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 15 ISLAND EXPRESS HELICOPTERS, INC., a
 16 California Corporation; and ISLAND EXPRESS
 17 HOLDING CORP., a California Corporation

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 19 **COUNTY OF LOS ANGELES, CIVIL UNLIMITED**

20 JOHN JAMES ALTOBELLI, an individual
 21 and as Successor in Interest to ALYSSA
 22 ALTOBELLI, JOHN ALTOBELLI, and
 23 KERI ALTOBELLI; ALEXIS ALTOBELLI,
 24 a minor, by and through her Guardian JOHN
 25 JAMES ALTOBELLI;

26 Plaintiffs,

27 vs.

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

Defendants.

ISLAND EXPRESS HELICOPTERS,
 INC., a California Corporation; and
 ISLAND EXPRESS HOLDING CORP., a
 California Corporation,

Cross-Complainants,

vs.

Case No.: 20STCV14963
 (Related to Cases: (LEAD)
 20STCV07492, 20STCV14973,
 20STCV17897)

Assigned to:
 Dept.: NW-W

**CROSS-COMPLAINT FOR
 INDEMNITY AND DECLARATORY
 RELIEF; DEMAND FOR JURY
 TRIAL**

Complaint Filed: April 20, 2020
 Trial Date: None Set

1 KYLE LARSEN, Individually; MATTHEW)
 2 CONLEY, Individually; and ROES 1 through)
 3 50,)
 Cross-Defendants.)
 _____)

4
 5 COMES NOW, Defendants and Cross-Complainants, ISLAND EXPRESS
 6 HELICOPTERS, INC., a California Corporation; and ISLAND EXPRESS HOLDING
 7 CORP., a California Corporation (herein “Cross-Complainants”), and against Cross-
 8 Defendants, KYLE LARSEN; MATTHEW CONLEY; and ROES 1 through 50,
 9 (collectively, “Cross-Defendants”), and alleges, on the information and belief:

10 1. Cross-Complainant Island Express Helicopters, Inc., a California Corporation
 11 is a California corporation located in Long Beach, California.

12 2. Cross-Complainant Island Express Holding Corp., a California Corporation is
 13 a California corporation located in Fillmore, California.

14 3. Cross-Defendant Kyle Larson (“Larson”) is an individual residing in
 15 California.

16 4. Cross-Defendant Matthew Conley (“Conley”) is an individual residing in
 17 California.

18 5. The true names and capacities, whether individual corporate, associate or
 19 otherwise of cross-defendants, Roes 1 through 50 are unknown to Cross-Complainants who,
 20 therefore, name said cross-defendant by such fictitious names and Cross-Complainants will
 21 ask leave of court to amend the cross-complaint to show the true names and capacities of
 22 such fictitiously named cross-defendants when the same have been ascertained. Cross-
 23 Complainants are informed and believe, and based upon such information and belief allege
 24 that each cross-defendant designated as a ROE is responsible under law in some manner for
 25 the events and happenings referred to herein.

26 6. At all times herein mentioned, each Cross-Defendant was acting as an agent,
 27 servant, employee, special employee, alter ego, successor in interest, partner, joint venturer,
 28

1 lessee and licensee of each of the other cross-defendants, within the course and scope of said
2 relationship. In addition, each Cross-Defendant authorized, ratified and approved the acts of
3 each of the other Cross-Defendants.

4 7. Relief is sought against each Cross-Defendant as well as his agents, assistances,
5 successors, employees, attorneys, and all persons acting in concert or cooperation with them
6 or at their direction or under their control.

7 8. Although Cross-Complainants do not concede the veracity of the Complaint's
8 allegations or the Plaintiff's claims, solely for purposes of its indemnity claims set forth
9 below, it incorporates them by this reference.

10 9. The claims asserted by Plaintiffs, and Cross-Complainants' claims, arise out of
11 the crash of a 1991 Sikorsky S76B helicopter, N72EX ("Aircraft" or "N72EX") on January
12 26, 2020, at approximately 9:45 a.m. PST. At the time of the crash, the Aircraft was being
13 piloted by Ara George Zobayan ("Zobayan" or "Pilot"). In addition to Zobayan, the Aircraft
14 was occupied by eight passengers.

15 10. Prior to the crash, Zobayan had taken off from John Wayne Airport, Santa Ana,
16 California, and was heading toward Camarillo Airport, in Camarillo, California. Zobayan
17 was familiar with the route and had often flown this precise route for Kobe Bryant on previous
18 occasions.

19 11. When Zobayan entered the Los Angeles basin, visibility decreased. He had
20 been following Highway 101, a major landmark and typically easy for helicopter pilots to
21 follow. Between Las Virgenes and Lost Hills road, the Aircraft was 1,500' AGL and began
22 to climb and enter a left turn. Eight seconds later, at approximately 2,300' AGL, the Aircraft
23 began a rapid descent while continuing with the left turn. At approximately 9:45 a.m. PST,
24 the Aircraft impacted hilly terrain near Calabasas, California. A post-impact fire ensued and
25 resulted in a brush fire. Zobayan and the eight passengers were fatally injured, and the
26 Aircraft was destroyed.

27 12. As a result of the accident, four lawsuits have been filed against Cross-
28 Complainants, including this one.

1 13. The accident was caused by a series of erroneous acts and/or omissions
2 committed by Cross-Defendants Larsen and Conley, both of whom were acting in the course
3 and scope of their employment as Air Traffic Controllers for the Southern California
4 TRACON (“SOCAL”), a Federal Aviation Administration Terminal Radar Approach
5 Control Facility, at all times relevant to this Cross-Complaint.

6 14. After transitioning from the Burbank Air Traffic Control Tower to SOCAL, the
7 Pilot contacted SOCAL and remained on that frequency until the time of the accident. The
8 Pilot had contact with two SOCAL controllers prior to the accident. The first was Cross-
9 Defendant Larson. The Pilot requested flight following, but Larsen denied the request, stating
10 “I’m going to lose radar and comms probably pretty shortly so you can just squawk V-FR-
11 and when you get closer go to Camarillo tower.” This denial was improper because radar
12 contact had not been lost and services were being denied based on the possibility that they
13 might be lost at some point in the future. The fact that N72EX was able to contact SOCAL
14 four minutes later, and its transponder was still observed by the controller, proves that the
15 prediction of lost contact was not accurate and services could and should have been provided
16 continuously.

17 15. Air Traffic Control Order: JO 7110.65Y (Air Traffic Control Handbook)
18 paragraph 2-1-1 c. states: “the provision of additional services is not optional on the part of
19 the controller but rather required when work situation permits.” Radar advisories to VFR
20 aircraft are considered an additional service. The SOCAL controller was not too busy to
21 provide service. NTSB Interview Summaries of both controllers from SOCAL confirmed that
22 they both described traffic as “normal,” and a “2” on a scale of 1 to 5.

23 16. Three minutes after Zobayan’s initial call to SOCAL, Larsen was relieved by
24 SOCAL controller Cross-Defendant Conley. Less than two minutes after Conley assumed
25 the position, he was called by the Pilot, who said “and SOCAL for helicopter two echo x-ray
26 we gonna go ahead and start our climb to go above the uh layers and uh we can stay with you
27 here.” However, despite Larsen’s obligation to do so, he had not informed Conley as to the
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1 existence of N72EX. As a result, critical time was lost as Conley struggled to identify N72EX
2 with no help from Larsen.

3 17. Among other things, the accident was caused by Larsen's failure to properly
4 terminate radar services. Because Larsen never actually terminated radar services with
5 N72EX, the Pilot would have assumed he was still being surveilled and being provided flight
6 following. The instruction "You can just squawk VFR" was no more than an instruction to
7 the Pilot to change his transponder setting. It is apparent that Larsen incorrectly thought he
8 had terminated radar service for N72EX because he failed to brief Conley, his replacement,
9 about the existence of N72EX. Conley was totally unaware of N72EX once assuming the
10 seat, which critically delayed N72EX's "re-identification" and provision of services to the
11 Pilot. In his interview, Conley admitted that "[h]e remembered the Pilot [N72EX] just talking
12 to him like he had already been in contact and was receiving services, but he had no record
13 of him."

14 18. Air Traffic Control Order: JO 7110.65Y (Air Traffic Control Handbook),
15 paragraph 5-1-13 Radar Service Termination states: "Inform aircraft when radar service is
16 being terminated. Phraseology - Radar service terminated." This is the only method
17 prescribed for controllers to inform an aircraft that they are not, or will no longer be, receiving
18 radar services. This is a mandatory requirement that was not followed. And this omission
19 clearly led the Pilot of N72EX to believe that he was continuing to receive radar services.

20 19. The pilot/controller glossary contained in the Aeronautical Information Manual
21 tells both pilots and controllers that the definition of Radar Service Terminated is "Used by
22 ATC to inform a pilot that he/she will no longer be provided any of the services that could
23 be received while in radar contact." In the absence of this phrase being used, the Pilot would
24 have properly assumed that he was still in radar contact and receiving all of the services, like
25 terrain callouts, provided during radar flight following.

26 20. Evidence that the Pilot thought he was receiving radar services is clear from
27 his transmission to SCT when he stated he was going to "climb above the layers and stay
28 with you." Such language is the opposite of a Pilot making an initial call to request services.

1 Rather, it is consistent with continued communications with a facility from whom a pilot is
2 receiving services.

3 21. Zobayan thought he was still receiving radar services at the time of the accident.
4 And because the Aeronautical Information Manual defines radar monitoring as “the use of
5 radar for the purpose of providing aircraft with information and advice relative to significant
6 deviations from nominal flight path,” the Pilot would have operated the aircraft under the
7 assumption that ATC was monitoring his flight and would have warned him of unsafe
8 proximity to terrain.

9 22. The accident was also caused by the failure of Larson and Conley to properly
10 execute position relief briefing. When one controller relieves another, the use of a position
11 relief checklist is mandated to assure that a full briefing is given to the new controller and
12 that no pertinent items are overlooked. This requirement is listed in paragraph 2-1-24
13 Transfer of Position Responsibility, 7110.65Y. This requirement is further defined in the
14 SOCAL Standard Operating Procedure Order 7110.65B paragraph 3-1-8 which states: “The
15 relief briefing must involve the use of a tailored checklist.”

16 23. During his NTSB interview, Larsen (the departing controller) admitted that he
17 does not normally use a checklist when conducting a position relief briefing. Yet Conley (the
18 replacement controller) claims that a relief briefing was conducted and that the briefings were
19 recorded, and a checklist was utilized.

20 24. SOCAL Standard Operating Procedures require that the departing controller
21 remain on position with the new controller for 2 minutes after position responsibility is
22 transferred. This requirement is contained in 7110.65B para. 3-I-8 b. During his NTSB
23 interview, Larsen was asked if he followed that requirement to remain on position and
24 “plugged in” to the console so he could still monitor radio transmissions. He replied that he
25 did. It does not appear that Larsen actually stayed “plugged in” after the relief briefing
26 because N72EX called SOCAL (Conley) 95 seconds after the position relief briefing and
27 Larsen did not assist Conley in identifying the aircraft. It took Conley a full 9 seconds to
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1 respond to N72EX, a critical delay which would never have happened had Larsen followed
2 procedure and stayed “plugged in” for a full two minutes after the relief handoff.

3 25. The accident was also caused by Conley’s lack of awareness as to critical
4 weather information needed to perform Air Traffic Controller duties. Conley stated that he
5 “noticed it was foggy and there were low ceilings when I came into work that morning.” He
6 further recalled that “the weather around the time of the accident was IFR with low ceilings
7 and instrument approaches were being conducted.” Paragraph 2-1-2-c. in Order 7110.65Y
8 states “Controllers are responsible to become familiar with and stay aware of current weather
9 information needed to perform ATC duties.” It is clear that Conley was also ignoring this
10 mandatory procedure when he cleared Southwest Flight 451 for a visual approach.
11 Fortunately, the Southwest pilot declined the instruction and notified Conley that it was IFR
12 conditions.

13 26. Another cause of the accident was the simultaneous loss of radar contact and
14 radio communications as a result of Conley’s and Larson’s negligent acts and/or omissions.
15 Paragraph 10-2-5 of 7110.65Y states “Consider that an aircraft emergency exists and inform
16 the RCC or ARTCC when any of the following exist ... There is an unexplained loss of radar
17 contact and radio communication with any IFR or VFR aircraft.” Larsen admitted that he
18 would have notified the “sup” had he lost radar and radio on N72EX when he was coming
19 over from VNY. But Conley admitted that he did not report this occurrence [the fact that he
20 was unaware of N72EX] because he [N72EX] had not been tagged up yet, and therefore had
21 not yet begun receiving flight following.” Conley also admitted that he did not consider him
22 radar identified because he did not advise the Pilot he was “radar contact.”

23 27. The fact that Conley was unaware of N72EX and did not consider him radar
24 contacted was solely caused by Larsen's failure to properly terminate radar service for
25 N72EX, which was compounded by his improper and incomplete position relief briefing.
26 These critical errors by Larsen caused Conley to inherit an aircraft that he did not know
27 existed, which was operating in marginal weather conditions believing that it was receiving
28 flight following services. Once startled by N72EX's call to climb above the layers, Conley

1 took 9 seconds to respond to N72EX , and then proceeded to make four radio contacts,
2 including one instruction (Ident) and question (where say intentions) during the most critical
3 33-second segment of the accident flight.

4 28. As a result of Larson's and Conley's negligent acts and/or omissions, the Pilot
5 assumed he was flying in RADAR contact based on ATC verbiage, or lack thereof, prior to
6 the crash. When in RADAR contact a pilot assumes several important items: (1) traffic
7 separation; (2) limited assistance with terrain and obstacle clearance; (3) that communication
8 with the controlling agency is readily available; and (4) ATC is aware of his presence. At
9 09:45, the pilot of N72EX was abruptly and unexpectedly made aware that he was not in
10 RADAR contact. Calculated data indicates an initial, relatively stable, climb of ± 1460 FPM
11 beginning at approximately 09:44:35 with the Aircraft in a controlled left bank that was
12 slowly being corrected via a controlled right bank until 09:45:03. At approximately 09:45:03,
13 the Aircraft entered an aggressive left bank that continued until the final moments of the
14 flight.

15 29. The pilot's workload and stress level in deteriorating weather conditions were
16 unnecessarily overloaded by Larsen's multiple errors, including the: (1) failure to properly
17 communicate termination of radar flight following, (2) incomplete position relief briefing,
18 and (3) lack of knowledge of current weather conditions. These errors were compounded by
19 Conley monopolizing the Pilot's attention during the critical phase of the flight by making
20 multiple radio calls, requiring transponder ident, and requesting the Pilot to state where he
21 was and what his intentions were. The combination of increased stress, workload, and
22 distraction significantly impacted the Pilot's ability to fly the aircraft. The introduction of a
23 simple task such as tuning a radio, or a transponder, can induce an illusion that can lead to
24 loss of control.

25 30. Had Larsen and Conley not engaged in the numerous negligent acts and/or
26 omissions stated herein, then the Pilot would not have been forced to respond to multiple
27 ATC requests and commands during the most critical phase of the flight. There is no
28 indication from calculated data or radio traffic that the accident pilot was panicking or beyond

1 his piloting capabilities and was within a few hundred feet of clearing the clouds at the time
2 ATC required him to “ident,” which likely caused the pilot to experience a “Coriolis Effect,”
3 which is an illusion that is created when a pilot has been in a turn long enough for the fluid
4 in the ear canal to move at the same speed as the canal. A movement of the head in a different
5 plane, such as looking at something in a different part of the flight deck, sets the fluid moving,
6 creating the illusion of turning or accelerating on an entirely different axis. This action causes
7 the pilot to think the aircraft is performing a maneuver it is not. The disoriented pilot may
8 maneuver the aircraft into a dangerous attitude in an attempt to correct the aircraft 's perceived
9 attitude.

10 31. Cross-Defendants Larsen’s and Conley’s actions are the proximate cause of the
11 Accident, and the damages Plaintiffs seek to recover from Cross-Complainants.

12 **32. CAUSES OF ACTION**

13 33. As to each cause of action below, Cross-Complainants hereby incorporate by
14 reference the allegations contained in the paragraphs above as though they were fully set forth
15 in that cause of action.

16 **FIRST CAUSE OF ACTION**

17 **(Total Equitable Indemnity As To All Cross-Defendants)**

18 34. If Cross-Complainants are found liable upon any or all of the allegations
19 contained in the Complaint, said liability would be based solely on the active, affirmative,
20 and primary negligence, strict liability, and acts or omissions of the Cross-Defendants, and
21 each of them. Any fault of Cross-Complainants, which fault it specifically denies, would be
22 secondary and passive only.

23 35. Cross-Defendants, and each of them, are thus obligated to defend, indemnify
24 and hold harmless Cross-Complainants against any and all liability that Cross-Complainants
25 may incur in this action, and Cross-Complainants are entitled to reimbursement from Cross-
26 Defendants for any and all expenditures or liabilities that Cross-Complainants may incur in
27 payment for any settlement or judgment, or in defense of this action, including costs of suit.

28 **SECOND CAUSE OF ACTION**

1 by reason of any judgment, settlement, or otherwise, in satisfaction of the Plaintiffs' claim
2 arising out of the allegations contained in Plaintiffs' Complaint on file herein;

3 2. For a declaration that the Cross-Defendants are liable to defend and indemnify
4 Cross-Complainants with respect to all claims against Cross-Complainants in this action;

5 3. For Judgment against Cross-Defendants, and each of them, in an amount equal
6 to the amount of any judgment obtained by Plaintiffs and any other cross-complainant in this
7 action against these Cross-Complainants, or such portion thereof for which Cross-Defendants
8 are liable;

9 4. For costs of defense incurred by Cross-Complainants in defending the
10 allegations of this Complaint and Cross-Complaints, including costs of suit incurred herein,
11 court costs, reasonable attorney's fees where provided by contract or statute, and other
12 expenses of preparation and investigation; and

13 5. For such further and other relief as the Court may deem just and proper.

14 Dated: August 19, 2020

CUNNINGHAM SWAIM, LLP

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16
17 By: /s/ Michael J. Terhar
18 Michael J. Terhar
19 Ross Cunningham - *Pro Hac Vice*
20 Don Swaim - *Pro Hac Vice*
21 D. Todd Parrish
22 Attorneys for Defendants,
23 ISLAND EXPRESS
24 HELICOPTERS, INC.,
25 a California Corporation; and
26 ISLAND EXPRESS HOLDING
27 CORP. a California Corporation
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DEMAND FOR JURY TRIAL

Defendants and Cross-Complainants ISLAND EXPRESS HELICOPTERS, INC., a California Corporation; and ISLAND EXPRESS HOLDING CORP., a California Corporation hereby demand a trial by jury in the above matter.

Dated: August 19, 2020 CUNNINGHAM SWAIM, LLP

By: /s/ Michael J. Terhar
Michael J. Terhar
Ross Cunningham - *Pro Hac Vice*
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Attorneys for Defendants, ISLAND EXPRESS HELICOPTERS, INC., a California Corporation; and ISLAND EXPRESS HOLDING CORP. a California Corporation

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

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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 August 19, 2020, I caused to be served the within document(s) described as:

**CROSS-COMPLAINT FOR INDEMNITY AND DECLARATORY RELIEF;
DEMAND FOR JURY TRIAL**

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 August 19, 2020, at Pasadena, California.

Cynthia Vivanco

(Type or print name)

/s/Cynthia Vivanco

(Signature)

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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