

1st Civ. No. \_\_\_\_\_

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT**

MARK RYCZ,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF  
CALIFORNIA, COUNTY OF SAN FRANCISCO,

Respondent,

MCKENNA MCGARRY LIMENTANI, as an  
individual, MCKENNA MCGARRY LIMENTANI,  
as the personal representative for THE ESTATE  
OF STELLA GRACE YEH; and JOSEFINA  
MCGARRY,

Real Parties in Interest.

San Francisco Superior Court  
Case No. CGC-20-584408

Hon. Richard B. Ulmer, Jr.  
Department 302  
Telephone: (415) 551-3723

**PETITION FOR WRIT OF MANDATE, PROHIBITION  
OR OTHER APPROPRIATE RELIEF;  
MEMORANDUM OF POINTS AND AUTHORITIES**  
[Exhibits Filed Under Separate Cover]

**BREMER WHYTE BROWN & O'MEARA LLP**

John O'Meara, SBN 144416  
*jomeara@bremerwhyte.com*  
Casey B. Nathan, SBN 302453  
*cnathan@bremerwhyte.com*  
21215 Burbank Boulevard, Suite 500  
Woodland Hills, California 91367-7092  
(818) 712-9800 / Fax (818) 712-9900

**GREINES, MARTIN, STEIN & RICHLAND LLP**

Marc J. Poster, SBN 48493  
*mposter@gmsr.com*  
5900 Wilshire Boulevard, 12th Floor  
Los Angeles, California 90036  
(310) 859-7811 / Fax (310) 276-5261

*Attorneys for Petitioner MARK RYCZ*

**Court of Appeal  
State of California  
First Appellate District**

**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Court of Appeal Case Number: \_\_\_\_\_

Case Name:       *Rycz v. Superior Court of the State of California,*  
*County of San Francisco*      

Interested entities or parties are listed below:

Name of Interested Entity or Person	Nature of Interest
1. Uber Technologies, Inc.	Co-Defendant
2. Rasier LLC	Co-Defendant
3. Rasier-CA LLC	Co-Defendant
4. Louvensky Geffrard	Co-Defendant
5. Vashti Curcio	Cross-Defendant
6. Richard Middleton Rail III	Cross-Defendant
7. Allison Marie Campos	Cross-Defendant
8. Chun Yeh	Nominal defendant

      s/ Marc J. Poster      

Signature of Attorney/Party Submitting Form

Printed Name: Marc J. Poster  
Address: Greines, Martin, Stein & Richland  
5900 Wilshire Boulevard, 12th Floor  
Los Angeles, California 90036  
State Bar No. 48493  
Party Represented: Petitioner MARK RYCZ

## TABLE OF CONTENTS

	PAGE
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	2
INTRODUCTION	7
PETITION	9
A.    The Parties And Jurisdiction.	9
B.    Nature Of The Action: A Wrongful Death In San Diego.	10
C.    Plaintiffs' Lawsuit In San Francisco.	11
D.    Petitioner (Joined By Other Defendants) Moves To Change Venue From San Francisco To San Diego For The Convenience Of Witnesses And In The Interests Of Justice Under Code Of Civil Procedure Section 397.	12
E.    Respondent Court's Order Denying A Venue Change.	15
F.    Respondent Court Abused Its Discretion; There Is No Reasonable Basis For Trying This San Diego Case To A San Francisco Jury.	16
G.    Writ Relief Is Statutorily-Authorized And Petitioner's Only Adequate Remedy To Prevent A Miscarriage Of Justice.	19
H.    This Petition Is Timely.	20
I.    The Exhibits To This Petition.	20
PRAYER	21
VERIFICATION	22

## TABLE OF CONTENTS

	PAGE
MEMORANDUM OF POINTS AND AUTHORITIES	23
I. THE STANDARD OF APPELLATE REVIEW IS FOR ABUSE OF DISCRETION.	23
II. RESPONDENT COURT ABUSED ITS DISCRETION IN DENYING A CHANGE OF VENUE FROM SAN FRANCISCO TO SAN DIEGO FOR THE CONVENIENCE OF THE SAN DIEGO WITNESSES AND IN THE INTERESTS OF JUSTICE.	24
A. The Undisputed Facts Compel A Change Of Venue From San Francisco To San Diego; The Case Has Nothing To Do With San Francisco And Everything To Do With San Diego.	24
B. Plaintiffs' Counter-Arguments Lack Merit; That All The Events Occurred In San Diego And Dozens Of Witnesses Reside There Is More Than Sufficient To Demonstrate The Need For A Venue Change.	27
C. Respondent Court's Reasons For Denying A Change Of Venue Also Miss The Mark; The Court Cannot Decide In Advance Whether A Jury Will Need To Visit The San Diego Sites Where The Events Leading To Ms. Yeh's Death Occurred, Nor Whether At Some Unknown Future Date The Case Will Be Tried In Person Or By Remote Technology.	30
CONCLUSION	33
CERTIFICATION	34
PROOF OF SERVICE	35
SERVICE LIST	36

## TABLE OF AUTHORITIES

## PAGE

### CASES

<i>Buran Equipment Co. v. Superior Court</i> (1987) 190 Cal.App.3d 1662	16
<i>Carr v. Stern</i> (1911) 17 Cal.App. 397	23, 31
<i>Garrett v. Superior Court of Kings County</i> (1967) 248 Cal.App.2d 263	23
<i>Gulf Oil Corp. v. Gilbert</i> (1947) 330 U.S. 501	32
<i>Harden v. Skinner &amp; Hammond</i> (1955) 130 Cal.App.2d 750	29
<i>Henson v. Superior Court for Yuba County</i> (1963) 218 Cal.App.2d 327	26
<i>J. C. Millett Co. v. Latchford-Marble Glass Co.</i> (1959) 167 Cal.App.2d 218	28
<i>Juneau v. Juneau</i> (1941) 45 Cal.App.2d 14	26
<i>Minatta v. Crook</i> (1959) 166 Cal.App.2d 750	28
<i>Mission Imports, Inc. v. Superior Court</i> (1982) 31 Cal.3d 921	19
<i>Pacific Coast Title Ins. Co. v. Land Title Ins. Co.</i> (1950) 97 Cal.App.2d 829	23, 30
<i>Pearson v. Superior Court, City and County of San Francisco</i> (1962) 199 Cal.App.2d 69	26

## TABLE OF AUTHORITIES

	PAGE
<i>Richfield Hotel Management, Inc. v. Superior Court</i> (1994) 22 Cal.App.4th 222	23, 26, 28
<i>Sargon Enterprises, Inc. v. University of Southern California</i> (2012) 55 Cal.4th 747	23
<i>Seybert v. Imperial County</i> (1956) 139 Cal.App.2d 221	27, 31, 32
<i>Union Trust Life Ins. Co. v. Superior Court for Ventura County</i> (1968) 259 Cal.App.2d 23	23

## STATUTES

Civil Code	
§ 52.1	12
Code of Civil Procedure	
§ 367.75	7, 14, 17, 28-29
§ 397	7-8, 12, 19, 23, 33
§ 400	9, 19

## INTRODUCTION

Does the recent temporary adoption of the optional use of remote technology to conduct court hearings (Code Civ. Proc., § 367.75) override the long-standing statutory preference for a change of venue for trials for the convenience of witnesses and in the interest of justice (Code Civ. Proc., § 397, subd. (c))? Respondent superior court seems to think so.

Here is what happened. This wrongful death action arises out of a series of events occurring at various places in San Diego and witnessed by numerous persons who reside in San Diego. The events came to a tragic end when Stella Yeh, a student at the University of San Diego, was hit by two cars as she walked, inebriated, into traffic lanes on a San Diego freeway. Ms. Yeh's alleged survivors, who reside in North Carolina, chose to file this action against defendant and petitioner Mark Rycz and other defendants five hundred miles away from San Diego, in respondent San Francisco Superior Court.

As soon as petitioner answered the survivors' complaint, pursuant to Code of Civil Procedure section 397, subdivision (c), and for the convenience of witnesses and in the interests of justice, petitioner moved to change venue to San Diego where a jury could view the pertinent sites and where he and another defendant and almost all of the potential witnesses, including eyewitnesses, first responders and other government employees, reside. The only connection this case has to San Francisco is the happenstance that one set of defendants, Uber Technologies, Inc. and related entities, have their principal places of business there.

The survivors blame Ms. Yeh's death on Uber for alleged inadequate training and supervision of petitioner, who was using the driver version of the Uber rides app in San Diego but never gave Ms. Yeh a ride, and another defendant using the driver version of the Uber app in San Diego who did give her a ride but the ride ended on a surface street four or five miles from the freeway accident scene. None of that occurred in San Francisco.

That the survivors *could* file their action in San Francisco does not mean their action *should* be tried there. All physical events occurred in San Diego. The vast majority of witnesses reside there. And the citizens of San Diego have an interest in having San Diego controversies decided in San Diego.

Yet respondent San Francisco superior court denied petitioner's motion to change venue. The court's stated reasons – deciding in advance that visits by a jury to the San Diego sites where all pivotal events as pleaded by the alleged survivors occurred will be unnecessary, that a San Diego court would not hold an in-person trial, and that testimony by key witnesses by video will suffice – do not justify having a San Francisco jury decide this San Diego case. The court's reasoning would effectively neuter Code of Civil Procedure section 397 and any litigant's right to call witnesses in person (as petitioner intends to do here), merely because witnesses at any trial at any future time might be presented by remote technology. This was a clear abuse of the court's discretion and is plainly prejudicial to the rights of petitioner and the other defendants, including Uber, who joined in his motion.



Petitioner’s only available appellate remedy is by way of this petition. (Code Civ. Proc., § 400.) The petition, filed within twenty days of respondent’s October 1, 2021 order, is timely. (*Ibid.*)

This petition should be granted and a writ issued commanding respondent court to set aside its October 1, 2021, order and to enter a new order granting the change of venue for the convenience of witnesses and in the interests of justice.

### **PETITION**

Petitioner Mark Rycz alleges as follows:

#### **A. The Parties And Jurisdiction.**

1. Petitioner Mark Rycz is one of multiple defendants, including Louvensky Geffrard, Uber Technologies, Inc., a Delaware corporation (Uber), Rasier LLC, a Delaware limited liability company (wholly owned by Uber) and Rasier-CA LLC, a Delaware limited liability company (a subsidiary of Raiser LLC) (collectively Uber), in an action in respondent Superior Court of the County of San Francisco entitled *McKenna McGarry Limentani v. Uber Technologies, Inc.*, Case No. CGC-20-584408 (Hon. Richard B. Ulmer, Jr.). (1Exh. 1/7.)<sup>1</sup>

2. The real parties in interest are the plaintiffs in this action, McKenna McGarry Limentani and Josefina McGarry (sister and mother respectively) as successors in interest to the

---

<sup>1</sup> “1Exh. 1/7” refers to Exhibit 1 of the Exhibits to this Petition, in Exhibits Volume 1 at page 7. (See ¶15, *post*, regarding authentication of the Exhibits.)

decedent Stella Grace Yeh, and Josefina McGarry as a wrongful death plaintiff.<sup>2</sup>

**B. Nature Of The Action: A Wrongful Death In San Diego.**

3. Plaintiffs' pleadings (1Exh. 1/7-47) and discovery responses (1Exh. 5/252-281), and extensive police investigative reports, coroner's reports and GPS tracking records (1Exh. 5/108-229, 248-250) establish the following.

a. On the evening of May 11, 2018, plaintiffs' decedent, Stella Yeh, age 19 and a student at the University of San Diego, attended a party with some school friends in the Mission Beach area of San Diego. Ms. Yeh became intoxicated with alcohol and marijuana, allegedly provided by cross-defendant Campos. After leaving the party, she and her friends went to an In-N-Out on Damon Ave in San Diego. Ms. Yeh vomited. At 12:49 a.m., one of her friends ordered a ride through the Uber rides app to take Ms. Yeh back to the campus dorms. Defendant Geffrard accepted the ride request. (1Exh. 1/19, ¶¶68-69.) As Mr. Geffrard drove her north on the Interstate 5 freeway, Ms. Yeh, who was seated in the front passenger seat, vomited all over the dashboard and interior front windshield of his car. (*Id.*, ¶70.)

---

<sup>2</sup> Petitioner Mark Rycz has cross-complained against Vasthi Curcio, Richard Rail III, and Alison Campos for contribution, and named Ms. Yeh's father, Chun Yeh, an additional potential successor-in-interest to Ms. Yeh, as a nominal defendant. (1 Exh. 2/62.)

b. Minutes later, around 12:55 am, Mr. Geffrard took the Gilman Avenue exit off Interstate 5 and pulled over. Ms. Yeh got out of the car, and Mr. Geffrard left. (1Exh. 1/19-20, ¶¶72-73.) Ms. Yeh requested another ride through the Uber rides app on her cellphone and petitioner Mark Rycz accepted her ride request. (1Exh. 20, ¶76) Ms. Yeh refused his ride and allegedly walked away onto the Interstate 5 southbound freeway ramp. Since Ms Yeh refused the ride, Mr. Rycz drove away. (1Exh. 1/20-21, ¶78-79.)

c. Somehow, in the next half hour, Ms. Yeh found herself four or five miles away on the Interstate 805 freeway southbound, just south of State Route 52. She was walking on the side of the freeway and crossed into traffic lanes. She was struck by cars driven by cross-defendants Vashti Curcio and Richard Middleton Rail III and died at the scene. (1Exh. 5/137, 142.) The coroner's autopsy revealed her blood alcohol level was 0.21% and there was marijuana in her system. (1Exh. 1/22, ¶81; 1Exh. 5/108-110, 128-147.)

### **C. Plaintiffs' Lawsuit In San Francisco.**

4. Plaintiffs allege that defendants Rycz and Geffrard should not have left decedent in a location that was allegedly unsafe and should have called 9-1-1 or waited until she obtained another ride. They allege that Mr. Rycz and Mr. Geffrard were Uber's employees and that Uber failed to properly train and supervise them to handle such situations. (1Exh. 1/12-18, ¶¶36-64; 1/20, ¶74; 1/21, ¶79.)

5. Plaintiffs' remaining causes of action are for common carrier liability against the Uber defendants and Mr. Geffrard (1Exh 1/22-29, ¶¶82-124), negligence against Mr. Geffrard and Mr. Rycz (1Exh. 1/29-33, ¶¶125-139) negligent hiring, training and retention, and unlawful business practices against the Uber defendants (1Exh. 1/33-36, ¶¶140-155; 1/43-44, ¶¶194-196), and denial of Ms. Yeh's constitutional rights under the Bane Act (Civ. Code, § 52.1) against defendants other than Mr. Rycz (1Exh. 1/41-42, ¶¶178-185).

**D. Petitioner (Joined By Other Defendants) Moves To Change Venue From San Francisco To San Diego For The Convenience Of Witnesses And In The Interests Of Justice Under Code Of Civil Procedure Section 397.**

6. As soon as he filed his answer (1Exh. 2/50), petitioner moved to change venue from San Francisco to San Diego pursuant to Code of Civil Procedure section 397, subdivision (c), for the convenience of witnesses and in the interests of justice. (1Exh. 4/73.) Later, the Uber defendants and defendant Geffrard joined in the motion. (2Exh. 6/293, 7/297.)

7. Plaintiffs' pleadings and discovery responses, and extensive police investigative reports and GPS records established that there were dozens of identified potential non-party trial witnesses who reside in the San Diego area. Several are eyewitnesses to the evening's events leading to Ms. Yeh's

death.<sup>3</sup> Many more potential witnesses include first responders, ambulance attendants and government employees in the police, fire, and coroner departments who investigated the accident scene, interviewed witnesses, located evidence and conducted forensic studies<sup>4</sup> and plaintiffs' damages witnesses.<sup>5</sup> In all, there are about 40 non-party witnesses who are likely to provide

---

<sup>3</sup> Marie George (San Diego); Louvensky Geffrard (San Diego); Mark Rycz (Imperial Beach); Elizabeth Browning (San Diego); and Connor Guy (San Diego). Other non-San Francisco eyewitnesses include Alison Campos (Tennessee); Mary Abruzzo (Albuquerque); and Michael Voytrian (La Jolla). Witness Alexandra Cooley may live in the San Francisco Bay area. (1Exh. 3/63; 5/103, 104, 161-163, 193-223, 269-272; 2Exh. 11/486-509.)

<sup>4</sup> Officer Mijangos (San Diego); Officer Pacheco (San Diego); Officer Mendez (San Diego); Officer A. Portillo (San Diego); Sgt. Pacheco (San Diego); Officer McBreaty (San Diego); Officer Bartholme (San Diego); Officer Hamilton (San Diego); Officer Cheely (San Diego); Sgt. Jio (San Diego); Sgt. Rhodes (San Diego); Officer Long (San Diego); Officer Clinkscales (San Diego); Officer Forsberg (San Diego); Officer Mendez (San Diego); Officer San Pedro (San Diego); Officer Guzman (San Diego); Officer Andino (San Diego); Officer J. Sanchez (San Diego); Officer R. Sanchez (San Diego); Officer Clapham (San Diego); Captain Tyquiengco (San Diego); Firefighter Williams (San Diego); Paramedic Kreps (San Diego); Firefighter Kirsch (San Diego); Paramedic Davis (San Diego); Paramedic Brunst (San Diego); EMT Behar (San Diego); Medical Examiner's Investigator Burton (San Diego); Autopsy Specialist Hang (San Diego); Supervising Pathologist Schaber (San Diego); Pathology Fellow Snyder (San Diego); and Toxicology Lab Manager McIntyre (San Diego). (2Exh. 11/486-508.)

<sup>5</sup> Dr. Phillip Murray and Dr. Steven Houser (treated plaintiff Josefina McGarry) (1Exh. 5/267-268), Harrison McGarry (Josefina's brother), and Dr. Steve Limentani (plaintiff Limentani's husband), all of North Carolina (1Exh. 5/259).

relevant and material testimony at trial. Thirty-three are from San Diego. Twenty-seven are government employees from San Diego. Only six reside out of state (as do plaintiffs), and only one may live near San Francisco.

8. In response to the motion, plaintiffs objected that the motion was supported only by three-year-old records of witness addresses (two of whom plaintiffs allege no longer live at those addresses); that petitioner offered no direct evidence from the witnesses themselves that they would be inconvenienced or that it would serve the interests of justice to have the action tried in San Diego; that plaintiffs intend to call a number of Uber's employees, many of whom plaintiffs' believe may live in the San Francisco area or elsewhere but not in San Diego; and that a new statute, Code of Civil Procedure section 367.75, allows courts to conduct trials by remote technology until July 2023. (2Exh. 8/301-302.)<sup>6</sup>

9. In rebuttal, petitioner and the joining parties pointed out that plaintiffs' own discovery responses, filed just weeks earlier on August 13, 2021, listed the names and their San Diego addresses of the same dozens, and more, of potential

---

<sup>6</sup> Plaintiffs also speculated that petitioner was "forum shopping" to avoid a ruling that Uber is a common carrier. (2Exh. 8/302.) (Respondent court, a different judge, had earlier overruled Uber's demurrer to plaintiffs' second amended complaint on the common carrier issue. [2Exh. 9/316-320.]) However, petitioner is not Uber, a ruling on a demurrer is not dispositive, plaintiffs' speculation is not evidence, and none of it has anything to do with the convenience of witnesses and the interest of justice.

eyewitnesses and many dozens of government first responders, investigators and forensic pathologists. (2Exh. 11/486-508.) The moving parties argued that plaintiffs' pleadings, discovery responses and official investigative reports speak for themselves as to the convenience of witnesses and the interest of justice, and that plaintiffs' own evidence, a single declaration by their attorney, did not name any Uber specific employees or where they reside who would be pertinent witnesses at trial. (2Exh. 10/476-479, 12/513-514, 13/520-525.)

**E. Respondent Court's Order Denying A Venue Change.**

10. Respondent court denied petitioner's motion to change venue. The court's October 1, 2021 order states in pertinent part:

Defense counsel's declaration merely indicates where third-party witnesses reported residing three years ago. Moreover, Rycz's motion ignores the sea change in litigation over the past 18 months. Many depositions and much trial testimony are now given via audio/video platforms such as Zoom. This is certainly what San Francisco jurors expect. Thus, it matters little, if at all, where a witness resides at the time of trial as travel is unnecessary.

At hearing, defense counsel argued that the jury might make site visits to outdoor scenes at issue in the case. However, given modern video technology, such visits are rare. Moreover, the at-issue events occurred in the 1 a.m. time frame, so a jury visit at that time would be required to try to replicate

conditions. Such a visit would be even more unlikely.<sup>7</sup>

(2Exh. 17/558-560.)

**F. Respondent Court Abused Its Discretion; There Is No Reasonable Basis For Trying This San Diego Case To A San Francisco Jury.**

11. Respondent court's order is wrong on the facts and its assumptions.

a. Respondent court overlooked the fact that plaintiffs' own August 13, 2021, discovery responses lists numerous potential witnesses and where they reside in San Diego. This was not "three years ago," as the court thought. It was just weeks ago. (2Exh. 11/485-511.) Furthermore, it is unreasonable for the court to assume that even after three years most first responders and other government employees would have left their jobs and moved elsewhere, or indeed that any potential witness who once lived in the San Diego area would have moved anywhere else, much less that any of them had moved to the San Francisco area. Moreover, even assuming it

---

<sup>7</sup> The court's tentative ruling questioned the timeliness of petitioner's motion. (2Exh. 15/537-438.) However, petitioner could not move to change venue for the convenience of witnesses and in the interests of justice until he filed an answer. (*Buran Equipment Co. v. Superior Court* (1987) 190 Cal.App.3d 1662, 1665.) He filed his motion as soon as he filed his answer. (1Exh. 2/50, 1/Exh. 4/73.)



were true, plaintiffs presented not a shred of evidence of this to respondent court to support their opposition to the motion.

b. Respondent court ignored reasonable inferences from undisputed evidence that witnesses would be inconvenienced by having to attend a trial five hundred miles from where they reside and engage in essential government employment.

c. Respondent court erroneously assumed video technology such as Zoom is sufficiently reliable to enable witnesses who may or may not be technology savvy to testify from remote locations. Indeed, during respondent court's hearing on the motion for a venue change there were glitches and interruptions for remote counsel. (2Exh. 16/541-543.)

d. Respondent court erroneously decided *in advance* that this case will be tried by remote video technology wherever it will be tried. The statute cited by plaintiffs, newly-enacted Code of Civil Procedure section 367.75, is effective only until July 1, 2023. There is no trial date set for this case. The court has not yet even held a case management conference. Moreover, the emergency statute only *allows* but does not *require* trials by remote technology. Whatever the perceived benefits of the use of remote technology in court proceedings may be in general, in any individual case a court may determine either that its technology is inadequate to guarantee effective resolution of the matter or that personal appearances by parties or witnesses would materially assist in the resolution of the case. (§ 367.75, subs. (b)-(d).) Conducting *pretrial* hearings on preliminary

issues by remote technology may offer cost-savings advantages for the parties, but conducting whole *trials* by remote technology is a poor substitute for in-person proceedings where jurors may most-effectively assess the credibility of witnesses. Petitioner intends to call in-person witnesses. There is no assurance that witnesses testifying remotely will do so with the same seriousness as when they face a jury in a courtroom and that they are testify without coaching.

e. Respondent court also erroneously decided *in advance* that no jury would want to or need to inspect the sites: one where Ms. Yeh got out of defendant Geffrard's car on a surface street near the I-5 freeway, and where she was when she requested and then did not accept a ride with petitioner Rycz, and whether this site appears to be as unsafe as plaintiffs allege it is; and another site — four or five miles away from the first site — where Ms. Yeh eventually found herself walking on the I-805 freeway half an hour later and was hit by two cars. Site visits by juries may be a rarity in general, as is apparently respondent court's experience, but that does not mean that site visits would be unnecessary in this specific case, especially since here, it is the plaintiffs, not the defendants, who have injected the safety of these two different sites as issues in the case. Moreover, a video, as suggested by the court, is easily manipulated and a poor substitute for an actual site visit, day or night.

12. In short, undisputed facts establish that trying this case in San Francisco would inconvenience the vast majority of witnesses. It would be in the interests of justice to try the case

where it arose, in San Diego. Plaintiffs' arguments to the contrary hold no water, and respondent court's stated reasons for denying the venue change are erroneous and speculative. The court's reasoning would effectively neuter section 397, since the same reasoning would permit courts to deny a venue change in almost any case no matter how many witnesses would be inconvenienced and how many physical sites should be visited. The court abused its discretion and prejudiced petitioner's and his co-defendants' rights to a fair trial.

**G. Writ Relief Is Statutorily-Authorized And Petitioner's Only Adequate Remedy To Prevent A Miscarriage Of Justice.**

13. A writ of mandate from this Court is the statutorily-authorized remedy for the erroneous denial of a motion for change of venue for the convenience of witnesses and in the interests of justice. (Code Civ. Proc., § 400; *Mission Imports, Inc. v. Superior Court* (1982) 31 Cal.3d 921, 927, fn. 4.) It is the only practical appellate remedy for a defendant who would otherwise be compelled to go through a trial in the wrong place with almost all witnesses testifying remotely due to the inconvenience of the five-hundred-mile trip between San Diego and San Francisco. And it is the most appropriate remedy in this case because of respondent court's clear and prejudicial abuse of discretion. Furthermore, there is apparently a need for an appellate decision clarifying the interplay between the right to a jury trial and recent Covid-19 emergency rules regarding trials.

**H. This Petition Is Timely.**

14. Respondent court mailed notice of entry of its order denying the motion to change venue on October 1, 2021. (2Exh. 17/558-560.) This petition is timely filed within 20 days of that notice.

**I. The Exhibits To This Petition.**

15. The Exhibits, submitted under separate cover, are true copies of pleadings filed in this action in respondent court (with the exception of the reporter's transcript) and are incorporated by reference in the allegations of this Petition.



## VERIFICATION

I, Casey B. Nathan, declare as follows:

I am an attorney duly licensed to practice law in California. I am an associate at Bremer Whyte Brown & O'Meara LLP, attorneys of record for defendant and petitioner Mark Rycz in this proceeding. I have reviewed and am familiar with the records and files that are the basis of this petition. I make this declaration because I am more familiar with the particular facts, i.e., the state of the record and the litigation, than is my client. I certify that the petition's allegations are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification is executed on October 21, 2021, at Woodland Hills, California.

s/ Casey B. Nathan

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. THE STANDARD OF APPELLATE REVIEW IS FOR ABUSE OF DISCRETION.

Code of Civil Procedure section 397 provides in pertinent part that “[t]he court may, on motion, change the place of trial in the following cases: . . . (c) When the convenience of witnesses and the ends of justice would be promoted by the change.”

The standard of appellate review for an order granting or denying a motion for change of venue is abuse of discretion. (*Richfield Hotel Management, Inc. v. Superior Court* (1994) 22 Cal.App.4th 222, 226-227.) Judicial discretion, however, is never unfettered. It is subject to the limitations of the legal principles governing the action and must be reversed where no reasonable basis for the action is shown. (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.)

Whether to change venue must be determined on a case-by-case basis. (*Pacific Coast Title Ins. Co. v. Land Title Ins. Co.* (1950) 97 Cal.App.2d 829, 832.) Where all the evidence points to a change, denial of a change is an abuse of discretion. (*Union Trust Life Ins. Co. v. Superior Court for Ventura County* (1968) 259 Cal.App.2d 23, 28; *Garrett v. Superior Court of Kings County* (1967) 248 Cal.App.2d 263, 268 [“when the applicable affidavits show without conflict that the convenience of witnesses and the ends of justice would be promoted by a change of venue, it is an abuse of discretion to deny the application”]; *Carr v. Stern* (1911) 17 Cal.App. 397, 409 [“where no reason appears on the record

against the change, the order refusing to grant such a motion cannot be justified upon the ground that granting such orders is in the discretion of the court”].) Such is the case here.

**II. RESPONDENT COURT ABUSED ITS DISCRETION IN DENYING A CHANGE OF VENUE FROM SAN FRANCISCO TO SAN DIEGO FOR THE CONVENIENCE OF THE SAN DIEGO WITNESSES AND IN THE INTERESTS OF JUSTICE.**

**A. The Undisputed Facts Compel A Change Of Venue From San Francisco To San Diego; The Case Has Nothing To Do With San Francisco And Everything To Do With San Diego.**

Plaintiffs’ pleadings, extensive police investigative reports, GPS tracking reports, and autopsy reports establish that everything about this case occurred in San Diego and was witnessed and investigated by San Diegans. Briefly:

On the evening of May 11, 2018, plaintiffs’ decedent, Stella Yeh, age 19 and a student at the University of San Diego, attended a party with some school friends in the Mission Beach area of San Diego. Ms. Yeh became intoxicated with alcohol and marijuana. After leaving the party, she and her friends went to an In-N-Out on Damon Ave in San Diego. Ms. Yeh vomited. One of her friends ordered a ride through the Uber rides app to take Ms. Yeh back to the campus dorms. Defendant Geffrard responded to the ride request. As Mr. Geffrard drove her north on the Interstate 5 freeway, Ms. Yeh, who was seated in the front passenger seat, vomited all over the dashboard and interior front windshield of his car. Mr. Geffrard took the Gilman Avenue exit



off Interstate 5 and pulled over. Minutes after she had vomited in his car, Ms. Yeh got out of the car, and Mr. Geffrard left. Ms. Yeh requested another ride through the Uber rides app on her cellphone. This time defendant and petitioner Mark Rycz responded to her ride request. Ms. Yeh refused his ride and allegedly walked away onto the Interstate 5 southbound freeway ramp. Since Ms. Yeh refused the ride, Mr. Rycz drove away. Somehow, in the next half hour, Ms. Yeh found herself four or five miles away on the Interstate 805 freeway southbound, just south of State Route 52. She was walking, still inebriated, on the side of the freeway and then crossed into traffic lanes. She was struck by two cars and died at the scene. (1Exh. 1/19-22, 5/108-110,128-147.)

These events all occurred in San Diego. None occurred in San Francisco.

There were numerous witnesses to these events, including Ms. Yeh's school-mates and first responders, almost all of whom still reside in the San Diego area. A few other witnesses reside in other parts of California or out of state. Only one may reside in the San Francisco Bay area. Dozens of San Diego police officers investigated her death and the actions of the two Uber drivers leading up to and after their contacts with Ms. Yeh. Several forensic pathologists were involved in her autopsy. (1Exh. 5/161-163, 193-223, 259, 269-272.) Plaintiffs' own recent discovery responses lists almost all of these persons as potential witnesses and identifies the vast majority of them as still residing in San Diego. (2Exh. 11/485-511.)

In these circumstances, the convenience of witnesses and the interests of justice compel the conclusion that this case should be tried in San Diego. Plaintiffs' counsel's mere disbelief that this is the case is insufficient to create an issue in this respect. (*Juneau v. Juneau* (1941) 45 Cal.App.2d 14, 17.)

A trial court abuses its discretion in denying a change of venue from a court 500 miles away without good reason. For example:

- *Pearson v. Superior Court, City and County of San Francisco* (1962) 199 Cal.App.2d 69, 77-78 (writ granted; it is an abuse of discretion to deny a venue change where just twelve witnesses [compared to nearly 40 witnesses in this case] reside in the county to which the transfer requested, and the ends of justice are promoted by moving the trial closer to the residence of the witnesses, delay and expense in court proceedings are avoided and savings in the witnesses' time and expense are effected).

- *Richfield Hotel Management, Inc. v. Superior Court, supra*, 22 Cal.App.4th at pp. 226-227 (writ granted; action filed in San Mateo County transferred 210 miles to Tulare County where all witnesses lived or worked, all relevant events took place, and many of the lay witnesses were employees for whom the lost working time and travel expenses would be significant).

- *Henson v. Superior Court for Yuba County* (1963) 218 Cal.App.2d 327, 329-330 (writ granted; in the interests of justice, divorce action should be transferred from Yuba County,

where neither party had any connection, to San Francisco, where five witnesses had knowledge of facts bearing upon the issues).

- *Seybert v. Imperial County* (1956) 139 Cal.App.2d 221, 230-231 (order denying venue change from Los Angeles County to Imperial County, two hundred miles away, reversed; accident occurred in Imperial County, at least six eyewitnesses to the events surrounding the accident were Imperial County residents, and there was no showing by the plaintiffs that any necessary and material witnesses reside in Los Angeles County or whose convenience would be aided by retaining the trial in Los Angeles County).

So, too, here. This is a San Diego case, through and through. The events leading to Ms. Yeh's death happened in San Diego. The physical sites where those events occurred are all in San Diego. All of the material witnesses were there and almost all still are. The named plaintiffs and their witnesses on damages live in North Carolina. (1Exh. 5/259, 267-268, 274, 278.) It would be to no one's convenience to try the action in San Francisco except, apparently, for the plaintiffs' attorneys.

**B. Plaintiffs' Counter-Arguments Lack Merit; That All The Events Occurred In San Diego And Dozens Of Witnesses Reside There Is More Than Sufficient To Demonstrate The Need For A Venue Change.**

As noted above, plaintiffs responded to the venue change motion by arguing that (1) the motion was supported only by three-year-old records of witness addresses; (2) petitioner offered

no evidence from the witnesses themselves that they would be inconvenienced or that it would serve the interests of justice to have the action tried in San Francisco; (3) plaintiffs intend to call a number of Uber's employees, many of whom plaintiffs' believe live in the San Francisco area or elsewhere but not in San Diego; and (4) a new statute, Code of Civil Procedure section 367.75, allows courts to conduct trials by remote technology until July 2023.

Plaintiffs' first point was simply wrong. As recently as a few weeks before petitioner filed the motion, plaintiffs had submitted discovery responses that listed the same witnesses as petitioner listed, and even more, with their current addresses, most all in San Diego. (2Exh. 11/485-511.)

Plaintiffs' second point was wrong too. A declaration from each witness is not required where the facts speak for themselves about the subject matter of their testimony, the inconvenience of testifying five hundred miles from home and employment, and the interests of justice. A court is entitled to draw such reasonable inferences from the evidentiary facts. (See *J. C. Millett Co. v. Latchford-Marble Glass Co.* (1959) 167 Cal.App.2d 218, 227; *Richfield Hotel Management, Inc. v. Superior Court*, *supra*, 22 Cal.App.4th at pp. 226-227 ["logical inferences which arise from the affidavits demonstrate the inconvenience of trying this case in San Mateo County" 210 miles from where all the events took place and all the witnesses resided]; *Minatta v. Crook* (1959) 166 Cal.App.2d 750, 755 ["There is no requirement that there be direct evidence of the facts showing that the ends of

justice will be served by granting or denying the change. “The trial court may rely not only on the direct facts set forth in the affidavits, but also on any reasonable and relevant inference arising therefrom.” quoting *Harden v. Skinner & Hammond* (1955) 130 Cal.App.2d 750, 755].) Naturally it would be inconvenient for dozens of San Diego first responders, police investigators and other government employees to take the time away from work to travel 500 miles to give testimony in a San Francisco court.

Plaintiffs’ third point, that they contemplate calling Uber employees, could not swing the balance in favor of San Francisco. Plaintiffs have not yet even named who those witnesses might be or where they reside, and Uber may not even be in this case by the time it comes to trial. (2Exh 12/513-514.) Furthermore, Uber has joined in petitioner’s motion and does not object to having its employees testify in San Diego. (2Exh 7/297.)

And plaintiffs’ final point, that just-enacted Code of Civil Procedure section 367.75, allows courts to conduct trials by remote technology, is equally unpersuasive. The statute is effective only until July 2023, and it only permits courts to conduct trials by remote technology, not require courts to do so. It is up to the individual court to decide whether trial by remote technology is feasible for that court and whether circumstances may require in-person appearances. (Code Civ. Proc., § 367.75, subd. (b).) Courts should not lightly deny juries “the opportunity of observing the appearance of [] witnesses upon the stand and the manner in which they give their testimony—factors that in no

small degree aid in the determination of the truth and correctness of testimony.” (*Pacific Coast Title Ins. Co. v. Land Title Ins. Co.*, *supra*, 97 Cal.App.2d 829, 834.)

In sum, plaintiffs failed to meet their burden in opposing petitioner’s showing of the need for a change of venue to San Diego.

**C. Respondent Court’s Reasons For Denying A Change Of Venue Also Miss The Mark; The Court Cannot Decide In Advance Whether A Jury Will Need To Visit The San Diego Sites Where The Events Leading To Ms. Yeh’s Death Occurred, Nor Whether At Some Unknown Future Date The Case Will Be Tried In Person Or By Remote Technology.**

Respondent court denied petitioner’s venue change motion for demonstrably wrong reasons. (2Exh. 17/558-560.)

Like plaintiffs, the court erroneously assumed that petitioner’s evidence of where witnesses reside today was stale. In fact, plaintiffs’ own recent discovery admissions confirmed petitioner’s evidence as to where witnesses reside. Furthermore, it is unreasonable for the court to assume that even after three years, most first responders and other government employees would have left their jobs and moved elsewhere, or indeed that any potential witness who once lived in the San Diego area would have moved anywhere else, much less that any of them had moved to the San Francisco area.

Respondent court noted that many depositions and much trial testimony are now given by remote technology such as Zoom. According to the court, “This is certainly what San Francisco jurors expect.” (2Exh. 17/558.) How the court knows what jurors expect is a mystery. Moreover, what jurors expect is not relevant to whether a venue change should be granted for the convenience of witnesses and in the interests of justice.

With little or no knowledge of the evidence to be produced in this case, respondent court unilaterally decided *in advance* that no San Diego site visits would be required. How the court knew this too is a mystery. By keeping the case in San Francisco, the court precludes a jury’s physical site visits. Since plaintiffs place blame on defendants for not rescuing Ms. Yeh from an area plaintiffs allege is unsafe, a site inspection would enhance the jury’s determination of that claim. (See, e.g., *Seybert v. Imperial County, supra*, 139 Cal.App.2d at p. 231 [“In this particular case a view of the place where the accident happened might well be essential to a proper understanding of the testimony of the witnesses”].)

Respondent court also erroneously decided *in advance* that this case will be tried by remote video technology wherever it will be tried. As noted above, that a court may conduct a trial by remote technology does not mean a court must use remote technology. The appearance of witnesses in court for jurors to see is the traditional and best manner of deciding factual issues. (See, e.g., *Carr v. Stern, supra*, 17 Cal.App. 397, 408 [“it is manifestly always more satisfactory and desirable, in jury cases

in particular, to present the testimony first hand to those who must determine the questions of fact than to submit the same through depositions, which, in practical effect, is always a sort of hearsay way of adducing the proofs”]; *Seybert v. Imperial County*, *supra*, 139 Cal.App.2d at p. 231 [same].) The court that eventually presides over the trial of this case should make the decision when the case is ready to be tried and, hopefully, when emergency rules for conduct of trials are no longer needed.

In short, undisputed facts establish that trying this case in San Francisco would inconvenience the vast majority of witnesses and prevent visits to the sites where the events central to plaintiffs’ case occurred. It would be in the interests of justice to try the case where it arose, in San Diego. Plaintiffs’ arguments to the contrary hold no water. Respondent court’s stated reasons for denying the venue change are erroneous, speculative and unjustifiably preemptive of future court rulings and the interests of both San Francisco and San Diego jurors. As the court stated in *Seybert v. Imperial County*, *supra*, 139 Cal.App.2d 221:

Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the county where they can learn of it by report only. There is a local interest in having localized controversies decided at home.

(*Id.* at p. 234, quoting *Gulf Oil Corp. v. Gilbert* (1947) 330 U.S. 501, 508-509 [superseded by statute on another point].)





## CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), (c)(4), I certify that this Petition for Writ of Mandate, Prohibition or Other Appropriate Relief; Memorandum of Points and Authorities contains **6,260 words**, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: October 21, 2021

s/ Marc J. Poster

---

## PROOF OF SERVICE

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 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On October 21, 2021, I served the foregoing document described as: **Petition for Writ of Mandate, Prohibition or Other Appropriate Relief; Memorandum of Points and Authorities** on the parties in this action by serving:

### SEE ATTACHED SERVICE LIST

I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

BY MAIL: As follows: I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on October 21, 2021, at Los Angeles, California.

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

s/ Rebecca E. Nieto

---

## SERVICE LIST

Via TrueFiling:

Gregory Ramon De La Pena, SBN 126626  
*gdelapena@dlphlaw.com*  
De La Pena & Holiday LLP  
One Embarcadero Center, Suite 2860  
San Francisco, CA 94111  
Telephone: (415) 268-8000

**Attorneys for Plaintiffs and Real Parties in  
Interest MCKENNA MCGARRY LIMENTANI, as an  
individual; MCKENNA MCGARRY LIMENTANI, as  
the personal representative for THE ESTATE OF  
STELLA GRACE YEH; and JOSEFINA MCGARRY**

William Noel Edlin, SBN 107796  
*nedlin@eghblaw.com*  
Jesper Rasmussen, SBN 121001  
*jrasmussen@eghblaw.com*  
Edlin, Gallagher, Huie & Blum LLP  
500 Washington Street, 7th Floor  
San Francisco, CA 94111  
Telephone: (415) 397-9006

**Attorneys for Defendant LOUVENSKY GEFFRARD**

Laura S. Flynn, SBN 148511  
*lflynn@murchisonlaw.com*  
Murchison and Cumming, LLP  
2175 N. California Blvd., Suite 900  
Walnut Creek, CA 94596  
Telephone: (415) 524-4300

**Attorneys for Cross-Defendant VASTHI CURCIO**

Beth Issacs Golub, SBN 123584  
*beth.golub@wilsonelser.com*  
Wilson Elser Moskowitz Edelman & Dicker LLP  
401 W. A Street, Suite 1900  
San Diego, CA 92101-7908  
Telephone: (619) 881-3323

**Attorneys for Defendants RASIER LLC;  
RASIER-CA LLC and UBER TECHNOLOGIES, INC.**

Joseph S. Leventhal, SBN 221043  
*joseph.leventhal@dinsmore.com*  
Dinsmore & Shohl LLP  
655 W. Broadway, Suite 800  
San Diego, CA 92101-8482  
Telephone: (619) 400-0500

**Attorneys for Cross-Defendant  
ALLISON MARIE CAMPOS**

**Nominal Cross-Defendant  
CHUN H. YEH, in pro per**  
12721 Nottingham Street  
Cerritos, CA 90703  
*allen@muirsismedical.com*

**Via US Mail:**

Office of the Clerk  
Honorable Richard B. Ulmer, Jr.  
San Francisco Superior Court  
400 McAllister Street  
San Francisco, California 94102-4514