nov. 29 Email was sent from the hotel in Hualien where Defendant and Decedent were staying when Alice purportedly left by train on November 29, 2019. The IP address of the email is that of the hotel Wi-fi in Hualien, which is where the victim's email</p>

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account was still logged in to her Google Gmail account, using the web interface of Gmail. The timestamp of the Email is consistent with most of the other emails that Alice sent from Taiwan, in that the device that sent the email was not on the Taiwan time zone; It was on the Pacific time zone (UTC -8), rather than the Taiwan time zone (UTC +8), which is confirmed by the email headers and the Google-produced mailbox file for the victim's email account. In addition, Decedent did not have her computer with her at that time, according to Defendant, she had left it in the hotel.

**Proof:** Plaintiff's claims are set forth in the operative First Amended Complaint, on file with this Court; Excepts from the Deposition of Harald Herchen, attached to the Declaration of Todd K. Davis at ¶ 4-5, **Exhibit A, B**; Declaration of George Ku, ¶ 4-18; Declaration of Dr. Tal Lavian, ¶¶ 1-38.

25. The full extent of the hotel's Wi-Fi coverage is unknown, but it extends at least throughout the hotel building and grounds. (Herchen Decl., ¶ 17.)

Undisputed as to Defendant's admission that he the extent of the hotel's wi-fi coverage is unknown to Defendant.

Objection as to Defendant's qualification to testify as to the hotel's wi-fi coverage.

Disputed. The Nov. 29 Email was, with certainty, not sent from Decedent's parents' area of Taiwan. The Nov. 29 Email was sent from the hotel in Haulien where Defendant and Decedent were staying when Alice purportedly left by train on November 29, 2019. The IP address of the email is that of the hotel Wi-fi in Hualien, which is where the victim's email account was still logged in to her Google Gmail account, using the web interface of Gmail. The timestamp of the Email is consistent with most of the other emails that Alice sent from Taiwan, in that the device that sent the email was not on the Taiwan time zone; It was on the Pacific time zone (UTC -8), rather than the Taiwan time

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	<p>zone (UTC +8), which is confirmed by the email headers and the Google-produced mailbox file for the victim's email account. In addition, Decedent did not have her computer with her at that time, according to Defendant, she had left it in the hotel.</p> <p><b>Proof:</b> Excerpts from the Deposition of Harald Herchen, attached to the Declaration of Todd K. Davis at ¶ 4-5, <b>Exhibit A, B</b>; Declaration of Dr. Tal Lavian, ¶¶ 1-38.</p> <p>Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant's own self-serving conclusion; (2) Lacks Foundation/Inadmissible Opinion/Conclusion: The credibility and admissibility of Defendant's testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 5003; <i>Nelson v. Black</i> (1954) 43 Cal.2d 612; <i>People v. Lavergne</i> (1971), 4 Cal. 3d 735)]; (3) Improper Expert Opinion from Lay Witness (Cal. Evid. Code §§ 720, 800-803; <i>Greshko v. County of Los Angeles</i> (1987) 194 Cal. App. 3d 822, 834.</p>
<p>26. The transmission of Alice's last Email through the hotel's IP address proves nothing regarding her alleged injury or death or its cause. (Herchen Decl., ¶17.)</p>	<p>Disputed The Nov. 29 Email was, with certainty, not sent from Decedent's parents' area of Taiwan. The Nov. 29 Email was sent from the hotel in Hualien where Defendant and Decedent were staying when Alice purportedly left by train on November 29, 2019. The IP address of the email is that of the hotel Wi-fi in Hualien, which is where the victim's email account was still logged in to her Google Gmail account, using the web interface of Gmail. The timestamp of the Email is consistent with most of the other emails that Alice sent from Taiwan, in that the device that sent the email was not on the</p>

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Taiwan time zone; It was on the Pacific time zone (UTC -8), rather than the Taiwan time zone (UTC +8), which is confirmed by the email headers and the Google-produced mailbox file for the victim's email account. In addition, Decedent did not have her computer with her at that time, according to Defendant, she had left it in the hotel.

**Proof:** Excerpts from the Deposition of Harald Herchen, attached to the Declaration of Todd K. Davis at ¶ 4-5, **Exhibit A, B**; Declaration of Dr. Tal Lavian, ¶¶ 1-38.

Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant's own self-serving conclusion; (2) Lacks Foundation/Inadmissible Opinion/Conclusion: The credibility and admissibility of Defendant's testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 202; CACI 5003; *Nelson v. Black* (1954) 43 Cal.2d 612; *People v. Lavergne* (1971), 4 Cal. 3d 735)]; (3) Improper Expert Opinion from Lay Witness (Cal. Evid. Code §§ 720, 800-803; *Greshko v. County of Los Angeles* (1987) 194 Cal. App. 3d 822, 834; (4) Improper Legal Conclusion.

27. Plaintiffs have no personal, direct, or admissible evidence that the Email was sent by Defendant. (See Plaintiff PI-LIEN KUO's Responses to Special Interrogatories, Set Three, No. 11; Plaintiff WEICHIAO KU's Responses to Special Interrogatories, Set One, No. 15.)

Plaintiff PI-LIEN KUO's Responses to Special Interrogatories, Set Three are attached to the Declaration of Louis F. Doyle as Exhibit K. Plaintiff

Undisputed that Plaintiff does not have personal knowledge that the Email was sent by Defendant; Plaintiff was not present in Taiwan in the couples' hotel room when the Email was sent by Defendant.

Undisputed that Plaintiff does not have direct evidence that the Email was sent by Defendant; Plaintiff was not present in Taiwan in the couples' hotel room when



1 WEICHIAO KU's Responses to  
2 Special Interrogatories, Set One and the  
3 Verification thereto are collectively  
4 attached to the Declaration of Louis F.  
5 Doyle as Exhibit I.

the Email was sent by Defendant.

Disputed as to whether Plaintiff has  
admissible evidence to establish that  
Defendant sent the Email.

The Nov. 29 Email was, with certainty, not  
sent from Decedent's parents' area of  
Taiwan. The Nov. 29 Email was sent from  
the hotel in Hualien where Defendant and  
Decedent were staying when Alice  
purportedly left by train on November 29,  
2019. The IP address of the email is that  
of the hotel Wi-fi in Hualien, which is  
where the victim's email account was still  
logged in to her Google Gmail account,  
using the web interface of Gmail. The  
timestamp of the Email is consistent with  
most of the other emails that Alice sent  
from Taiwan, in that the device that sent  
the email was not on the Taiwan time  
zone; It was on the Pacific time zone  
(UTC -8), rather than the Taiwan time  
zone (UTC +8), which is confirmed by the  
email headers and the Google-produced  
mailbox file for the victim's email account.  
In addition, Decedent did not have her  
computer with her at that time, according  
to Defendant, she had left it in the hotel.

***Proof:*** Excerpts from the Deposition of  
Harald Herchen, attached to the  
Declaration of Todd K. Davis at ¶ 4-5,  
**Exhibit A, B**; Declaration of George Ku, ¶  
4-18; Declaration of Dr. Tal Lavian, ¶¶ 1-  
38.

Objection: (1) Lacks foundation [Evid. Code  
§702], this is not a material fact supported by  
admissible evidence but rather Defendant's  
own self-serving conclusion; (2) Lacks  
F o u n d a t i o n / I n a d m i s s i b l e  
Opinion/Conclusion: The credibility and  
admissibility of Defendant's testimony is in  
question given he is an admitted perjurer.  
[The trier of fact may disregard all of the  
testimony of a party if it determines that he  
testified falsely as to some matters covered

<p>1</p> <p>2</p> <p>3</p> <p>4</p>	<p>by his testimony (Evid. Code §780; CACI 202; CACI 5003; <i>Nelson v. Black</i> (1954) 43 Cal.2d 612; <i>People v. Lavergne</i> (1971), 4 Cal. 3d 735)].</p>
<p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>28. <b>Defendant did not send the Email.</b></p> <p>(Herchen Decl., 16, 17.)</p>	<p>Disputed.</p> <p>The Nov. 29 Email was, with certainty, not sent from Decedent's parents' area of Taiwan. The Nov. 29 Email was sent from the hotel in Hualien where Defendant and Decedent were staying when Alice purportedly left by train on November 29, 2019. The IP address of the email is that of the hotel Wi-fi in Hualien, which is where the victim's email account was still logged in to her Google Gmail account, using the web interface of Gmail. The timestamp of the Email is consistent with most of the other emails that Alice sent from Taiwan, in that the device that sent the email was not on the Taiwan time zone; It was on the Pacific time zone (UTC -8), rather than the Taiwan time zone (UTC +8), which is confirmed by the email headers and the Google-produced mailbox file for the victim's email account. In addition, Decedent did not have her computer with her at that time, according to Defendant, she had left it in the hotel.</p> <p><b><i>Proof:</i></b> Excerpts from the Deposition of Harald Herchen, attached to the Declaration of Todd K. Davis at ¶ 4-5, <b>Exhibit A, B</b>; Declaration of George Ku, ¶ 4-18; Declaration of Dr. Tal Lavian, ¶¶ 1-38</p> <p>Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant's own self-serving conclusion; (2) Lacks Foundation/Inadmissible Opinion/Conclusion: The credibility and admissibility of Defendant's testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it</p>

	<p>determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 202; CACI 5003; <i>Nelson v. Black</i> (1954) 43 Cal.2d 612; <i>People v. Lavergne</i> (1971), 4 Cal. 3d 735)].</p>
<p>29. Plaintiffs have no personal, direct, or admissible evidence regarding Alice Ku's credit card usage. (See Herchen Decl., ¶ 14.)</p>	<p>Disputed. Alice did not use or access any of her financial holdings/credit cards after November 23, 2019, the day she left for Taiwan. She did not pay her December 2019 credit card bill. She did not make any large cash withdrawals prior to leaving for Taiwan.</p> <p><b>Proof:</b> Declaration of George Ku, ¶ 15-16.</p> <p>Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant's own self-serving conclusion; (2) Lacks Foundation / Inadmissible Opinion/Conclusion: The credibility and admissibility of Defendant's testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 202; CACI 5003; <i>Nelson v. Black</i> (1954) 43 Cal.2d 612; <i>People v. Lavergne</i> (1971), 4 Cal. 3d 735.)]</p>
<p>30. Defendant Harald Herchen never claimed that Alice was using credit cards for expenses in Taiwan. (Herchen Decl., ¶ 14.)</p>	<p>Undisputed.</p>
<p>31. Alice Ku possessed ample cash to finance her longer stay in Taiwan. (Herchen Dep., page 165; Herchen Decl., ¶ 15.)</p>	<p>Disputed. Alice did not use or access any of her financial holdings/credit cards after November 23, 2019, the day she left for Taiwan. She did not pay her December 2019 credit card bill. She did not make any large cash withdrawals prior to leaving for Taiwan.</p> <p><b>Proof:</b> Declaration of George Ku, ¶ 15-16.</p>

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	<p>Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant's own self-serving conclusion; (2) Lacks Foundation/Inadmissible Opinion/Conclusion: The credibility and admissibility of Defendant's testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 202; CACI 5003; <i>Nelson v. Black</i> (1954) 43 Cal.2d 612; <i>People v. Lavergne</i> (1971), 4 Cal. 3d 735.]</p>
32. The police NEVER responded to a domestic argument between Defendant Harald Herchen and Alice Ku. (Herchen Decl., ¶ 13.)	Undisputed.
33. Plaintiffs have no personal, direct, or admissible evidence that any such police response ever occurred. (See Herchen Decl., ¶ 13.)	Undisputed.
34. Alice was familiar with the area where her parents lived in Taiwan. She knew the area, she spoke the language and she had very recently spoken to her mother by telephone so she likely had her mother's telephone number. (See Plaintiff Pi-Lien Kuo's response to Special Interrogatory No. 2, Set Three, where she states she spoke with Alice by telephone between November 7 and November 17 of 2019; Herchen Decl., ¶ 10.	<p>Undisputed that Alice spoke Taiwanese.</p> <p>Disputed that Alice spoke recently to her mother. Alice spoke daily or close to daily with her sister Josephine, but hadn't talked to her mother since a few weeks before her trip. Alice's mother did not know Alice was coming to Taiwan, and Alice did not talk to her when she was in Taiwan. The last communication from Alice was a text message sent to Josephine November 26 (California time, November 27 Taiwan time).</p> <p><b>Proof:</b> Declaration of George Ku, ¶ 3.</p> <p>Disputed that Alice was familiar with the area that her parents lived in.</p>

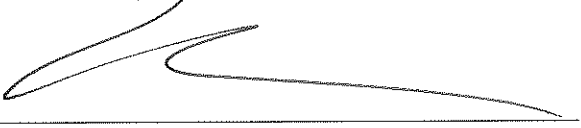
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	<p><b>Proof:</b> Declaration of George Ku, ¶ 17.</p> <ul style="list-style-type: none"><li>• Objection: (1) Lacks foundation [Evid. Code §702], this is not a material fact supported by admissible evidence but rather Defendant's own self-serving conclusion; (2) Lacks Foundation/Inadmissible Opinion/Conclusion: The credibility and admissibility of Defendant's testimony is in question given he is an admitted perjurer. [The trier of fact may disregard all of the testimony of a party if it determines that he testified falsely as to some matters covered by his testimony (Evid. Code §780; CACI 5003; <i>Nelson v. Black</i> (1954) 43 Cal.2d 612; <i>People v. Lavergne</i> (1971), 4 Cal. 3d 735.)]</li></ul>
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Plaintiffs' repeat and reallege their responses to Defendants' Statement of Undisputed Facts 1 through 34 and incorporate the same herein, for Defendants' Motion for Summary Adjudication for Causes of Action 1 through 3.

Dated: November 22, 2022

FARLING, HECHT & DAVIS

By 

TODD K. DAVIS  
Attorneys for Plaintiffs