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9 ATTORNEYS FOR Defendants ISLAND EXPRESS
HELICOPTERS, INC., a California Corporation; and
10 ISLAND EXPRESS HOLDING CORP., a California Corporation.

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**
14

15 JOHN JAMES ALTOBELLI, an individual
and as Successor in Interest to ALYSSA
16 ALTOBELLI, JOHN ALTOBELLI, and KERI
17 ALTOBELLI; ALEXIS ALTOBELLI, a minor,
by and through her Guardian JOHN
18 JAMES ALTOBELLI;

19 Plaintiffs,

20 vs.

21 ISLAND EXPRESS HELICOPTERS, INC., a
California Corporation; ISLAND EXPRESS
22 HOLDING CORP., a California Corporation;
and DOES 1-50,
23

24 Defendants.
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Case No.: 20STCV14963

Assigned to:
Dept.: 28

ISLAND EXPRESS HELICOPTERS, INC., a
California Corporation; and ISLAND EXPRESS
HOLDING CORP., a California Corporation's
ANSWER TO PLAINTIFFS' COMPLAINT
FOR DAMAGES; DEMAND FOR JURY
TRIAL

Complaint Filed: April 20, 2020
Trial Date: October 18, 2021

1 COME NOW defendants ISLAND EXPRESS HELICOPTERS, INC., a California
2 Corporation; and ISLAND EXPRESS HOLDING CORP., a California Corporation (collectively
3 referred to herein as “Defendants”), and in accordance with Section 431.30 of the California Code
4 of Civil Procedure, hereby generally deny each and every, all and singular, the allegations therein
5 contained, and in this connection, Defendants deny that Plaintiffs JOHN JAMES ALTOBELLI, an
6 individual and as Successor in Interest to ALYSSA ALTOBELLI, JOHN ALTOBELLI, AND
7 KERI ALOTBELLI; ALEXIS ALTOBELLI, a minor, by and through her Guardian JOHN JAMES
8 ALTOBELLI (collectively referred to herein as “Plaintiffs”) have been injured or damaged in any
9 of the sums mentioned in the complaint, or in any sum what so ever at all, as a result of any action
10 or omission by Defendants.

11 **FIRST AFFIRMATIVE DEFENSE**

12 1. AS A FURTHER, SEPARATE, AND AFFIRMATIVE DEFENSE TO THE
13 COMPLAINT ON FILE HEREIN, all or some of Plaintiffs’ claims are barred due to Plaintiffs’
14 failure to state facts sufficient to constitute a cause of action against Defendants.

15 **SECOND AFFIRMATIVE DEFENSE**

16 2. AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
17 COMPLAINT ON FILE HEREIN, decedents ALYSSA ALTOBELLI, JOHN ALTOBELLI, and
18 KERI ALTOBELLI had actual knowledge of all of the circumstances, particular dangers, and an
19 appreciation of the risks involved and the magnitude thereof, and proceeded to encounter a known
20 risk, and voluntarily assume the risk of the accident, injury, and damages in the alleged
21 COMPLAINT, thereby barring or reducing Plaintiffs’ claim for damages.

22 **THIRD AFFIRMATIVE DEFENSE**

23 3. AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
24 COMPLAINT ON FILE HEREIN, Defendants allege that the damages sought in the COMPLAINT
25 were proximately caused by one or more unforeseeable, independent, intervening, and/or
26 superseding events beyond the control of and unrelated to any actions or conduct of Defendants.

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FOURTH AFFIRMATIVE DEFENSE

4. AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, Defendants allege that the damages sought in the COMPLAINT were proximately caused by the acts or omissions of other parties for whom answering Defendants are not legally responsible, which intervened and/or superseded the acts and/or omission of answering Defendants, if any, and Plaintiffs’ alleged damages. In the alternative, any amounts which Plaintiffs might be entitled to recover against answering Defendants must be reduced to the extent any such damages are attributable to the intervening and/or supervening acts and/or omissions of persons other than answering Defendants.

FIFTH AFFIRMATIVE DEFENSE

5. AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, Defendants allege that the sole proximate cause of Plaintiffs’ damages was the acts and/or omissions of others.

SIXTH AFFIRMATIVE DEFENSE

6. AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, Defendants allege that the damages sought in the COMPLAINT were proximately caused in whole or in part by a new and independent cause not reasonably foreseeable by answering Defendants. Such new and independent cause became the direct and proximate cause of the accident.

SEVENTH AFFIRMATIVE DEFENSE

7. AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, Defendants allege that the damages sought in the COMPLAINT were the result of an unavoidable accident and not proximately caused by any alleged act or omission on the part of answering Defendants.

EIGHTH AFFIRMATIVE DEFENSE

8. AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, Defendants allege that Plaintiffs have failed to join all necessary

1 and indispensable parties.

2 **NINTH AFFIRMATIVE DEFENSE**

3 9. AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
4 COMPLAINT ON FILE HEREIN, Defendants claim that they are not responsible for Plaintiffs'
5 damages due to an act of God.

6 **TENTH AFFIRMATIVE DEFENSE**

7 10. AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
8 COMPLAINT ON FILE HEREIN, all or some of Plaintiffs' claims are barred due to Plaintiffs'
9 failure to mitigate damages.

10 **ELEVENTH AFFIRMATIVE DEFENSE**

11 11. AS A ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
12 COMPLAINT ON FILE HEREIN, the damages, if any, suffered by Plaintiffs were caused in whole
13 or in part by the acts or omissions of persons or entities other than these answering Defendants.
14 Answering Defendants expressly reserve their right to pursue any and all actions for contribution
15 and indemnity of any kind whatsoever against such persons or entities.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 12. AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
18 COMPLAINT ON FILE HEREIN, all or some of Plaintiffs' claims for relief against Defendants are
19 barred due to the doctrines of waiver and/or estoppel.

20 **THIRTEENTH AFFIRMATIVE DEFENSE**

21 13. AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
22 COMPLAINT ON FILE HEREIN, all or some of Plaintiffs' claims for relief against Defendants are
23 barred due to comparative and/or contributory negligence. In the alternative, in the event there is a
24 finding of damages for Plaintiffs, such damages must be reduced to the extent of such comparative
25 and/or contributory negligence.

26 **FOURTEENTH AFFIRMATIVE DEFENSE**

27 14. AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
28

1 COMPLAINT ON FILE HEREIN, all or some of Plaintiffs' damages must be reduced and/or offset
2 by any benefits received by Plaintiffs under applicable law.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 15. AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
5 COMPLAINT ON FILE HEREIN, Defendants allege that Plaintiffs' COMPLAINT, and each cause
6 of action thereof, is barred by reason of acts, omissions, representation, and courses of conduct by
7 Plaintiffs, which Defendants were led to rely upon to their detriment, thereby barring each and
8 every cause of action under the doctrine of equitable estoppel.

9 **SIXTEENTH AFFIRMATIVE DEFENSE**

10 16. AS AN SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
11 COMPLAINT ON FILE HEREIN, Defendants allege that if they are determined to be liable to
12 Plaintiffs, such liability is based on conduct which is passive and secondary to the active and
13 primary wrongful conduct of other defendants in this action, if any. Defendants are therefore
14 entitled to total, equitable indemnity from such other defendants.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 17. AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
17 COMPLAINT ON FILE HEREIN, Defendants allege that in the event the parties were not
18 reasonably and adequately warned of potential dangers concerning the inherently dangerous nature
19 of flying in a helicopter, the duty to provide the warnings was that of a third party, and not of
20 Defendants.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 18. AS AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
23 COMPLAINT ON FILE HEREIN, Defendants allege that there are other persons, parties, entities,
24 and/or defendants who are at fault and proximately caused Plaintiffs' injuries, if any. If Defendants
25 are responsible to Plaintiffs, of which Defendants expressly deny such responsibility, these
26 answering Defendants are only liable for their proportionate share of non-economic damages, if
27 any, as set forth in the Civil Code section 1431.2.

1 **NINETEENTH AFFIRMATIVE DEFENSE**

2 19. AS A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
3 COMPLAINT ON FILE HEREIN, Defendants allege that Plaintiffs' COMPLAINT, and each cause
4 of action thereof, is barred by the doctrines of unclean hands and/or laches.

5 **TWENTIETH AFFIRMATIVE DEFENSE**

6 20. AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
7 COMPLAINT ON FILE HEREIN, Defendants allege that they are entitled to a set-off for all
8 amounts paid to the Plaintiffs by other Defendants through settlements, if any.

9 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

10 21. AS A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
11 COMPLAINT ON FILE HEREIN, Defendants allege that the services of Defendants fully complied
12 with all applicable governmental laws and regulations at the time the services were rendered.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 22. AS A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO
15 THE COMPLAINT ON FILE HEREIN, Defendants allege that plaintiffs were advised, informed
16 and warned of any potential hazards and/or dangers, and they failed to follow such warnings.

17 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

18 23. AS A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
19 COMPLAINT ON FILE HEREIN, answering Defendants allege that defendants were not acting as
20 a common carrier, but rather a private carrier, at all relevant times.

21 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

22 24. AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
23 THE COMPLAINT ON FILE HEREIN, answering Defendants allege that the COMPLAINT and
24 each purported Cause of Action therein, are barred under the Doctrine of Federal Preemption, in
25 that the laws of the United States of America, including, but not limited to, the Federal Aviation
26 Act, the Federal Aviation Regulations, rules and regulations of the Federal Aviation Administration
27 and its predecessors, the Civil Air Regulations, as well as other federal statutes, rules and laws, have
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1 shown intent by the Federal Government to completely and exclusively occupy the field of the
2 operation of civilian aviation.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

4 25. AS A TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
5 COMPLAINT ON FILE HEREIN, answering Defendants allege that the federal government has
6 preempted the field of law applicable to aviation safety through the Federal Aviation Act and
7 Federal Aviation Regulations. To the extent that Plaintiffs seek recovery based upon a standard of
8 care not mandated by federal law, such recovery is barred by the Supremacy Clause, Article VI,
9 clause 2, of the United States Constitution.

10 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

11 26. AS A TWENTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
12 COMPLAINT ON FILE HEREIN, Defendants allege that Plaintiff John James Altobelli lacks
13 standing to bring suit for a wrongful death claim for decedent Keri Altobelli, because Plaintiff John
14 James Altobelli is the adult stepchild of said decedent, and on information and belief was not
15 financially dependent on said decedent as Plaintiff John James Altobelli is and was employed by the
16 Boston Red Sox Major League Baseball team as a recruiter.

17 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

18 27. AS A TWENTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
19 THE COMPLAINT ON FILE HEREIN, answering Defendants allege that Plaintiffs have not pled
20 sufficient facts to support a claim for survival damages.

21 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

22 28. AS A TWENTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
23 COMPLAINT ON FILE HEREIN, answering Defendants allege that they presently have
24 insufficient knowledge or information on which to form a belief as to whether they may have
25 additional defenses available. Defendants expressly reserve their right to assert any additional
26 affirmative defenses that become known as a result of discovery, investigation, analysis and/or
27 proceedings in this case.

1 WHEREFORE, Defendants pray that Plaintiffs take nothing against Defendants by
2 Plaintiffs' COMPLAINT, that Defendants have judgment for its costs of suit herein incurred, and
3 together with such other and further relief both at law and in equity that Defendants may show
4 themselves entitled to.

5 Dated: June 29, 2020

CUNNINGHAM SWAIM, LLP

6
7 By: /s/ Michael J. Terhar

8 Michael J. Terhar
9 Ross Cunningham *Pro Hac Vice Pending*
10 Don Swaim *Pro Hac Vice Pending*
11 D. Todd Parrish
12 Attorneys for Defendants,
13 ISLAND EXPRESS
14 HELICOPTERS, INC.,
15 a California Corporation; and
16 ISLAND EXPRESS HOLDING CORP. a
17 California Corporation.
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DEMAND FOR JURY TRIAL

Defendants, ISLAND EXPRESS HELICOPTERS, INC., and ISLAND EXPRESS HOLDING CORP. hereby demand a trial by jury.

Dated: June 29, 2020

CUNNINGHAM SWAIM, LLP

By: /s/ Michael J. Terhar
Michael J. Terhar
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Attorneys for Defendants,
ISLAND EXPRESS
HELICOPTERS, INC.,
a California Corporation; and
ISLAND EXPRESS HOLDING CORP. a
California Corporation.

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PROOF OF SERVICE
John James Altobelli, et al. v. Island Express Helicopters, Inc., et al.
Superior Court of California, County of Los Angeles
Case No.: 20STCV14963

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2 North Lake Avenue, Suite 550, Pasadena, California 91101.

On June 29, 2020, I caused to be served the within document(s) described as:

**ISLAND EXPRESS HELICOPTERS, INC., a California Corporation; and
ISLAND EXPRESS HOLDING CORP., a California Corporation's ANSWER
TO PLAINTIFFS' COMPLAINT FOR DAMAGES.**

on the interested parties in this action as stated below:

SEE ATTACHED SERVICE LIST

- BY E-MAIL:** By transmitting a true copy of the foregoing document(s) to the e-mail addresses set forth on the attached mailing list.
- BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY OVERNIGHT COURIER:** I caused such envelope to be placed for collection and delivery on this date in accordance with standard Federal Express delivery procedures.
- BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the offices of the addressees.
- BY FAX:** I transmitted a copy of the foregoing document(s) this date via telecopier to the facsimile numbers shown on the attached mailing list.

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

Executed on June 29, 2020, at Pasadena, California.

_____ Cynthia Vivanco (Type or print name)	_____ <i>/s/Cynthia Vivanco</i> (Signature)
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SERVICE LIST

*John James Altobelli, et al. v. Island Express Helicopters, Inc., et al.
Superior Court of California, County of Los Angeles
Case No.: 20STCV14963*

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