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**This motion requires you to respond. Please see the Notice to Responding Party.**

**IN THE THIRD JUDICIAL DISTRICT COURT**
**SALT LAKE COUNTY, STATE OF UTAH**

| | |
|---|---|
| JEFFREY D. GASTON,<br><br>Gaston,<br><br>v.<br><br>JASON HALL, an individual; NATALIE HALL, an individual; GEORGE SCHLIESSER, an individual; WOODCRAFT MILL & CABINET INC., a Utah corporation; and BLUFFDALE CITY, a municipality of the State of Utah,<br><br>Defendants. | **DEFENDANTS' JOINT MOTION TO DISMISS SECOND AMENDED COMPLAINT**<br><br>Case No: 230905528<br><br>Judge Chelsea Koch |

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Defendants Jason Hall, Natalie Hall, George Schliesser, and Woodcraft Mill & Cabinet Inc. (collectively, "**Defendants**"), through their respective counsel of record, and pursuant to Rules 7(c) and 12(b)(6) of the Utah Rules of Civil Procedure, submit this Joint Motion to Dismiss Second Amended Complaint.

## RELIEF REQUESTED AND SUPPORTING GROUNDS

Defendants respectfully request that the Court enter an order dismissing the Second Amended Complaint ("**SAC**") in its entirety pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure because it fails to state any cognizable claim against any Defendant. The SAC alleges the following causes of action against Defendants: battery (against Mr. Hall), assault (against all Defendants), false light (against Mayor Hall), intentional infliction of emotional distress (against all Defendants), and civil conspiracy (against all Defendants). These claims all fail.

The civil battery claim against Mr. Hall fails because the SAC lacks facts to show that Mr. Hall intended to cause unlawful contact with Plaintiff during an incident between the men at Old West Days. Plaintiff's theory of civil assault based on that same incident likewise fails because he has not shown that Mr. Hall intended to place him in imminent apprehension of unlawful contact.

Plaintiff's second theory of assault, premised on the delivery of allegedly "threatening communications," fails as a matter of law because written threats alone are insufficient to establish assault where there is no threat of immediate contact. *See* Restatement (Second) of Torts § 24, cmt. b (1965). Relatedly, Defendants cannot be liable for assault for communications that contained only insults or for those that were sent to third parties. In those instances, Plaintiff cannot show that Defendants had the requisite intent or that his alleged imminent apprehension as reasonable.

Although it is Defendants' position that the Court already disposed of Plaintiff's false light claim in its May 13, 2024 Order, Defendants address the claim in an abundance of caution to anticipate any argument that the claim was also asserted against Mayor Hall in her capacity as a private citizen. This claim, like other reputational torts, such as defamation, is subject to a one-year statute of limitations that expired in early July before Plaintiff filed his initial Complaint. *See Jensen v. Sawyers*, 2005 UT 81, ¶ 53, 130 P.3d 325 (citing Utah Code § 78B-2-302(4)).

The claim for intentional infliction of emotional distress ("**IIED**") must also be dismissed because the alleged conduct (*e.g.*, the Old West Days incident and the "threatening communications") is neither outrageous nor intolerable as a matter of law. Furthermore, Plaintiff's allegations of each Defendants' respective intent to cause emotional distress are conclusory and unsupported by sufficient surrounding facts to sustain the claim as to any Defendant.

Without an underlying tort, Plaintiff's claim for civil conspiracy must also be dismissed. If the Court allows any of the underlying torts to survive, however, the conspiracy claim fails for two separate reasons. First, this claim is barred, at least in part, by the intra-corporate conspiracy doctrine because neither the Halls nor Mr. Schliesser may conspire with Woodcraft. Second, the SAC is devoid of allegations to establish Defendants had a meeting of the minds concerning the object of the conspiracy.

Finally, Woodcraft should be dismissed because Plaintiff has not pled sufficient facts to hold it liable under a theory of *respondeat superior* where, as here, Mr. Schliesser's alleged conduct was outside his scope of employment.

## RELEVANT BACKGROUND[1]

Plaintiff took public office in January 2020 after being elected as a city council member for Bluffdale—a position he held at all times relevant to this lawsuit. SAC ¶¶ 9–10. Sometime later that year, Plaintiff allegedly decided to run for Mayor of Bluffdale. *Id.* ¶ 11. To prepare for his alleged mayoral campaign for the November 2021 election cycle, Plaintiff allegedly commenced his fundraising efforts and other campaign-related tasks. *Id.* ¶ 12.

### Plaintiff Receives "Threatening Communications" from an Anonymous Source.

Several months after deciding to run for mayor, Plaintiff started to receive anonymous emails, letters, and packages to his home and work. *Id.* ¶ 13. The packages and communications were received between March and November 2021. *Id.* ¶¶ 13, 91.

#### *March 5, 2021 Email*

Plaintiff received the first email from cpacbluffdale@gmail.com on March 5, 2021. *Id.* ¶ 13. The email accused Plaintiff of acting "like a schoolyard bully, not a statesman" and warned that he would be exposed as "a fool" and "a freshman using childish tactics." *Id.* ¶ 15(a)–(c). The email also advised Plaintiff that "the wheels [were] in motion to render [him] irrelevant." *Id.* ¶ 16. Plaintiff did not know the identity of sender but believed it was a group of individuals forming a political organization in Bluffdale. *Id.* ¶¶ 13–14.

#### *March 8, 2021 Email*

Three days later, the self-proclaimed group "Bluffdale Citizens for Civility" emailed the then-elected Mayor of Bluffdale along with the city manager, city attorney, and city council. *Id.* ¶ 19. The email referred to Plaintiff as "manchild with massive insecurity issues" and called him

[1] "For the purposes of a motion to dismiss, the truth of the Complaint's fact allegations must be assumed." *Colman v. Utah State Land Bd.*, 795 P.2d 622, 625 (Utah 1990). Accordingly, for this Motion only, Defendants recite the facts as alleged by Plaintiff without conceding the truth of the same.

"Bluffdale's own little Donald Trump." *Id.* ¶ 20. It also advised the intended recipients that "Gaston need[ed] to be reeled in" and encouraged Bluffdale to collectively "stand up and be finished with this fool once and for all." *Id.* ¶ 21. The email further stated that if Plaintiff did not "get the hint," then a group of individuals was "ready to move to the next phase." *Id.* ¶ 22. The email assured that they would "return to civil discourse" if Plaintiff complied with their demands. *Id.* ¶ 24. This email was not addressed or sent to Plaintiff, but it was later provided to him by the city attorney. *See id.* ¶¶ 19, 26. Like the first email, Gaston believed the email was sent by a group forming a political organization. *Id.* ¶ 27.

***March 9, 2021 Packages***

On March 9, 2021, the anonymous group sent two packages that were allegedly directed at Plaintiff. The first package containing an anger management workbook for children was sent to Plaintiff's home. *Id.* ¶¶ 29–30. The package included a note, which referred to Plaintiff as "an imbecile" and told him to move out of Bluffdale. *Id.* ¶¶ 29, 31. The note also allegedly directed Plaintiff to kill himself or risk being killed. *Id.* ¶ 32. Plaintiff was then advised that this was his "final warning," noting that "[w]e are moving to the next phase. Do what we ask, or we will do what must be done." *Id.* ¶ 33. Plaintiff alleges that he grew concerned for his and his family's safety and that he believed the sender intended to force him to end his mayoral campaign. *Id.* ¶¶ 34–35.

That same day, a separate package containing gag gifts was sent to members of the Bluffdale city council members, including Plaintiff himself. *Id.* ¶¶ 37–38. The unknown sender allegedly "directed" the gag gifts at Plaintiff. *Id.* ¶ 39. That package was turned over to law enforcement who later allowed city council members to examine its contents. *Id.* ¶¶ 41–42. There are no allegations describing the gag gifts that were included in this package.

***March 24, 2021 Letter***

Approximately two weeks later, the Bluffdale city clerk handed Plaintiff a letter addressed to him. *Id.* ¶ 43. The letter stated that Plaintiff would "no longer have the will to live in Bluffdale" and indicated that it was "time we put you down like the dog you are, not a statesman." *Id.* ¶ 44. Plaintiff alleges that this letter led him to believe that someone intended to harm him, leaving him concerned for his and his family's safety. *Id.* ¶¶ 45–46. As a result, Plaintiff allegedly directed his domestic partner stay with her family when he was absent from their home. *Id.* ¶ 49

***June 14, 2021 Email***

On June 14, 2021, cpacbluffdale@gmail.com sent Plaintiff another email, stating that the author knew Gaston had interviewed "to get money for a potential run for mayor." *Id.* ¶¶ 54–55. The email was allegedly referring to an interview that Plaintiff had attended as a potential mayoral candidate a month and a half earlier. *Id.* ¶¶ 50, 52, 55. Mayor Hall had also attended the interviews that day because she had commenced a mayoral campaign. *Id.* ¶¶ 51, 53.

The also email acknowledged the gag gifts sent to the other city council members, calling the gag gifts "brilliant." *Id.* ¶ 56. Plaintiff was advised that he would be selling his house "out of humiliation by the time we're done." *Id.* ¶ 57.

Plaintiff alleges that it was around this time that he terminated his mayoral campaign and instead turned his attention to supporting Mayor Hall's opponent. *Id.* ¶¶ 60–61.

***July 20, 2021 Email***

On July 20, 2021, "cpacbluffdale@gmail.com" sent Plaintiff a third email, which referred to Plaintiff's support for Mayor Hall's opponent and stated: "Jesus Fucking Christ, you're an imbecile." *Id.* ¶ 64.

### *November 2, 2021 Package*

On November 2, 2021, Plaintiff received another package, which contained a jester's hat and letter. *Id.* ¶ 85. The package was sent to Plaintiff's home address with a return address that was allegedly for an axe-throwing society. *Id.* ¶ 86. There are no allegations describing the allegedly "demeaning" statements in the letter. *See id.* ¶¶ 85–86.

### *November 23, 2021 Package*

Plaintiff received a final package to his home on November 23, 2021. *Id.* ¶ 91. The package included a letter, stating, "Unfortunately . . . , you have shown you will not change until something is done. It's time you leave Bluffdale or resign. If you don't you will end up dead." *Id.* Plaintiff alleges that these communications caused him to fear being harmed or killed. *Id.* ¶¶ 94–95. Plaintiff also alleges that he was humiliated that some of the packages had been sent to other city council members, which left him feeling estranged. *Id.* ¶ 97.

## Plaintiff and Mr. Hall are Involved in an Altercation at Old West Days

In August 2021, in the lead up to the November mayoral election, Bluffdale hosted its annual Old West Days celebration. *Id.* ¶ 67. Plaintiff rented a booth for the event to help promote John Roberts' campaign against Mayor Hall whose booth was located nearby. *Id.* ¶¶ 68, 70–71. Plaintiff was allegedly unaware of the proximity of the two competing booths. *Id.* ¶¶ 70–71. As he began to place campaign signs around his booth, Mr. Hall approached Plaintiff and called him "fucking pathetic." *Id.* ¶¶ 72–74. Plaintiff retreated as Mr. Hall grabbed one of campaign signs and threw it at him. *Id.* ¶¶ 75–79. The sign hit Plaintiff in the hands, arms, and face, allegedly leaving signs of injury. *Id.* ¶ 80.

Plaintiff reported the incident to event staff, city management, and law enforcement. *Id.* ¶ 81. Mr. Hall admitted to the incident and apologized for his behavior. *Id.* ¶ 82. In doing so, Mr.

Hall explained that the incident was the result of Plaintiff communicating with the city attorney about complaints that had purportedly been received from citizens and city employees. *Id.* ¶ 83. Although Plaintiff alleges, on information and belief, that Mayor Hall was aware of and complicit in Mr. Hall's conduct at Old West Days, there is no allegation that she was present during or a witness to the altercation.

**Criminal Investigation into Anonymous Communications**

Law enforcement became involved in March 2021 after the first package was sent to Bluffdale city council members. *Id.* ¶¶ 41–42. Through its investigation, law enforcement concluded, in or about November 2021, that Mr. Schliesser, Mr. Hall, and Mayor Hall were somehow connected to the anonymous packages and communications sent to Plaintiff and city council. *Id.* ¶ 114. Around this time, Plaintiff learned of Defendants' involvement.

Mr. Schliesser is an employee of Woodcraft, a company owned and managed by Mr. Hall. *Id.* ¶ 99. Mr. Schliesser was tasked with running errands, mailing packages, and delivering information on behalf of the company. *Id.* ¶¶ 101, 103, 178. According to Plaintiff, Woodcraft instructed Mr. Schliesser to deliver at least one of the anonymous packages or communications to Plaintiff. *Compare id.* ¶ 104 ("Schliesser was instructed by Woodcraft to deliver one or more of the packages and communications referenced herein."), *with* ¶ 107 ("Schliesser made each of the deliveries at the direction of the other Hall Defendants."); *see also id.* ¶ 229.

Plaintiff alleges that Mr. Schliesser was aware of the contents of the packages and communications, noting that he had concealed his identity during the deliveries by wearing oversized clothing and a mask, obscuring his license plate, and paying for postage with cash. *Id.* ¶¶ 109–10. Plaintiff alleges that Woodcraft paid Mr. Schliesser to complete deliveries during normal business hours. Company computers and software were used to prepare at least some of

the communications that were sent to Plaintiff. *Id.* ¶¶ 104, 111–13, 230.

Plaintiff alleges that, upon learning the suspects' identities, he began to request police escorts to city council meetings where he would see Mayor Hall who had been elected as Mayor. *Id.* ¶¶ 123–24.

The State charged Mr. Hall in July 2022 with crimes related to the packages and communications sent to Plaintiff. *Id.* ¶ 121. The charges against Mr. Hall were widely reported on by several local media outlets in early July 2021. *Id.* ¶ 122.

**Mayor Hall Responds to the Public Allegations Against Mr. Hall**

After Mr. Hall was charged with crimes related to the anonymous packages and communications, Mayor Hall made two public statements in his defense. First, soon after the news stories broke, Mayor Hall made a public statement on her Bluffdale Mayor Facebook account. *Id.* ¶¶ 126, 207. In her statement, Mayor Hall allegedly accused Plaintiff of threatening, attacking, wrongly accusing, and bullying her in addition to accusing him of creating a hostile work environment. *Id.* ¶¶ 125–26. Mayor Hall also used her social media post to disclaim allegations that Mr. Hall had sent communications with threats of violence to Plaintiff. *Id.* ¶¶ 127–28.

Later that month, during a public city council meeting, multiple residents allegedly called for Mayor Hall's resignation due to Mr. Hall's suspected involvement in sending the packages and communications to Gaston. *Id.* ¶¶ 131, 134, 194. Mayor Hall initially stated that the meeting was an improper forum to address the criminal charges. *Id.* ¶¶ 135, 195. Later in the meeting, however, Mayor Hall, in her official capacity as Mayor of Bluffdale, advised the in-person and online attendees that Mr. Hall had never attacked Plaintiff and that the allegations had been fabricated. *Id.* ¶¶ 136–37, 141, 196–98. The meeting was also the subject of media coverage by multiple new agencies. *Id.* ¶ 142.

**Gaston Sues Defendants**

Based on the above facts, and more than a year after criminal case against Mr. Hall was initiated, Plaintiff filed this lawsuit, asserting causes of action against Defendants for (1) battery (Mr. Hall); (2) civil assault (all Defendants); (3) false light (Mayor Hall); (4) intentional infliction of emotional distress (all Defendants); and (5) civil conspiracy (all Defendants). *See also* Second Amended Complaint ("**SAC**"), Dkt. 11, ¶¶ 217–70.

## STANDARD OF REVIEW

Rule 12(b)(6) of the Utah Rules of Civil Procedure "permits dismissal of a complaint for 'failure to state a claim upon which relief can be granted.'" *Shah v. Intermountain Healthcare, Inc.*, 2013 UT App 261, ¶ 9, 314 P.3d 1079 (quoting Utah R. Civ. P. 12(b)(6)). In ruling on a motion to dismiss, the court must "accept the material allegations in the complaint as true and interpret those facts and all reasonable inferences drawn therefrom in a light most favorable to the plaintiff as the non-moving party." *Wagner v. State*, 2005 UT 54, ¶ 9, 122 P.3d 599. "[M]ere conclusory allegations in a pleading, unsupported by a recitation of relevant surrounding facts, are insufficient to preclude dismissal." *Howard v. PNC Mortg.*, 2012 UT App 19, ¶ 2, 269 P.3d 995 (alteration in original) (citation and internal quotation marks omitted). In other words, "[t]he sufficiency of the pleadings within a complaint must be determined by the facts pleaded rather than the conclusions stated." *Fid. Nat. Title Ins. Co. v. Worthington*, 2015 UT App 19, ¶ 23, 344 P.3d 156 (citation and internal quotation marks omitted). Where "it is apparent that as a matter of law, the plaintiff[] could not recover under the facts alleged," the court must dismiss the complaint. *Bennett v. Jones, Waldo, Holbrook & McDonough*, 2003 UT 9, ¶ 30, 70 P.3d 17. Each of Plaintiff's claims against Defendants fails under this standard and must therefore be dismissed.

## ARGUMENT

### I. Plaintiff Fails to Allege Facts Sufficient to Show Mr. Hall had the Requisite Intent to be Liable for Battery.

Plaintiff's first cause of action alleges civil battery against only Mr. Hall. SAC ¶¶ 217–22. Plaintiff alleges that Mr. Hall committed battery at Old West Days when he hit Plaintiff with a campaign sign. *Id.* ¶¶ 218–22.

"Utah has adopted the Restatement (Second) of Torts to define the elements of the intentional tort of battery." *Reynolds v. MacFarlane*, 2014 UT App 57, ¶ 12, 322 P.3d 755. Under the Restatement, an individual is liable for battery if "(a) he [or she] acts intending to cause a harmful or offensive contact[2] with the person of the other or a third person, or an imminent apprehension of such contact, and (b) a harmful contact with the person of the other directly or indirectly results." *Larsen v. Davis Cnty. Sch. Dist.*, 2017 UT App 221, ¶ 32, 409 P.3d 114 (quoting *Wagner v. State*, 2005 UT 54, ¶ 19, 122 P.3d 599). "The word 'intent' is used . . . to denote that the actor desires to cause the consequences of his act, or that he believes that the consequences are substantially certain to result from it." *Erickson v. Canyons Sch. Dist.*, 2020 UT App 91, ¶ 11, 467 P.3d 917 (alteration in original) (citations omitted). Relevant here, "intent to make contact is necessary." *Wagner*, 2005 UT 54, ¶ 18; *see also id.* ¶¶ 29, 31, 34. "Substantial certainty requires a showing higher than that of mere recklessness." *Id.* ¶ 15. Instead, a plaintiff "must show that the actor believed that the legally harmful or offensive contact was essentially unavoidable." *Id.*

Plaintiff has not met his burden to plead non-conclusory facts showing that Mr. Hall intended to make harmful or offensive contact with him or otherwise cause him to experience imminent apprehension of such contact. Utah courts have held that an actor cannot be liable for

[2] Utah courts define "harmful or offensive contact" as contact "to which the recipient of the contact has not consented either directly or by implication, or to which no reasonable person would consent." *Larsen*, 2017 UT App 221, ¶ 32 (citation and internal quotation marks omitted).

battery if his intentional act (*i.e.*, throwing the sign) resulted in unintended contact (*i.e.*, hitting Gaston). *See Wagner*, 2005 UT 54, ¶ 26. Here, Plaintiff's allegation that Mr. Hall threw the campaign sign may establish his intent for that act, but it does not reasonably establish Mr. Hall's intent to commit battery.

Additionally, the facts alleged refute any argument that Mr. Hall was substantially certain that the campaign sign would strike Plaintiff. In the SAC, Plaintiff alleges that he moved away as Mr. Hall approached him, stating that he "retreated to a point significantly removed from his booth and Mayor Hall's booth." *Id.* ¶ 77. A reasonable inference from this allegation is that Mr. Hall believed there was enough distance between them that it would be impossible to hit Plaintiff when he threw the sign.

Because Plaintiff has not pled facts to show that Mr. Hall had the requisite intent to cause harmful or offensive contact *or* imminent apprehension of such contact, he has failed to state a claim for battery against Mr. Hall and this cause of action should be dismissed.

### II. Plaintiff Fails to State a Claim for Assault Because There are Insufficient Facts to Show Intent and Imminent Apprehension of Unlawful Contact.

Plaintiff's second cause of action alleges civil assault against all Defendants. SAC ¶¶ 223–34. This claim is premised on two distinct theories. *Id.* Under the first theory, Plaintiff alleges that Mr. Hall assaulted him at Old West Days Mr. Hall confronted and threw a campaign sign at him. *Id.* ¶¶ 224–26. Under the second theory, Plaintiff claims that Defendants are each liable for assault because they allegedly participated in "the creation and delivery of the threatening communications" to him at his home and workplace. *Id.* ¶¶ 227–32.

Under Utah law, "[a]n assault is an act (a) . . . intending to cause a harmful or offensive contact with the person of the other . . . or an imminent apprehension of such a contact by which (b) . . . the other is . . . put in such imminent apprehension." *Reynolds*, 2014 UT App 57, ¶ 7

(alterations in original) (citation and internal quotation marks omitted). Although the terms "assault" and "battery" are often used interchangeably, they are distinct legal concepts in civil tort law. *Larsen*, 2017 UT App 221, ¶ 30 n.5. While battery focuses on the actual contact, assault focuses on the imminent apprehension of such contact. *Id.*

### A. Dismissal of the first theory of civil assault is warranted because Plaintiff does not allege facts sufficient to show Mr. Hall intended to assault him.

Plaintiff's first theory of assault, alleged against only Mr. Hall, is based on the same set of facts as his battery claim. That is, Plaintiff alleges that he was assaulted at Old West Days when Mr. Hall approached him, called him a "fucking pathetic," and threw a campaign sign at him. SAC ¶¶ 224–25.

As with battery, Plaintiff has failed to plead facts demonstrating Mr. Hall's intent. Instead, the assault claim is based only on the allegation that Mr. Hall "intended to cause imminent apprehension of harmful or offensive contact." *Id.* ¶ 224. Utah courts have repeatedly admonished that "mere conclusory allegations," such as this, "are insufficient to preclude dismissal." *Howard*, 2012 UT App 19, ¶ 2.

Additionally, the facts alleged do not support Plaintiff's conclusory allegation that he experienced imminent apprehension of unlawful contact. *See* SAC ¶ 225. As explained above in Section I, Plaintiff alleges that there was significant distance between him and the booths. Given the distance alleged, it would be unreasonable for Plaintiff to apprehend any contact between him and Mr. Hall let alone contact that is either harmful or offensive.

The Court should dismiss Plaintiff's assault claim because the SAC lacks adequate facts to establish each of the necessary elements.

### B. Dismissal of the second theory of liability is warranted because, as a matter of law, the written communications cannot cause imminent apprehension of harmful or offensive contact.

Under his second theory, Plaintiff alleges that each Defendant is liable for assault based on the "creation and delivery of the threatening communications." *See id.* ¶¶ 227, 231–32. Plaintiff's reliance on these communications and packages to state a claim for assault is misplaced and legally deficient for several reasons.

#### 1. Written threats alone do not constitute assault as a matter of law.

To establish the imminent apprehension element of assault, the complaint must include facts suggesting that Plaintiff believed "the act is capable of *immediately inflicting the contact* upon him unless something further occurs." Restatement (Second) of Torts § 24, cmt. b (1965) (emphasis added). "[P]roposed interactions for a future time, even if inappropriate, are insufficient to establish the intent requirement." *Id.* Applying this rationale, courts have consistently dismissed assault claims based only on verbal or written threats. *See Kijonka v. Seitzinger*, 363 F.3d 645, 647 (7th Cir. 2004) ("A merely verbal threat of indefinite action in the indefinite future is not an assault."); *Benninger v. Ohio Twp. Police Dep't*, No. 2:19-CV-00524-PLD, 2020 WL 264967, at *3 (W.D. Pa. Jan. 17, 2020) ("Words in themselves, *no matter how threatening*, do not constitute an assault; the actor must be in a position to carry out the threat immediately, and he must take some affirmative action to do so." (emphasis added) (citation omitted)); *Fox v. Wolfson*, No. 2:10-CV-0812, 2010 WL 3907656, at *2 (W.D. La. Sept. 27, 2010) (dismissing assault and battery claims because future threats and threats conveyed via electronic communication do not pose and imminent threat).

Plaintiff's second theory of liability for assault against all Defendants is based solely on "delivery of the threatening communications." SAC ¶ 227. Those "threatening communications"

were all written and were sent to Plaintiff via email and mail. None of the Defendants personally delivered the communications to Plaintiff, nor were they present when he received and read them. Consequently, none of the Defendants were in a position to immediately carry out any of the threats allegedly asserted in those communications.

Instead, the subset of written communications that arguably contain any "threats" uses conditional and indeterminate language to describe potential harm in the future if certain demands are not met. Those communications consist of the following:

- On March 5, 2021, Plaintiff received an email, stating, "the wheels are in motion to render you irrelevant." *Id.* ¶ 16.

- On March 8, 2021, several Bluffdale public officials received an email advising them that "There is a group of us that are ready to move to the next phase" if Plaintiff does not "get the hint." *Id.* ¶ 22.

- On March 9, 2021, Plaintiff received package, which included a note directing him to kill himself or risk being killed. *Id.* ¶ 32. The note also advised Gaston that this was his "final warning" because the group was "moving to the next phase." *Id.* ¶ 33. Plaintiff was then directed, "Do what we ask, or we will do what must be done." *Id.*

- On March 24, 2021, Plaintiff received a letter saying that he would "no longer have the will to live in Bluffdale" and that it was "time we put you down like the dog you are, not a statesman." *Id.* ¶ 44.

- On June 14, 2021, an anonymous email said Plaintiff would be selling his house "out of humiliation by the time we're done." *Id.* ¶ 57.

- On November 23, 2021, the final package to Plaintiff included a note, stating, "Unfortunately . . . , you have shown you will not change until something is done. It's time you leave Bluffdale or resign. If you don't you will end up dead." *Id.* ¶ 91.

None of these communications threaten *immediate* harmful or offensive contact. They each assert that plans are being or will be made and only if certain conditions are not met beforehand. As a matter of law, none of these "threatening communications" can sustain a claim for assault. Accordingly, the Court should dismiss Plaintiff's assault claim against all Defendants to the extent

that it relies on these written communications of future, conditional threats.

**2. Written insults and gag gifts do not constitute assault as a matter of law.**

Even if the Court determines that allegations regarding "the threatening communications" are sufficient to establish assault, it should nevertheless dismiss the claim to the extent that it is premised on non-threatening personal insults and gag gifts. The emails, letters, and packages sent to Plaintiff can be broken into categories. Section II.B.1 addresses communications that may arguably contain "threats." This section pertains to communications that one may consider to be insulting.

In the SAC, Plaintiff alleges that Defendants sent emails and letters to him and Bluffdale city council members, referring to Plaintiff as "a fool," "a schoolyard bully," "not a statesman," "a freshman," "a manchild with massive insecurity issues," "Bluffdale's own little Donald Trump," "an imbecile," and a "dog" *Id.* ¶¶ 15(a)–(c), 20–21, 29, 31, 44, 64. Some of the packages also contained gag gifts "directed at" Gaston, including a jester's hat. *Id.* ¶¶ 37–39, 85.

While these statements and gag gifts may be unkind and perhaps insulting, these communications cannot sustain a claim for assault. "Courts are reluctant to protect extremely timid individuals from exaggerated fears of contact, thus requiring the apprehension to be of the sort normally aroused in the mind of a reasonable person." *Buvel v. Bristol Myers Squibb Co.*, No. CV 22-6449 (ZNQ), 2024 WL 3824025, at *3 (D.N.J. Aug. 15, 2024) (citation and internal quotation marks omitted). Here, no reasonable person would be placed in imminent apprehension of unlawful contact upon receiving communications calling him or her an "imbecile" or any of the other names referenced above. Consequently, Plaintiff's claim for assault should be dismissed to the extent it relies on these allegations to assert liability against Defendants.

### 3. Packages sent to third parties do not constitute assault as a matter of law.

Again, if this Court is disinclined to grant Defendants' motion pursuant to Section II.B1, it should still dismiss the assault claim to the extent it relies on allegations related to packages and communications that were not sent to Plaintiff. As explained above, Plaintiff must plead facts to show that Defendants intended to place *him* in imminent apprehension of unlawful contact. *See Reynolds*, 2014 UT App 57, ¶ 7. Utah courts have acknowledged that "[a] plaintiff complaining of assault 'must be aware of the defendant's act.'" *Reynolds*, 2014 UT App 57, ¶ 8; *see also* W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 10, at 44 (5th ed. 1984) ("Since the interest involved is the mental one of apprehension of contact, it should follow that the Gaston must be aware of the threat of contact, and that it is not an assault to aim a gun at one who is unaware of it.").

Here, Plaintiff alleges that on March 8, 2021, an anonymous email was sent to several Bluffdale public officials calling for them to stand up to and reel in Plaintiff —"Bluffdale's own little Donald Trump." *Id.* ¶¶ 20-21. This email was not addressed or sent to Plaintiff. *See id.* ¶¶ 19, 26. Instead, Plaintiff learned of the email's existence and contents only after the city attorney provided a copy to him. *Id.* There are no surrounding facts alleging that Defendants intended Plaintiff to see the communication let alone be place him in imminent apprehension of unlawful content. Accordingly, these allegations are inadequate to state a claim for assault.

## III. Plaintiff's False Light Claim is Barred by the Statute of Limitations to the Extent it was not Previously Dismissed.

Plaintiff's third claim for relief for false light is asserted against Mayor Hall in her official capacity. SAC ¶¶ 235–54. Although it is Defendants position that no part of this claim still survives, Defendants address the claim in an abundance of caution and to clarify the scope of this

Court's Order Granting Bluffdale City's Motion to Dismiss with Prejudice ("**Order of Dismissal**"). *See* Order of Dismissal, Dkt. 39.

**A. The Court previously dismissed the false light claim in its entirety.**

On May 13, 2024, the Court dismissed all claims in the SAC against Mayor Hall in her official capacity as Mayor of Bluffdale.[3] *See* Order of Dismissal, at 4. Gaston acknowledged in his Opposition to Bluffdale's Motion to Dismiss that the false light claim was alleged against Mayor Hall in her official capacity. *See* Memorandum in Opposition to Defendants' Motion to Dismiss with Prejudice, Dkt. 30, at 9–10. There are no allegations that Mayor Hall made statements in her personal capacity that would expose her to civil liability for Plaintiff's false light claim. Therefore, this claim is already dismissed.

**B. The false light claim is barred by the one-year statute of limitations.**

Even if Plaintiff now contends that the SAC also alleges false light against Mayor Hall in her capacity as a private citizen, the claim is barred by the statute of limitations and must be dismissed as a matter of law. The Utah Supreme Court has held that false light claims are subject to the one-year limitations period that is applicable to defamation claims. *See Jensen v. Sawyers*, 2005 UT 81, ¶ 53, 130 P.3d 325 (citing Utah Code § 78B-2-302(4)).

Plaintiff alleges that in "early July 2022," Mayor Hall used her official Bluffdale social media account to "publicly accused Plaintiff of threatening her, attacking her, wrongly accusing her, and bullying her, creating a hostile workplace." SAC ¶¶ 125–26. Additionally, Plaintiff alleges that she falsely stated that "Mr. Hall had never sent any threatening letters" and "was never involved with threats of violence." *Id.* ¶¶ 127–28. Plaintiff did not file his original Complaint until

[3] Based on the Parties' stipulation, the Court also dismissed with prejudice all claims against Bluffdale City. *See* Order of Dismissal, at 4.

July 26, 2023, *See* Complaint, Dkt. 1. The SAC was filed last that year in December. SAC, Dkt. 11. Accepting the facts alleged in the SAC as true, the deadline to assert a claim for false light and similar reputational torts, such as defamation, passed in "early July 2023." Accordingly, any residual theory of false light that was not previously disposed of in the Court's grant of Bluffdale's Motion to Dismiss should now be dismissed with prejudice.[4]

## IV. Plaintiff's IIED Claim Fails Because Defendants' Alleged Conduct is not Outrageous or Intolerable as a Matter of Law and There are Insufficient Facts of Tortious Intent.

Plaintiff alleges his fourth cause of action for IIED against all Defendants. SAC ¶¶ 255–62. To state a claim for IIED, a plaintiff must allege that

> (i) the defendant's conduct is outrageous and intolerable in that it offends against the generally accepted standards of decency and morality; (ii) the defendant intends to cause, or acts in reckless disregard of the likelihood of causing, emotional distress; (iii) the plaintiff suffers severe emotional distress; and (iv) the defendant's conduct proximately causes the plaintiff's emotional distress.

*Hatch v. Davis*, 2004 UT App 378, ¶ 40, 102 P.3d 774; *see also Retherford v. AT & T Commc'ns of Mountain States, Inc.*, 844 P.2d 949, 970–71 (Utah 1992). "[C]ourts have historically been wary of dangers in opening the door to recovery" for IIED claims "[d]ue to the highly subjective and volatile nature of emotional distress and the variability of its causations." *Franco v. The Church of Jesus Christ of Latter-day Saints*, 2001 UT 25, ¶ 25, 21 P.3d 198, *abrogated on other grounds by Williams v. Kingdom Hall of Jehovah's Witnesses*, 2021 UT 18, ¶ 26, 491 P.3d 852 (citation and

[4] Defendants have contemporaneously filed an Anti-SLAPP Motion under Utah's Public Expression Protection Act. If the Court determines that Plaintiff's claim for false light survived dismissal and was filed before the statute of limitations expired, the Court should still dismiss the claim with prejudice because Mayor Hall was speaking on matters of public concern. Plaintiff's conduct, as a public official, and as a mayoral candidate are, of course, matters of public interest. And so are Plaintiff's allegations of tortious conduct against Defendants and criminal charges against Mr. Hall. Plaintiff concedes as much when he alleges that various news outlets reported the story of Mr. Hall's charges and of Mayor Hall's responsive public statements. As a separate and alternative basis, the Court must dismiss the false light claim because it is based on Mayor Hall's right to speak on matters of public concern without fear of that she will be silenced by baseless lawsuits, such as this one.

internal quotation marks omitted). It is for this reason that courts determine, in the first instance, "whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery." *Oman v. Davis Sch. Dist.*, 2008 UT 70, ¶ 52, 194 P.3d 956 (citation omitted).

### A. None of Defendants' alleged conduct was not outrageous or intolerable as a matter of law.

Plaintiff has failed to meet his burden to allege facts supporting an inference that Defendants conduct was extreme and outrageous. Outrageous conduct is that which evokes "outrage or revulsion; it must be more than unreasonable, unkind, or unfair." *Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68, ¶ 38, 56 P.3d 524 (citation and internal quotation marks omitted). "[A] plaintiff must be able to prove that the defendant engaged in extraordinarily vile conduct, conduct that is atrocious, and utterly intolerable in a civilized community." *A.W. v. Marelli*, 2024 UT App 8, ¶ 14, 543 P.3d 786. "[C]onduct is not outrageous simply because it is tortious, injurious, or malicious, or because it would give rise to punitive damages, or because it is illegal. *Id.* (citation and internal quotation marks omitted); *see also Camco Constr. Inc. v. Utah Baseball Acad. Inc.*, 2018 UT App 78, ¶ 20, 424 P.3d 1154 (holding that "parking near someone's house, visiting a facility where that person works three times, and threatening to sue" was "not the sort of behavior for which plaintiffs can recover under a theory of intentional infliction of emotional distress").

Here, Plaintiff alleges that Defendants committed IIED by harassing and intimidating him, portraying him in a false light, impeding the criminal investigation into the threats against him,[5] battering him, and assaulting him "through the communication of numerous death threats directed to Plaintiff at both his public office as well as his home." *Id.* ¶ 256. In essence, Plaintiff's IIED

[5] Because the Court already dismissed all claims against Bluffdale and Mayor Hall, in her official capacity, Plaintiff's IIED claim is no longer supported by factual allegations that the government actors portrayed him in a false light or that they impeded any criminal or administrative investigation into the anonymous communications sent to Plaintiff. *See* Order of Dismissal, at 4. Accordingly, Defendants do not address these theories of IIED here.

claim is based on the same conduct he relies on for his battery and assault claims, including the Old West Days incident and the "threatening communications." This conduct cannot sustain a claim for IIED.

### 1. Mr. Hall's conduct at Old West Days is not outrageous or intolerable conduct.

Plaintiff first alleges that he experienced emotional distress after the confrontation with Mr. Hall at Old West Days. Utah courts have held that "profane outbursts" may be "unfortunate and disfavored in civil society," but they do not support IIED claims as a matter of law. *Keisel v. Westbrook*, 2023 UT App 163, ¶ 76, 542 P.3d 536. The *Westbrook* case is instructive here.

In that case, Westbrook, a professional basketball player for the Thunder, confronted a jeering Utah Jazz fan who told him to apply ice or heat to his knees because he was "going to be on them a lot later." *Id.* ¶ 6. On a video recording of the interaction, Westbrook is heard responding,

> I'm going to say one thing. I'll fuck him up. . . . I promise you. You think I'm playing. I swear to God. I swear to God, I'll fuck you up, you and your wife, I'll fuck you up, . . . I promise you on everything I love, on everything I love, I promise you.

*Id.* ¶ 7. Despite acknowledging that Westbrook's profane outburst was "course and offensive," the Utah Court of Appeals held that his conduct was not so extreme and outrageous as to constitute the type of "vile" conduct necessary to establish IIED. *Id.* ¶¶ 75–76. In so holding, the Court considered the context in which the conduct occurred, noting that Westbook had responded after being provoked and that the outburst occurred at a professional sporting event—"a place where society has unfortunately come to expect some amount of intemperate behavior." *Id.* ¶ 77.

The *Westbrook* Court's analysis is applicable here. Plaintiff's IIED claim against Mr. Hall is based, in part, on the alleged incident at Old West Days. After ceasing his own mayoral campaign, Plaintiff turned his attention to supporting Mayor Hall's opponent, including campaigning on his behalf. *Id.* ¶ 61. As part of those efforts, Plaintiff rented a booth at Old West

Days where he intended to display campaign signs. *Id.* ¶¶ 67–69. Plaintiff discovered upon arrival that his booth was close to Mayor Hall's. *Id.* ¶¶ 70–71. According to Gaton, Mr. Hall approached him as he set up campaign signs, "cursing" at him and calling him "fucking pathetic." *Id.* ¶¶ 72–74. Mr. Hall then threw a campaign sign, which struck Plaintiff allegedly causing injury. *Id.* ¶¶ 76, 78–80.

This conduct, even when viewed in the light most favorable to Plaintiff, is not the type of actionable conduct contemplated by IIED case law. Instead, Mr. Hall's actions in purportedly cursing at and calling Plaintiff "fucking pathetic" are best classified as a profane outburst. The context of this interaction also mitigates against any finding that Mr. Hall's actions were outrageous or intolerable. As with professional sporting events, political events arouse antagonistic emotions, and society has come to expect and even accept a degree of contention in such settings. So, while Mr. Hall's language may be deemed harsh and profane, it was not so reprehensible as to withstand dismissal.

Additionally, Mr. Hall's conduct, like Westbrook's, was not unprovoked. After the tension between Plaintiff and Mr. Hall subsided, Mr. Hall apologized for his behavior and explained that his outburst was spurred by Plaintiff's communications with the city attorney concerning complaints that some citizens and municipal employees has purportedly made about Mayor Hall. *Id.* ¶¶ 82–83. The facts alleged paint a picture of Plaintiff repeatedly being adversarial with Mayor Hall. She had publicly accused Plaintiff of "threatening her, attacking her, wrongly accusing her, and bullying her, creating a hostile workplace." *Id.* ¶ 125. And at Old West Days, he was openly campaigning for her opponent. Mr. Hall's conduct, when viewed in context as Mayor Hall's husband, is understandable. It did not rise to the level of "extraordinarily vile" necessary to sustain Plaintiff's IIED claim beyond the pleading stage. *Prince*, 2002 UT 68, ¶ 38; *Marelli*, 2024 UT App

8, ¶ 14. Plaintiff's theory that Mr. Hall committed IIED when through his conduct at Old West Days fails as a matter of law and musts therefore be dismissed.

#### 2. Defendants' alleged participation in creating and delivering the "threatening communications" is not outrageous or intolerable conduct.

According to Plaintiff, each Defendant is liable for IIED because of their alleged participation in creating and delivering the "threatening communications"[6] to him. SAC ¶ 256. In the Relevant Background Section, Defendants outline the chronology and contents of the communications and packages that were anonymously delivered to Plaintiff as well as those sent to city council. The communications insult Plaintiff, call him names, and threaten unspecified harm if he fails to comply with ambiguous demands. These communications certainly may be classified as "unreasonable, unkind, or unfair," and the conduct could bruise one's ego. But the conduct is not so extreme as to "evoke outrage and revulsion." *See Franco*, 21 P.3d at 207. Plaintiff cannot meet the high bar set to plead outrageous conduct for an IIED claim to survive dismissal.

### B. Plaintiff has not Pled Facts Sufficient to Show that Defendants had the Requisite Intent to Establish an IIED.

The SAC fails to state a claim for IIED because Plaintiff allegations related to each Defendant's involvement are conclusory and unsupported by relevant surrounding facts and therefore fail to plead the required intent. Plaintiff lumps Defendants together, alleging that "each of the communications and packages described herein were packaged, created, or written by Defendants Mr. Hall, Mayor Hall, Mr. Schliesser, and Woodcraft." SAC ¶ 98. But there are no

[6] As a threshold matter, Defendants' alleged statements in those communications are protected by the First Amendment and the Utah Constitution. Defendants hereby incorporate by reference arguments and analysis in their contemporaneously filed Anti-SLAP Motion. *See* Utah R. Civ. P. 10(c) ("Statements in a paper may be adopted by reference in a different part of the same or another paper."). The privilege to free speech is an independent legal basis for dismissing Plaintiff's IIED claims that stem from Defendants' protected speech. Alternatively, if the Court concludes that some or all of Defendants' statements are not privileged, Plaintiff has still failed to state a claim for IIED because the communications and packages were not outrageous or intolerable as a matter of law.

supporting facts to support Plaintiff's conclusory allegation concerning each Defendant's involvement.

Indeed, the conduct alleged falls into at least three separate categories (*e.g.*, drafting, packaging, and delivering). There are no facts that support a reasonable inference that each Defendant participated in every step of the process, each of which is qualitatively different in terms of the level of outrage or revulsion that it could inspire. For example, there are no allegations as to which Defendant wrote the communications, nor are there facts to support a reasonable inference that any Defendant except the drafter knew the contents of the communications. *See generally* SAC, ¶ 114–15.

Additionally, the SAC is devoid of allegations that Mayor Hall engaged in any conduct related to the threatening communications or that she even knew about them before November 2021 when law enforcement became involved. *See id.* ¶ 114. The SAC is also silent as to her ownership of or employment with Woodcraft, her communications and interactions with Mr. Schliesser, or any other facts that support attributing "outrageous conduct" to her even at this pleading stage.

Without these additional facts, Plaintiff has failed to establish that any of the Defendants had the requisite intent to cause emotional distress. Without this necessary element of IIED, Plaintiff's claim fails as a matter of law.

## V. Plaintiff has Failed to Plead Facts Sufficient to Show Defendants Committed an Underlying Tort or Had a Meeting of the Minds for the Alleged Conspiracy.

Plaintiff's fifth and final cause of action is for civil conspiracy against all Defendants. SAC ¶¶ 263–70. To state a claim for civil conspiracy, Plaintiff must allege the following:

> (1) a combination of two or more persons, (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful,

overt acts, and (5) damages as a proximate result thereof."

*Pyper v. Reil*, 2018 UT App 200, ¶ 16, 437 P.3d 493 (quoting *Pohl, Inc. of Am. v. Webelhuth*, 2008 UT 89, ¶ 29, 201 P.3d 944.

**A. There is no underlying tort to sustain a conspiracy claim.**

"The claim of civil conspiracy require[s], as one of [its] essential elements, an underlying tort." *Estrada v. Mendoza*, 2012 UT App 82, ¶ 13, 275 P.3d 1024 (alterations in original) (citation and internal quotation marks omitted). Thus, "to sufficiently plead a claim for civil conspiracy, a Plaintiff is obligated to adequately plead the existence of such a tort." *Id.* (citation and internal quotation marks omitted). Plaintiff alleges that Defendants conspired to commit assault and intentional infliction of emotional distress. SAC ¶¶ 265–67. Because those claims each fail as a matter of law, Plaintiff's claim for civil conspiracy likewise fails.

Although less clear, Plaintiff may also be alleging that Mayor Hall conspired with Mr. Hall to commit battery. He alleges that Mayor Hall "was aware of Mr. Hall's intent to confront Gaston and was complicit" with his actions at Old West Days." This allegation is unsupported. There is no allegation that Mayor Hall was even present before or during the incident between Mr. Hall and Plaintiff at Old West Days let alone that she was aware Mr. Hall intended to confront him. Even if Mrs. Hall was aware of Mr. Hall's intent, there are no facts that she shared his alleged intent to have unlawful contact with Plaintiff. This theory of conspiracy also fails.

**B. The intra-corporate conspiracy doctrine bars Plaintiff's conspiracy claim.**

Plaintiff's conspiracy claim is based, at least in part, on allegations that Mr. Schliesser an employee of Woodcraft conspired with each other or other Woodcrafts owner, Mr. Hall. This theory of recovery is barred by the intra-corporate doctrine.

Under Utah law, civil conspiracy requires proof of, among other things, "a combination of

two or more persons." *Pyper v. Reil*, 2018 UT App 200, ¶ 16. The intracorporate conspiracy doctrine holds that "acts of corporate agents are attributed to the corporation itself, thereby negating the multiplicity of actors necessary for the formation of a conspiracy." *Cox v. Cache Cnty.*, No. 1:08-CV-124 CW, 2013 WL 4854450, at *3 (D. Utah Sept. 11, 2013). "Under the doctrine, a corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment, cannot conspire among themselves." *Id.*

Here, Plaintiff alleges that Woodcraft instructed Mr. Schliesser to delivery at least one of the threatening communications or packages to Plaintiff. SAC ¶¶ 104–06. Mr. Schliesser was allegedly paid to make the deliveries during normal business hours. *Id.* ¶¶ 104, 111. Plaintiff concludes that "Schliesser was acting within the course and scope of his employment with Woodcraft" at all times relevant to this case. SAC ¶ 228; *see also id.* ¶¶ 101–13, 229–30. Assuming the truth of these factual allegations, the intracorporate conspiracy doctrine prohibits Plaintiff's recovery under this theory of liability.

### C. There are no facts to establish a meeting of the minds.

Alternatively, Plaintiff fails to state a claim for civil conspiracy because there are no facts to show that Defendants had a meeting of the minds regarding the object of the conspiracy. There are not facts to support Plaintiff's allegation that Defendants collectively had the requisite intent required for any of the underlying torts. That is, there are insufficient facts to show that any combination Defendants intended to harass, intimidate, threaten, or otherwise cause Plaintiff to experience severe emotional distress. The conspiracy claim should therefore be dismissed.

## VI. Woodcraft is not Vicariously Liable for any of Mr. Schliesser's Alleged Conduct Because he was Acting Outside the Scope of His Employment.

Although not a claim itself, Plaintiff seeks to hold Woodcraft liable for Mr. Schliesser's alleged conduct under a theory of *respondeat superior*. "*Respondeat superior* is a doctrine of the

common law of agency." *M.J. v. Wisan*, 2016 UT 13, ¶ 50, 371 P.3d 21. Under the doctrine, "an employer may be held vicariously liable for the acts of its employee if the employee is [acting] in the course and scope of his employment at the time of the act giving rise to the injury." *Sutton v. Byer Excavating, Inc.*, 2012 UT App 28, ¶ 7, 271 P.3d 169 (alteration in original) (quoting *Newman v. White Water Whirlpool*, 2008 UT 79, ¶ 8, 197 P.3d 654). To plead vicarious liability, a Plaintiff must allege at least two elements to prove that the employee was acting within the course and scope of his or her employment. Specifically, the complaint must allege that the conduct is "of the general kind the employee is employed to perform" and that the conduct was "motivated, at least in part, by the purpose of serving the employers interest." *Drew v. Pac. Life Ins. Co.*, 2021 UT 55, ¶ 56, 496 P.3d 201 (quoting *Birkner v. Salt Lake Cnty.*, 771 P.2d 1053, 1056–57 (Utah 1989)). Here, it is indisputable that Mr. Schliesser acted outside the scope of his employment in delivering threatening packages to Plaintiff's home and work.

**1. Woodcraft did not employ Mr. Schliesser to deliver anonymous and allegedly threatening communications to individuals.**

Mr. Schliesser's conduct clearly was not the "general kind" of conduct that he was employed to perform. Woodcraft specializes in custom cabinetry and kitchen design for residential and commercial spaces. Plaintiff alleges that Woodcraft employed Mr. Schliesser to run errands, mail packages, and deliver information on the company's behalf. SAC ¶ 103. A reasonable inference from this allegation is that Woodcraft employed Mr. Schliesser to run errands and deliver packages that were business-related, such as mailing invoices, visiting job sites, picking up supplies, and similar types of conduct. It is unreasonable to infer that Woodcraft employed Mr. Schliesser to deliver "threatening communications" or engage in any alleged tortious conduct on behalf of the company. Woodcraft cannot be held liable for Mr. Schliesser's conduct outside the scope of his employment.

### 2. Mr. Schliesser did not further Woodcraft's business by delivering anonymous packages and communications to Plaintiff.

"[A]n employer is vicariously liable for an employee's intentional tort if the employee's purpose in performing the acts was either wholly or only in part to further the employer's business, even if the employee was misguided in that respect." *Sampson v. HB Boys, LC*, 2024 UT App 56, ¶ 27, 548 P.3d 538. As explained above, Woodcraft is in the cabinetry business. It is not a political or governmental entity. Accordingly, Mr. Schliesser's actions in delivering packages to Plaintiff were clearly not designed to benefit Woodcraft. Because Mr. Schliesser's deliveries to Plaintiff were so clearly outside the scope of his employment that reasonable minds cannot differ, the Court can (and should) determine as a matter of law that Woodcraft cannot be vicariously liable for his actions.

## CONCLUSION

Plaintiff has failed to state any claim against Defendants upon which relief may be granted. Consequently, and pursuant to Utah Rule of Civil Procedure 12(b)(6), the Court should dismiss the SAC.

DATED this 5th day of September, 2024.

**DENTONS DURHAM JONES PINEGAR**

*/s/ Jordan Westgate*
Aaron B. Clark
Trinity Jordan
Jordan E. Westgate
*Attorneys for Jason Hall, Natalie Hall, & Woodcraft Mill & Cabinet Inc.*

DATED this 5th day of September, 2024.

**THE KITTRELL LAW FIRM**

*/s/ Joel Kittrell*
Joel J. Kittrell
*Attorney for Defendant George Schliesser*

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7(q)(3), I hereby certify that this motion complies with the word limitation applicable to Rule 12(b)(6) motions to dismiss. Excluding the caption, table of contents, table of authorities, signature block, and certification, Defendants' Motion to Dismiss is 8,870 words.

**CERTIFICATE OF SERVICE**

I hereby certify that on September 5, 2024, a true and correct copy of the foregoing was served via the Court's Electronic Filing System to all counsel of record.

*/s/ Shelby Irvin*