

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

LI FEN YAO, as Administrator of the  
Estate of Sam Mingsan Chen,

Plaintiff,

v.

ROBERT CHEN, OTTER AUDITS  
LLC, and RC SECURITY LLC,

Defendant.

Case No. 8:23-cv-00889-TDC

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION  
TO DEFENDANTS' MOTION TO DISMISS COMPLAINT  
FOR LACK OF PERSONAL JURISDICTION**

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**PRELIMINARY STATEMENT**

Plaintiff Li Fen Yao (“Plaintiff”) is the administrator of the estate (the “Estate”) of her late husband, Sam Mingsan Chen (“Sam” or “Sam Chen”). Sam Chen was one of two members of OtterSec LLC (“OtterSec”), until passing away in a car accident on July 13, 2022. Defendant Robert Chen (“Robert” or “Robert Chen”) was the other member. This action arises out of Robert’s brazen scheme to steal the Estate’s interest in OtterSec.

As detailed in the Complaint, after explicitly threatening to “dissolve” OtterSec “and reform it” if Sam Chen did not agree to a buy-out, Defendant Robert Chen secretly formed two companies in South Dakota on September 13, 2022, Defendants Otter Audits LLC (“Otter Audits”) and RC Security LLC (“RC Security,” and together with Otter Audits, the “Successor Defendants”). Next, Robert unilaterally pushed through, over the Estate’s objection, a pretextual dissolution of OtterSec on October 6, 2022, and seized control over a wind-down process that he shrouded in secrecy. Robert then took OtterSec’s assets, property, employees, and clients and transferred them to his new companies, the Successor Defendants Otter Audits and RC Security, and continued the exact same business as OtterSec’s, using OtterSec’s name.

The Complaint sets forth, over the course of 164 paragraphs, the facts supporting Plaintiff’s eight causes of action and personal jurisdiction over Defendants in Maryland, including how:

- (a) Robert knowingly entered into a business relationship with individuals located in Maryland to form, own, and operate OtterSec; (b) Robert engaged in extensive communications with, and made numerous false and misleading statements and omissions to, individuals located in Maryland relating to that business; (c) Robert transmitted and entered into agreements with Maryland residents for that business; (d) a significant portion of OtterSec’s business operations and asserts

were based in Maryland, (e) OtterSec generated substantial revenue from activities and services in Maryland, and (f) Defendants committed several intentional torts injuring Plaintiff in Maryland.

Nevertheless, alternatively disregarding or gainsaying the allegations of the Complaint, Defendants contend in their motion that “[t]he alleged facts relating to Plaintiff’s chosen forum are confined to a single paragraph,” that Plaintiff “does not allege any conduct by the Defendants that occurred in or targeted Maryland,” and that this Court lacks personal jurisdiction over them. Def. Mem. at 1, 5. In truth, Plaintiff commenced this action in Maryland because every aspect of this case arises out of or relates to Defendants’ extensive contacts with Maryland. Those contacts are liberally referenced throughout the Complaint and, for the avoidance of doubt, are detailed further in the accompanying Declaration of David Chen.

Defendants’ motion appears founded upon the mistaken belief that they somehow cleansed themselves of their Maryland contacts by virtue of the very scheme at issue in this case – *i.e.*, Robert’s admitted plan to “dissolve the company and reform it.” Indeed, this can be the only explanation for why Defendants’ motion (a) completely disregards Robert’s conduct in, and directed to, Maryland, and (b) focuses exclusively on the Maryland contacts of Otter Audits and RC Security after the dissolution of OtterSec, while disregarding Plaintiff’s allegations that they are the successors to OtterSec. However, once Robert’s connections to Maryland during OtterSec’s existence are considered, and OtterSec’s connections to Maryland are imputed to the Successor Defendants, as they must be, personal jurisdiction over all Defendants is manifest.

As further detailed below, the allegations of the Complaint, particularly as amplified by the facts set forth in the accompanying Declaration of David Chen, are more than adequate to sustain Plaintiff’s burden of showing that this Court has personal jurisdiction over all Defendants, and their motion to dismiss should be denied.

## **STATEMENT OF FACTS<sup>1</sup>**

### **A. Nature of the Case**

OtterSec was a limited liability company formed under Wyoming law on February 8, 2022, and it was engaged in the business of performing security audits of software code used by companies operating on the blockchain. Compl., ¶¶ 15-16. The only two members of OtterSec were Sam Chen and Defendant Robert Chen. Compl., ¶ 15. After Sam Chen tragically passed away in a car accident on July 13, 2022, his interest in OtterSec passed to the Estate. *Id.*

Apart from having been formed and dissolved in Wyoming, OtterSec had no connection to the State of Wyoming. Defendant Robert Chen was a resident of Bellevue, Washington and Sam Chen was a resident of Rockville, Maryland. Compl., ¶¶ 7-8; D. Chen Decl., ¶ 3. Wyoming was chosen because Robert Chen had once before assisted with the formation of an unrelated entity there. D. Chen Decl., ¶ 9. OtterSec had no employees, office or other physical presence in Wyoming, and thus appointed “Registered Agents Inc.,” a paid corporate services provider,<sup>2</sup> to serve as its statutory agent in Wyoming. D. Chen Decl., ¶ 4, Ex. B.

OtterSec was born from a friendship between Robert Chen and David Chen, Sam Chen’s minor son (“David” or “David Chen”). Compl., ¶¶ 17-20; D. Chen Decl., ¶¶ 6-10. Robert and David met in 2019 while participating in a cybersecurity competition and came to know each other in the years that followed. *Id.* They began discussing and pursuing the business that eventually became OtterSec on February 4, 2022. *Id.* Robert knew that David was still a minor at the time, in high school, and that he lived with his parents in Maryland. Compl., ¶ 19; D. Chen Decl., ¶ 10.

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<sup>1</sup> The facts set forth herein come from (a) the Complaint filed by Plaintiff on March 31, 2023 (ECF Doc. No. 1), a true and correct copy of which is attached to the accompanying Declaration of Stephen M. Plotnick (“Plotnick Decl.”) as Exhibit A (“Compl.”), and (b) the accompanying Declaration of David Chen (“D. Chen Decl.”).

<sup>2</sup> <https://www.registeredagentsinc.com/wyoming>

Shortly after OtterSec was formed, Robert and David came to recognize that David's status as a minor was likely to be problematic. Compl., ¶ 20; D. Chen Decl., ¶¶ 10-12. Robert thus suggested as a work-around that one of David's parents serve as the co-owner of OtterSec. Compl., ¶ 20; D. Chen Decl., ¶¶ 11-12. They settled on David's father, Sam Chen, and agreed that David would act as Sam's "proxy" with respect to OtterSec. Compl., ¶¶ 20-22; D. Chen Decl., ¶¶ 11-12. Using David as the go-between for Robert and Sam, Robert prepared and signed an operating agreement for OtterSec, which documented the 50/50 ownership structure as between Robert and Sam and included David and Sam Chen's mailing address in Rockville, Maryland immediately below their signatures. Compl., ¶ 22; D. Chen Decl., ¶ 14, Ex. D.

Consistent with the agreement and understanding of the parties, David was closely involved in OtterSec from the outset, working from the home he shared with his parents in Rockville, Maryland during the period of February-April 2022. Compl., ¶¶ 23-24; D. Chen Decl., ¶ 21. Robert and David's relationship started to deteriorate beginning in April 2022, when David began to suspect that Robert was being dishonest about discussions Robert was having with a firm named Jump Trading. Compl., ¶¶ 29-40; D. Chen Decl., ¶ 24. As the facts came to light and revealed Robert's duplicity, David ceased working for OtterSec. Compl., ¶ 70. When negotiations for Robert to acquire Sam Chen's membership interest in OtterSec stalled, Robert threatened on to "dissolve the company and remake it." Compl., ¶ 77; D. Chen Decl., ¶¶ 31-32.

Robert put his plan to "dissolve the company and remake it" in motion after Sam Chen suddenly and tragically passed away in a car accident. Compl., ¶ 97. As a first step, Robert secretly formed two new companies in South Dakota on September 13, 2022, the Successor Defendants Otter Audits and RC Security. Compl., ¶ 100; Plotnick Decl., ¶¶ 3-4, Exs. B, C. Robert chose

South Dakota to avoid detection and circumvent Wyoming law prohibiting the use of a name (like “Otter Audits”) that is the same as, or deceptively similar to, the name “OtterSec.” Compl., ¶ 104.

As a next step, Robert pushed through a dissolution of OtterSec on October 6, 2022, followed by a wind-up process that he controlled and shrouded in secrecy. Compl., ¶ 101; D. Chen Decl., ¶ 4. Robert, in fact, has never disclosed any of the details of the dissolution of OtterSec or the disposition of its assets. D. Chen Decl., ¶ 33. Despite now claiming in general terms that he paid for OtterSec’s assets, he never previously disclosed that to Plaintiff and has never revealed how much he paid, what he purchased or how he arrived at a purchase price. D. Chen Decl., ¶ 33. Moreover, even though OtterSec was highly profitable – and appears to be experiencing continued success as the Successor Defendants – Plaintiff has not received any distributions from OtterSec or any financial or tax information for calendar year 2022. D. Chen Decl., ¶¶ 33-35.

What is clear, however, is that Robert carried through with his threat to dissolve OtterSec and reform it as the Successor Defendants, Otter Audits and RC Security. They are openly utilizing the OtterSec website and domain name, and the OtterSec name and logo. Compl., ¶ 105-08; D. Chen Decl., ¶ 25. They list on their website OtterSec clients, include audit reports for those clients that were done by OtterSec, and describe themselves as a business identical to OtterSec. Compl., ¶¶ 105-08; D. Chen Decl., ¶ 25. They are utilizing OtterSec’s social media accounts, and multiple former OtterSec employees now work for them. Compl., ¶¶ 105-08; D. Chen Decl., ¶ 26. Plaintiff specifically alleges in her Complaint that Otter Audits and RC Security are the successors to OtterSec. Compl., ¶¶ 109-110.

The Complaint filed by Plaintiff in this action asserts eight causes of action: (1) for unfair competition under Section 43(a) of the Lanham Act as to all Defendants, (2) for a Declaratory Judgment as to all Defendants, principally determining that Otter Audits and RC Security are the

successors to OtterSec and awarding the Estate its rightful interest in them, (3) for Breach of Fiduciary Duty as to Defendant Robert Chen, and Aiding and Abetting Breach of Fiduciary Duty as to the Successor Defendants, (4) for Fraud as to Defendant Robert Chen, and Aiding and Abetting Fraud as to the Successor Defendants, (5) for Misappropriation and Conversion as to all Defendants, (6) for Breach of Contract as to Defendant Robert Chen, (7) for Tortious Interference as to all Defendants, and (8) for an Accounting as to all Defendants. Compl., ¶¶ 111-164.

The Complaint and accompanying Declaration of David Chen detail the facts, summarized below, supporting jurisdiction over all Defendants. These include the extensive business activities and other conduct of Robert and OtterSec, which are imputed to Otter Audits and RC Security as OtterSec's successors, that took place in or were directed to Maryland – all of which give rise to Plaintiff's claims in this case.

**B. Business Activities, Operations and Revenue in Maryland**

OtterSec, borrowed over \$292,000 from David in February 2022, to help fund its initial operations, and repaid the majority of that loan to David in April 2022. D. Chen Decl., ¶ 20.

During the same period of February-April 2022, OtterSec generated approximately \$925,000 in auditing revenue, much of which it derived from services rendered by David for OtterSec in Maryland. Compl., ¶ 29; D. Chen Decl., ¶ 21. David, in fact, worked on one-half of the company's audits during that period and those audits were responsible for \$625,000 in revenue, equating to approximately 67.5%, of OtterSec's total auditing revenue during that period. D. Chen Decl., ¶ 21.

Moreover, at Robert's request, David was responsible for handling OtterSec's money, the majority of which was held in a hardware Ledger wallet and an account maintained with the now-defunct cryptocurrency exchange FTX Trading Ltd. ("FTX"). D. Chen Decl., ¶ 15. David had

exclusive possession and control of OtterSec's hardware Ledger wallet, which is a physical device used for cryptocurrency transactions on the blockchain that must be physically connected to an interface (like a computer), from his home in Maryland. D. Chen Decl., ¶¶ 15-19. Similarly, David had exclusive possession and control of the password and hardware security key (also a physical device that needed to be connected to an interface) that was necessary to gain access to the FTX account, again from his home in Maryland. D. Chen Decl., ¶¶ 15-19.

OtterSec used David's computer server, located in his home in Rockville, Maryland, for its auditing work. Compl., ¶ 24; D. Chen Decl., ¶¶ 27-29. Robert and other OtterSec employees or consultants were granted access to that server, and regularly logged into and accessed it remotely for executing code and performing auditing work for OtterSec. D. Chen Decl., ¶ 27. Robert knew that the server was located in Sam's and David's home. D. Chen Decl., ¶¶ 28-29.

OtterSec also had at least three other employees or consultants located in Maryland. Each signed an employment or consulting agreement indicating his name and address, and Robert counter-signed for OtterSec:

- Harikesh Kailad, 5304 Bangor Drive, Kensington MD;
- Andrei Kotliarov, 13972 Saddleview Dr., North Potomac MD; and
- William Wang, 9706 Watts Branch Dr., Rockville, MD.<sup>3</sup>

D. Chen Decl., ¶ 23, Exs. E-G.

One of these employees, William Wang, is specifically referenced in the Complaint because Robert was secretly negotiating to bring Mr. Wang with him from OtterSec to Jump Trading in April 2022, while Robert was a member of OtterSec and Mr. Wang was still under

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<sup>3</sup> Messrs. Kailad's, Kotliarov's and Wang's agreements with OtterSec contain Wyoming choice of law and forum selection clauses, but none of them were ever physically located there. D. Chen Decl., ¶ 10.

contract with OtterSec pursuant to a consulting agreement that included confidentiality obligations, work-for-hire provisions, and restrictive covenants. *See Compl.*, ¶¶ 55-64; D. Chen Decl., ¶ 23, Exs. E-G. The Complaint details Robert's numerous false and misleading statements or material omissions, made to David in Maryland as his father's agent, with respect to his discussions with Jump Trading. *See Compl.*, ¶¶ 55-65, 131-145. Further, Mr. Wang is just one of several former OtterSec employees or consultants that now appear to be working for Robert and the Successor Defendants. D. Chen Decl., ¶ 26. Several claims asserted by Plaintiff in this case are based at least in part of these allegations, including the causes of action for a declaratory judgment, breach of fiduciary duty, fraud, and tortious interference.

#### **C. Communications and Other Persistent Conduct Directed to Maryland**

The Complaint details the circumstances that led to a breakdown in the relationship between Robert and David and, ultimately, the claims in this case. Plaintiff's allegations quote directly from logs of myriad electronic messages exchanged over the course of several months between Robert and David. For context, David and Robert exchanged a total of **18,543 messages** over Discord alone, between the date OtterSec was formed and the date it was dissolved. Of those, 8,088 were messages sent by David to Robert and **10,455 were messages sent by Robert to David in Maryland**, who was acting as his father's agent with respect to OtterSec. D. Chen Decl., ¶¶ 11, 31. These communications, which include Robert's threat to "dissolve the company and remake it" as the Successor Defendants, form at least part of the basis of essentially every cause of action asserted against Defendants. *See, e.g.*, Compl., ¶¶ 36-39, 42-49, 53-54, 59, 69, 74-77, 87-88.

For example, the Complaint details Robert's materially false or misleading statements and material omissions to David concerning his discussions with Jump Trading. Despite having (a) provided Jump Trading with financial details concerning OtterSec's revenue and profitability, and

(b) scheduled a call with the President of a Jump Trading affiliate that was expected to lead to “an offer,” Robert falsely represented to David that he was exploring raising money from “friends and family,” and that he was “talking to some potential vcs” in an effort to build “connections” for OtterSec. Compl., ¶ 36. The Complaint alleges that, knowing David was his father’s agent with respect to OtterSec, Robert’s statements and omissions were made to David knowing that they would be conveyed to and relied upon by Sam Chen – and that is precisely what happened when Sam Chen was induced by those statements to transfer a portion of his membership interests in OtterSec to Robert. Compl., ¶¶ 44-45. The Complaint seeks rescission of that transfer.

The Complaint further alleges that, as Robert’s discussions with Jump Trading progressed, he eventually brought David into the loop under the guise that they related to a potential “acquihire” of OtterSec. Compl., ¶¶ 50-53. However, in truth, Robert’s discussions with Jump Trading were centered on negotiating deals for himself and two others: Kevin Chow and Mr. Wang, both of whom had employment or consulting agreements with OtterSec. Compl., ¶ 56. As set forth in the Complaint, David became suspicious of Robert’s duplicity following a call he had with principals of Jump Trading, during which he learned for the first time that Robert’s discussions with Jump Trading did not concern an “acquihire” at all. Compl., ¶ 58. Robert then feigned ignorance afterwards during a discussion with David and compounded his misconduct with additional misrepresentations and omissions. Compl., ¶ 59. Robert even received an offer to join Jump Trading, and according to messages he exchanged with a third party, admitted that he had “signed” a deal with Jump Trading that involved a “partial share acquisition.” Compl., ¶ 85.

The Complaint details numerous other breaches of fiduciary duty, and materially false and misleading statements or omissions, by Robert over the course of the months that followed, including in connection with the dissolution and winding up of OtterSec. Compl., ¶¶ 99-110. In

one such communication, Robert advised Plaintiff that he was “not aware” of any “third parties” that were “interested” in purchasing OtterSec’s assets (Compl., ¶ 93) – despite now having effectively admitted that he was interested in them for his new companies, the Successor Defendants. These statements and other conduct detailed in the Complaint concerning the dissolution and wind-up of OtterSec also form part of the Complaint, as the entire process was plainly a pretext for stealing the Estate’s interest in OtterSec for the two companies Robert formed before he even dissolved OtterSec, the Successor Defendants Otter Audits and RC Security. Compl., ¶¶ 93-105; Plotnick Decl. ¶¶ 3-4, Exs. B, C.

## ARGUMENT

### **I      LEGAL STANDARD**

On a pre-answer motion to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2), “the burden on the plaintiff is simply to make a *prima facie* showing of a sufficient jurisdictional basis to survive the jurisdictional challenge.” *Brown Inv. Advisory & Tr. Co. v. Allen*, 2020 U.S. Dist. LEXIS 181067, at \*9 (D. Md. Sept. 29, 2020) (quoting *New Wellington Fin. Corp. v. Flagship Resort Dev. Corp.*, 416 F.3d 290, 294 (4th Cir. 2005)); *see also Johnson-Howard v. Aecom Special Missions Servs.*, 434 F. Supp. 3d 359, 365 (D. Md. 2020). “In deciding whether the plaintiff has made the requisite showing, the court must take all disputed facts and reasonable inferences in favor of the plaintiff.” *Ibid.* (quoting *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 396 (4th Cir. 2003)). Courts may consider evidence outside the pleadings, including affidavits submitted by both sides, but need not resolve any contradictions because all factual disputes must be resolved in favor of the plaintiff. *Young v. Swirsky*, 2015 U.S. Dist. LEXIS 144671, at \*6, \*9 (D. Md. Oct. 26, 2015) (citing *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 60 (4th Cir. 1993)).

As further detailed below, the allegations of the Complaint, particularly as amplified by the facts set forth in the accompanying Declaration of David Chen, are more than adequate to make a *prima facie* showing that this Court has personal jurisdiction over the Defendants.

## **II THE JURISDICTIONAL CONTACTS OF OTTERSEC ARE IMPUTED TO THE SUCCESSOR DEFENDANTS**

At the outset, Defendants' motion disregards Plaintiff's allegations that Otter Audits and RC Security are the successors to OtterSec. As the Fourth Circuit has observed, "the great weight of persuasive authority permits imputation of a predecessor's actions upon its successor whenever forum law would hold the successor liable for its predecessor's actions." *City of Richmond v. Madison Management Group, Inc.*, 918 F.2d 438, 454 (4th Cir. 1990). Thus, where there is evidence supporting the imposition of successor liability, it is proper to assert personal jurisdiction over the successor based on the forum contacts of the predecessor. *Id.* at 455; *see also Hartford Mut. Ins. Co. v. Hoverzon, LLC*, 2021 U.S. Dist. LEXIS 71263, at \*13-17 (D. Md. Apr. 13, 2021) (denying motion to dismiss for lack of personal jurisdiction where defendant was alleged to be successor-in-interest to predecessor company).

Plaintiff alleges in the Complaint that, after having threatened to "dissolve the company and remake it," Defendant Robert Chen (a) secretly formed Otter Audits and RC Security in South Dakota on September 13, 2022, (b) unilaterally dissolved OtterSec on October 6, 2022, and (c) proceeded to transfer OtterSec's assets, including its name, logo, website, domain, social media accounts, clients, employees and contracts, to Otter Audits and RC Security. Plaintiff further alleges that Otter Audits and RC Security are not only engaged in the exact same business as OtterSec, but are in fact actually holding themselves out to be OtterSec. As detailed above, these allegations are well-supported by the evidence, even at this early stage of the case and

notwithstanding Defendants' lack of transparency in connection with the dissolution and winding up of OtterSec. On the basis of that evidence, the Complaint alleges specifically that:

- “The transfer of OtterSec’s assets and property to Defendants Otter Audits and RC Security is a classic example of a de facto merger, and Otter Audits and RC Security are the essence of a mere continuation of OtterSec.”
- “The dissolution of OtterSec and formation of Otter Audits and RC Security were fraudulent transactions arranged and effectuated by Robert Chen, in violation of his fiduciary duties, in furtherance of his scheme to ‘dissolve the company and remake it’ without Sam Chen or the Estate.”
- ***“Otter Audits and RC Security are the successors to OtterSec,*** and the Estate is therefore entitled to the same interest in Otter Audits and RC Security as it would be entitled to in OtterSec, together with an award of damages, profits costs and other relief as further detailed below.”

Compl., ¶¶ 109-110 (emphasis added).

Defendants' motion does not address, let alone challenge the sufficiency of, these allegations or the causes of action upon which they are based.<sup>4</sup> Rather, Defendants disregard them altogether and focus their argument exclusively on the Successor Defendants' contacts in Maryland as though Plaintiff's successor allegations do not exist. That is precisely the type of argument the Fourth Circuit cautioned against in *City of Richmond* because it “would allow corporations to immunize themselves by formalistically changing their titles.” *City of Richmond*, 918 F.2d at 455 (quoting *Duris v. Erato Shipping, Inc.*, 684 F.2d 352, 356 (6th Cir. 1982)).

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<sup>4</sup> “It is a well settled rule that contentions not raised in the argument section of the opening brief are abandoned.” *A Helping Hand, LLC v. Balt. Cty.*, 515 F.3d 356, 369 (4th Cir. 2008).

Accordingly, accepting Plaintiff's well-pleaded and uncontested allegations as true, it is proper to assert personal jurisdiction over Otter Audits and RC Security based on OtterSec's contacts with Maryland.

### **III JURISDICTION OVER DEFENDANTS IS PROPER UNDER THE MARYLAND LONG ARM STATUTE AND THE FOURTEENTH AMENDMENT**

As non-residents, exercising personal jurisdiction over Defendants is proper because (a) it is authorized under the Maryland long-arm statute, Md. Code Ann., Cts. & Jud. Proc. § 6-103; and (b) it satisfies the due process requirements of the Fourteenth Amendment. *See Christian Science Bd. v. Nolan*, 259 F.3d 209, 215 (4th Cir. 2001).

#### **A. Jurisdiction Is Authorized Under The Maryland Long Arm Statute**

Courts have interpreted the Maryland long-arm statute “to reach as far as the Constitution allows, [and thus] the statutory and due process components of the personal jurisdiction analysis merge.” *Crussiah v. Inova Health Sys.*, 2015 U.S. Dist. LEXIS 156751, at \*8 (D. Md. Nov. 19, 2015). It authorizes courts to exercise jurisdiction over non-residents if (among other reasons) the cause of action arises from the transaction of business in Maryland, or if the non-resident “causes tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue” from services in Maryland. *See* Md. Code Ann., Cts. & Jud. Proc. § 6-103(b)(1) and (4). Jurisdiction exists over the Defendants under both of these sections.

Subsection (b)(1) of the long arm statute “does not require the defendant to have been physically present in Maryland.” *See CoStar Realty Info., Inc. v. Field*, 612 F. Supp. 2d 660, 671 (D. Md. 2009). All that is required “are actions by the defendant that ‘culminate in purposeful activity within the state.’” *Johns Hopkins Health v. Al Reem Gen. Trading & Co.*, 374 F. Supp. 2d 465, 472 (D. Md. 2005) (quoting *Bahn v. Chicago Motor Club Ins.*, 98 Md. App. 559 (1993)).

In *Bahn*, the court found that the defendant had transacted business in Maryland when it sent insurance renewals to Maryland and accepted payment under those renewals from Maryland. *See* 98 Md. App. at 578. Here, there is far more.

Robert knowingly entered into a business relationship with individuals located in Maryland, Sam Chen and David Chen, to form and operate OtterSec (the predecessor to Otter Audits and RC Security). Robert engaged in extensive communications with an individual (David) in Maryland relating to that business, transmitted to Maryland residents and entered into agreements (such as the operating agreement and amendments) with Maryland residents for that business, and a significant portion (if not most) of the business's operations were based in Maryland. The majority of OtterSec's funds were located and controlled exclusively in Maryland (in the case of the hardware Ledger wallet and FTX account). OtterSec borrowed over \$292,000 from an individual (David) located in Maryland, routinely accessed and utilized a computer server located in Maryland for its auditing work, and generated substantial revenue from auditing work performed by employees or consultants that were located in Maryland. Moreover, at least one of those consultants, Mr. Wang, still works for the Successor Defendants and Plaintiff has asserted claims in this case that arise directly out of that relationship. These contacts are significantly more than the contacts found sufficient in *Bahn* and they are more than sufficient to confer jurisdiction on the Defendants.

The Complaint also alleges that Defendants have committed several torts that caused injury to Plaintiff in Maryland, including breaches of fiduciary duties and aiding and abetting breach of fiduciary duties; fraud and aiding and abetting fraud; misappropriation and conversion; and

tortious interference.<sup>5</sup> Thus, jurisdiction is also present under subsection (b)(4) of the long arm statute because Defendants have also done substantial business, engaged in a persistent course of conduct, and derived substantial revenue from services in Maryland. *See, e.g., Calder v. Jones*, 465 U.S. 783, 789-90 (1984) (personal jurisdiction proper where defendants' "intentional, and allegedly tortious, actions were expressly aimed at" forum state, and "knew that the brunt of that injury would be felt by respondent in the State in which she lives and works.").

#### **B. The Exercise of Jurisdiction Satisfies Due Process**

A court may exercise personal jurisdiction over a foreign defendant consistent with due process so long as there is an "affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum state." *Bristol-Myers Squibb v. Superior Ct. of CA*, 137 S. Ct. 1773, 1776 (2017) (quotation omitted); *accord Walden v. Fiore*, 571 U.S. 277, 277 (2014) (analysis of whether defendant has minimum contacts for jurisdiction "focuses on the relationship among the defendant, the forum, and the litigation") (quotation omitted). In assessing specific jurisdiction, courts consider "(1) the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the State; (2) whether the plaintiffs' claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable." *Crussiah*, 2015 U.S. Dist. LEXIS 156751, at \*10-11.

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<sup>5</sup> Robert's misrepresentations and omissions to David may be treated as misrepresentations and omissions to Sam. *See CX Reins, Co. v. Leader Rlty. Co.*, 252 F. Supp. 3d 439, 446 (D. Md. 2017) (holding that knowledge gained by agent may be considered knowledge of the principal.); *Fox v. DRA Services, LLC*, 2012 U.S. Dist. LEXIS 202767, at \*11 (D. Wyo. May 17, 2012) ("It is general rule of the law of agency that knowledge of the agent will be imputed to the principal[.]").

1. Defendants Purposefully Availed Themselves of the Privilege of Conducting Business in Maryland

Courts consider a variety of factors in assessing whether out of state defendants have purposefully availed themselves of the privilege of doing business in a particular state, including:

- (1) Whether the defendant maintained offices or agents in the State; (2) whether the defendant maintained property in the State; (3) whether the defendant reached into the State to solicit or initiate business; (4) whether the defendant deliberately engaged in significant or long-term business activities in the State; (5) whether a choice of law clause selects the law of the State; (6) whether the defendant made in-person contact with a resident of the State regarding the business relationship; (7) whether the relevant contracts required performance of duties in the State; and (8) the nature, quality, and extent of the parties' communications about the business being transacted.

*UMG Recordings, Inc. v. Kurbanov*, 963 F.3d 344, 352 (4th Cir. 2020) (quotation omitted); *accord Bradley v. DentalPlans.com*, 617 F. Supp. 3d 326, 335 (D. Md. 2022). It is not merely the *number* of contacts, but rather “the *quality and nature*” of the connections to the forum state. *UMG Recordings, Inc.* 963 F.3d at 352 (emphasis in original). Even a single business transaction can be sufficient to support specific personal jurisdiction. *See, e.g., Aerovation v. Airtec, Inc.*, 2019 U.S. Dist. LEXIS 139340, at \*11 (D. Md. Aug. 16, 2019).

In attempting to distance themselves from Ottersec, Defendants cite to *Ark. Nursing Home Acquisition, LLC v. CFG Cnty. Bank*, 460 F. Supp. 3d 621, 641 (D. Md. 2020) for the proposition that simply using assets that might have had a connection to Maryland at one point is insufficient to confer personal jurisdiction. *See* Def. Mem. at 12. But this distorts the allegations in this case. Plaintiff does not contend that Otter Audits and RC Security are merely in receipt of OtterSec’s assets; Plaintiff alleges that Otter Audits and RC Security effectively *are* OtterSec – *i.e.*, its successors in interest.

Here, Robert chose to enter into a business relationship with David and Sam – forming an entity in which Sam (a Maryland resident) had a 50% interest. As a member of OtterSec, Sam was

an agent of the company located in Maryland, and his residence in Maryland subjected OtterSec to service of process in Maryland. Md. Code Ann., Corps. & Ass'ns § 1-401(a). Moreover, the parties agreed that, in order to run OtterSec, David would serve as Sam's "proxy" on a day-to-day basis. D. Chen Decl., ¶¶ 11-12. David and Robert exchanged a total of ***18,543 messages*** over Discord alone, between the date OtterSec was formed and the date it was dissolved, the majority of which related to OtterSec. D. Chen Decl., ¶ 31. Of those, 8,088 were messages sent by David to Robert and ***10,455 were messages sent by Robert to David in Maryland.*** D. Chen Decl., ¶ 31. Those messages include many of the misrepresentations and omissions forming the basis of Plaintiff's claims in this case. Robert knew that David was his father's "proxy" with respect to OtterSec, that David and Sam lived in Maryland at the time of these communications, and that those communications would be relayed to Sam and relied upon. Compl., ¶ 139.

Additionally, OtterSec conducted substantial business, and maintained a significant presence and tangible property, in Maryland. The majority of OtterSec's funds were located and controlled in Maryland, it borrowed over \$292,000 from an individual (David) located in Maryland, routinely utilized a computer server located in Maryland for its auditing work, and generated substantial revenue from work performed by David and at least three employees or consultants who were located in Maryland. Accordingly, the purposeful availment requirement is plainly satisfied in this case. *See, e.g., St. Paul Mercury Ins. Co. v. Am. Bank Holdings, Inc.*, 691 F. Supp. 2d 626, 629 (D. Md. 2010) ("[T]he acts done within a State which will support in personam jurisdiction as transacting 'any business' are not necessarily limited to acts which are a part of commerce or of transactions for profit, but include acts which constitute a purposeful activity within the State." (quotation omitted)); *accord Aerovation, Inc.*, 2019 U.S. Dist. LEXIS 139340, at \*12 (finding that defendant had purposely availed itself of the privilege of doing

business in Maryland by “submitting multiple contract proposals to . . . a Maryland company, executing a multimillion dollar contact with [that company], and visiting Maryland six different times as part of the execution of that contract.”).

2. Plaintiff’s Claims Arise Out of Activities Directed at Maryland

Under the second prong, a court merely looks at whether “activity in the forum state is the genesis of the dispute.” *See UMG Recordings, Inc.*, 963 F.3d at 354 (quotation and alteration omitted). The dispute must “arise out of or relate to the defendant’s contacts with the forum.” *Bradley*, 617 F. Supp. 3d at 336 (quoting *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021)); *accord Aerovation, Inc.*, 2019 U.S. Dist. LEXIS 139340, at \*13.

Again, Defendants argue that this action does not arise out of their connections with Maryland because they ignore all pre-OtterSec dissolution conduct and Plaintiff’s successor allegations. *See* Def. Mem. at 16. Once Ottersec’s connections to Maryland are considered, and Robert’s dealings, actions, and conduct directed towards Maryland residents are considered, together with the theft of a Maryland resident’s membership interest, it is difficult to fathom how Defendants can seriously dispute that the second requirement is met because it is clear that every aspect of this dispute arises out of or relates to those contacts.

3. The Exercise of Jurisdiction is Constitutionally Reasonable

“In assessing the sufficiency of a defendant’s contacts with the forum state, the ‘constitutional touchstone’ is whether the contacts were purposefully established’ by the defendant such that he ‘will not be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts.’” *Ritz Camera Centers v. Wentling Camera Shops*, 982 F. Supp. 350, 353 (D. Md. 1997) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75 (1985)).

Defendants' contacts with Maryland were neither "fortuitous" nor "attenuated." Rather, they deliberately and knowingly formed a business with an individual residing in Maryland (Sam Chen), interacted on a regular basis with his agent in Maryland (David Chen), borrowed funds from that same agent to operate the business, kept the company's money in Maryland, ran significant aspects of the business out of the co-owner's and agent's home in Maryland, hired other Maryland residents to perform auditing work for that business from Maryland, generated substantial revenue from services performed in Maryland, and then carried out an intentional scheme specifically to steal a Maryland resident's interest in that business..

In arguing that the exercise of jurisdiction is not constitutionally reasonable, Defendants point to two factors: (1) none of them are physically located in Maryland, and (2) the Court will need to apply law from a state other than Maryland. *See* Def. Mem. at 19-20. Both arguments are unavailing, and do not outweigh other factors that courts consider in assessing the constitutional reasonableness of a forum.

Specifically, in assessing whether a selected forum is constitutionally reasonable, courts consider a variety of factors, including:

(1) the burden on the defendant of litigating in the forum; (2) the interest of the forum state in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the shared interest of the states in obtaining efficient resolution of disputes; and (5) the interests of the states in furthering substantive social policies.

*CSS Antenna, Inc. v. Amphenol-Tuchel Elecs., GmbH*, 764 F. Supp. 2d 745, 751 (D. Md. 2011).

Consideration of these factors leads to the conclusion that the exercise of jurisdiction over Defendants is constitutionally reasonable. Whatever inconvenience there may be to Defendants is the product of their own knowing and intentional conduct, and it should neither be a surprise to

them that they have been haled into court in Maryland nor should it outweigh Maryland's interest in adjudicating a case involving a resident who has been victimized by that conduct.

Additionally, there is no jurisdiction in which the Defendants' argument could not be made. Robert lives in Washington, OtterSec was formed in Wyoming, the Successor Defendants were formed in South Dakota, and Plaintiff is in Maryland. Any of these jurisdictions would have to apply the law of other jurisdictions. Moreover, to the best of Plaintiff's knowledge, Robert is the only individual located in Washington, and there is no actual person, witness or evidence located in Wyoming or South Dakota. Thus, Maryland would appear to be the most practical jurisdiction for this dispute; not only are witnesses and evidence located here, but Maryland law will apply to at least some of Plaintiff's tort claims. *See, e.g., Botts v. Johns Hopkins Univ.*, 2021 U.S. Dist. LEXIS 76788, at \*15 (D. Md. Apr. 21, 2021) ("When choosing the applicable state substantive law while exercising diversity or supplemental jurisdiction, a federal district court applies the choice of law rules of the forum state"); *Auto USA, Inc. v. DHL Express (USA), Inc.*, 2018 U.S. Dist. LEXIS 30084, at \*5 (D. Md. Feb. 26, 2018) ("Maryland's choice of law rules ... adopt the principle of *lex loci delicti*: "the law of the place where the tort or wrong was committed. ... The 'place of wrong' is the place of injury.") (internal citations omitted).

#### **IV CONCLUSION**

Accordingly, and for all the forgoing reasons, Plaintiff respectfully submits that she has carried her burden of making a *prima facie* showing that this Court has personal jurisdiction over all Defendants, and requests that Defendants' motion to dismiss be denied. If for some reason this Court finds that Plaintiff has not carried her burden, it should exercise its discretion to transfer this case to another district, rather than dismiss it. *Chavakula v. Christian Heritage Broad., Inc.*, 2023 U.S. Dist. LEXIS 34586, at \*15 (D. Md. Feb. 28, 2023) (citing 28 U.S.C. §§ 1404, 1406).

Dated: November 6, 2023

Respectfully submitted,

CARTER LEDYARD & MILBURN LLP

/s/ Stephen M. Plotnick

By: \_\_\_\_\_  
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-and-

BARKLEY & KENNEDY

/s/ Daniel M. Kennedy, III

By: \_\_\_\_\_  
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permission of Daniel M. Kennedy, III)

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**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

LI FEN YAO, as Administrator of the Estate of Sam Mingsan Chen,

Plaintiff,

Civil Action No. TDC-23-0889

-v-

ROBERT CHEN; OTTER AUDITS LLC; and RC SECURITY LLC,

Defendants.

**DECLARATION OF STEPHEN M. PLOTNICK  
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS  
COMPLAINT FOR LACK OF PERSONAL JURISDICTION**

STEPHEN M. PLOTNICK, hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner with the law firm of Carter Ledyard & Milburn LLP, co-counsel for the plaintiff in the above-referenced matter, Li Fen Yao ("Plaintiff"). I respectfully submit this declaration for the purpose of placing before the Court certain documents that are referenced in Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss Complaint for Lack of Personal Jurisdiction.

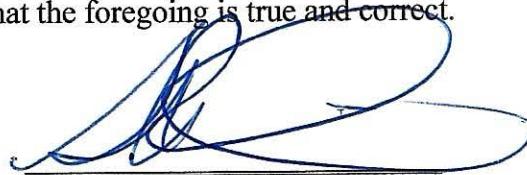
2. Attached as Exhibit A is a true and correct copy of the Complaint filed in this action on March 31, 2023.

3. Attached as Exhibit B is a true and correct copy of the Articles of Organization of Defendant Otter Audits LLC, filed with the Secretary of State of the State of South Dakota and with an effective date of September 13, 2022.

4. Attached as Exhibit C is a true and correct copy of the Articles of Organization of Defendant RC Security LLC, filed with the Secretary of State of the State of South Dakota and with an effective date of September 13, 2022.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: November 6, 2023



Stephen M. Plotnick

## **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

LI FEN YAO, as ADMINISTRATOR OF THE  
ESTATE OF SAM MINGSAN CHEN, deceased,  
13717 Travilah Road  
Rockville, MD 20850

Plaintiff,

-v-

ROBERT CHEN,  
4710 142 Pl. SE  
Bellevue, WA 98006;

OTTER AUDITS LLC,  
519 West 22<sup>nd</sup> Street  
Suite 100  
Sioux Falls, SD 57105; and

RC SECURITY LLC,  
519 West 22<sup>nd</sup> Street  
Suite 100  
Sioux Falls, SD 57105

Defendants.

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Li Fen Yao (“Plaintiff”), as Administrator of the Estate of Sam Mingsan Chen (the “Estate”), by and through her undersigned attorneys, hereby brings this action against Defendants Robert Chen (“Robert” or “Robert Chen”), Otter Audits LLC (“Otter Audits”), and RC Security LLC (“RC Security” and, together with Robert Chen and Otter Audits, “Defendants”) and, in support thereof, respectfully alleges on knowledge as to herself and her own actions and on information and belief as to all other matters, as follows:

**NATURE OF THE ACTION**

1. This action arises out of Defendants’ brazen plot to steal the Estate’s interest in a limited liability company known as OtterSec LLC (“OtterSec”).

2. OtterSec was formed in February 2022 under Wyoming law, and its only two members were Sam Chen (“Sam” or “Sam Chen”) and Defendant Robert Chen.<sup>1</sup> After Sam Chen tragically passed away in a car accident on July 13, 2022, Robert Chen seized the opportunity to follow through with a duplicitous scheme, which he threatened months earlier, to make off with the entire company for himself.

3. In particular, while Sam Chen’s family was still grieving his loss, Robert Chen (a) secretly formed two new companies in South Dakota, Defendants Otter Audits and RC Security, (b) proceeded to exploit his control and authority over OtterSec to unilaterally dissolve OtterSec, and then (c) misappropriated OtterSec’s assets, employees, clients, opportunities, and other tangible and intangible property for his new companies, Otter Audits and RC Security, and to the exclusion of the Estate.

4. By all appearances, Otter Audits and RC Security are engaged in the exact same business as OtterSec, utilizing OtterSec’s employees, assets, and other resources, providing services to OtterSec’s clients, and capitalizing on OtterSec’s business opportunities and goodwill. Defendants are even making use of OtterSec’s name, logo, website, and social media presence to portray themselves outwardly as though they actually are OtterSec.

5. All of Robert Chen’s maneuvering and chicanery is a classic example of a de facto merger, and Otter Audits and RC Security are the essence of a mere continuation of OtterSec. The dissolution of OtterSec and formation of Otter Audits and RC Security were fraudulent transactions arranged and effectuated by Robert Chen, in violation of his fiduciary duties, in order to effectuate the master plan he formulated to, in his own words, “dissolve the company and remake it” without Sam Chen or the Estate.

6. Accordingly, by this action, Plaintiff seeks to recover the Estate’s rightful interest in OtterSec’s successors, Otter Audits and RC Security, together with an award of

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<sup>1</sup> Although they share the same last name, Sam Chen and Robert Chen are not related.

damages, profits, costs, and other relief available at law and in equity as a direct and proximate result of Defendants' wrongful actions and misconduct as detailed further below.

### **PARTIES**

7. Plaintiff Li Fen Yao is the widow of the Sam Chen. She is a resident of Rockville, Maryland, where she resided with her husband at the time of his passing. Ms. Yao is the personal representative of the Estate pursuant to Letters of Administration issued on January 27, 2023, by the Register of Wills for Montgomery County, Maryland.

8. Defendant Robert Chen is an individual, residing in Bellevue, Washington.

9. Defendant Otter Audits is a limited liability company formed under the laws of South Dakota, with a principal place of business located in Sioux Falls, South Dakota. On information and belief, Defendant Robert Chen is the sole member of Otter Audits.

10. Defendant RC Security is a limited liability company formed under the laws of South Dakota, with a principal place of business located in Sioux Falls, South Dakota. On information and belief, Defendant Robert Chen is the sole member of RC Security.

### **JURISDICTION AND VENUE**

11. Plaintiff asserts claims against Defendants arising under and pursuant to the Lanham Act, 15 U.S.C. § 1125, over which this Court has original subject matter jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331. The Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1337.

12. This Court also has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a), because the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and there is complete diversity of citizenship between the parties.

13. Defendants are subject to personal jurisdiction in this judicial district pursuant to Fed. R. Civ. P. 4 and Md. Code Ann. Courts & Jud. Proc. §6-103(b).

14. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

## FACTUAL ALLEGATIONS

### **A. The Formation and Growth of OtterSec**

15. OtterSec is a limited liability company that was formed on February 8, 2022, pursuant to the Wyoming Limited Liability Company Act, Wyo. Stat. Ann. § 17-29-101, *et seq.* Sam Chen and Robert Chen were initially the only two members of OtterSec and remained the only two members of OtterSec until Sam Chen passed away on July 13, 2022, at which time Sam's interest in OtterSec passed to the Estate.

16. OtterSec was engaged in the business of performing security assessments of software code used by companies operating on the blockchain. OtterSec audited code for security flaws or weaknesses that potentially exposed clients to risks from malicious actors, such as hackers and other cybercriminals, seeking to exploit vulnerabilities for personal gain or other nefarious reasons.

17. OtterSec was the brainchild of Robert Chen and Sam Chen's minor son, David Chen ("David" or "David Chen"). David, who was sixteen years old and still in high school when OtterSec was formed, had demonstrated an exceptional aptitude for computer coding, and the digital asset world generally, from a very early age. He regularly competed in cyber security competitions and, before OtterSec was formed, developed his own computer code for decentralized finance liquidations that performed remarkably well.

18. David was introduced to Robert Chen in 2019 while participating in a cyber security competition that Robert helped to organize. David's cyber security competition team eventually partnered with Robert's team in 2021, and they began working together. Robert was impressed by David and even recommended him for an internship with a burgeoning cyber security firm.

19. In early February 2022, Robert approached David with a proposal to start their own cyber security company together. Robert, who was an adult, knew that David was still a

minor and in high school. David indicated to Robert that he was interested and expressed his desire to pursue the idea further.

20. Robert and David then began working together on the business concept that would eventually become OtterSec. However, in the course of developing their idea, they encountered various obstacles due to David's status as a minor. Robert thus suggested that David's father, Sam Chen, be the co-owner of OtterSec.

21. David's parents were protective of their minor son, but well-aware of his talents. They did not wish to discourage his entrepreneurial spirit and agreed that Sam Chen would co-own OtterSec with Robert.

22. Accordingly, after OtterSec was legally formed, Sam Chen and Robert Chen entered into an operating agreement for the company on February 14, 2022 (the "Operating Agreement"). Pursuant to the Operating Agreement, Sam and Robert agreed that OtterSec was to be member-managed, that Sam and Robert were the only members of OtterSec, and that each owned a 50% interest in the company.

23. David was actively involved in OtterSec from the outset, using his talents, know-how and burgeoning reputation to help grow the business in his spare time, when not otherwise occupied by his high school course work, family obligations, and other activities.

24. David also used, and allowed OtterSec to use, personal resources that he purchased and/or developed on his own, utilizing his own time and money, prior to the formation of OtterSec. These included, in addition to his own code, relationships, auditing strategies, computer hardware, and accounts.

25. The company eventually hired employees and consultants who were required to execute agreements (the "OtterSec Employment Agreements") that included restrictions on the use or disclosure of "Confidential Information" and required them to return any and all such "Confidential Information" to OtterSec upon the termination of their agreements.

26. The OtterSec Employment Agreements also included (a) “Work for Hire” provisions, pursuant to which the employee or consultant expressly agreed that everything he or she “creates, writes or develops in the course of providing” services to OtterSec “shall be ‘works made for hire’ as defined by U.S. copyright law” and the property of OtterSec, (b) non-competition clauses, prohibiting the employees or consultants from working with, owning or having any financial interest in, or lending his or her name to any competing business “anywhere in the world” during the term of their agreements and for a period of time thereafter, and (c) non-solicitation provisions, prohibiting the direct or indirect solicitation of clients, prospective clients, other employees, and agents, contractors or vendors of OtterSec during the term of their agreements and for a period of time thereafter.

27. Each of the OtterSec Employment Agreements was signed by Robert Chen for OtterSec and granted him authority to modify or waive them only to the extent that the modification or waiver “would not significantly harm the Company’s legitimate, protectible interests.” Any such modification or waiver was required to be in writing.

28. David Chen executed no such agreement with OtterSec and was never asked to execute any such agreement with OtterSec.

#### **B. Robert Chen’s Undisclosed Discussions with Jump Crypto**

29. OtterSec experienced explosive growth from the outset and generated over \$1 million in revenue in its first two months of operations. By March of 2022, Robert began to explore opportunities to raise money for OtterSec. He disclosed to David that he was engaged in preliminary discussions with two potential investors, Sino Global Capital and Race Capital, and David participated with Robert in calls with representatives of both. The discussions with Sino Global Capital and Race Capital did not progress any further.

30. By no later than April 13, 2022, Robert entered into discussions in earnest with principals of Jump Trading, including Jonathan Claudius and Hendrik Hofstadt, regarding a

possible acquisition of OtterSec. Jump Trading is a registered broker-dealer with over 700 employees worldwide, and a member of multiple exchanges based in the United States and Europe, including the CME Group, the New York Stock Exchange, Eurex, and the London Stock Exchange.

31. Robert's discussions with Messrs. Claudius and Hofstadt were focused on a potential acquisition of OtterSec by Jump Crypto, which at the time was a division of Jump Trading. Jump Trading had launched Jump Crypto in September of 2021 to focus on the growth and development of blockchain ecosystems and cryptocurrencies. Although Jump Trading and Jump Crypto (together, "Jump") had an in-house software auditing team, Jump was also a client of OtterSec and was interested in acquiring OtterSec because of the skills and talent of OtterSec's employees.

32. Unlike with the Sino Global Capital and Race Capital discussions, Robert did not initially disclose his discussions with Jump to David (or Sam Chen) and did not involve David (or Sam Chen) in any of his initial discussions with Jump. Nonetheless, these discussions occurred, as confirmed by text messages exchanged between Robert and Jonathan Claudius.

33. In the early morning hours of April 14, 2022, Robert sent a message to Jonathan Claudius, thanking him for "setting up the chat with Hendrick" and stating that it "was great to hear his perspective about being acquired by jump." Robert told Mr. Claudius that he "gathered up some approximate numbers" for OtterSec and advised that revenues for OtterSec's first two months of operations were approximately \$1.36 million. He also told Mr. Claudius that he thought OtterSec's revenue would "stabilize at ~ 1-2 million per month" and that "[p]rofit margins are ~ 80% right now."

34. In response, Mr. Claudius told Robert that, "for next steps, I was thinking of getting Kanav involved." "Kanav" is Kanav Kariya, the President of Jump Crypto. When Robert asked Mr. Claudius to "clarify what 'getting kanav involved' implies," Mr. Claudius

replied, “Yeah, probably a call with Kanav, if that jives well, I suspect the next step would be to make you an offer.” Mr. Claudius then agreed to set up a telephone call between Robert and Mr. Kariya for Monday, April 18, 2022.

35. Sam and David Chen were not parties to these discussions between Robert and Messrs. Claudius and Hofstadt, did not know that they had taken place, and Robert did not disclose them at the time to either of Sam or David.

36. Instead, late in the day on April 14, 2022, Robert reached out to David asking to speak about raising money for OtterSec. Robert did not mention his discussions with Messrs. Claudius and Hofstadt, and stated only that he was “talking to some potential vcs.” He characterized those discussions broadly as efforts to build “connections” with a view towards raising “500k” in exchange for about “2.5% equity.”

37. David pressed Robert for details, even asking him specifically, “what’s the real reason you want investment?” and noting to Robert that he had “been very deflective about it in the past.” Robert kept the discussion at a high-level, explaining only generally that he believed it would benefit the company to raise money because it would better position OtterSec to handle more clients and that “outside investment would definitely help somewhat with connections.”

38. Although David continued to ask for more specifics about Robert’s discussions with the “potential vcs,” Robert simply told David that he had been “connected … w/ a company today” but did not mention that the “company” was Jump. Robert also concealed that his discussions with that “company” were “about being acquired” and affirmatively misrepresented them as being associated with his efforts to build “connections.” Robert, in fact, specifically represented to David that his plan at that point was only to raise money for OtterSec from “friends and family.”

39. Robert misrepresented and failed to disclose the highly material facts that he was keenly aware of – namely, that (a) the “company” he had been “connected” with that day was Jump, (b) Jump was interested in acquiring OtterSec, (c) Robert had already provided Jump with financial details concerning OtterSec’s revenue and profitability, (d) Robert’s discussions with Jump were being elevated to a forthcoming call with Mr. Kariya, the President of Jump Crypto, scheduled for April 18, 2022, and (e) if the call with Mr. Kariya went well, the next step would be “an offer” from Jump.

40. Sam and David Chen first learned of Robert’s discussions with Jump after Sam agreed a few days later, on April 16, 2022, to amend the Operating Agreement and transfer 10% of Sam’s membership interests in OtterSec to Robert.

### **C. The First Amendment to the Operating Agreement**

41. OtterSec’s explosive growth was due in significant part to David’s exceptional dedication and work ethic. From the outset, David worked for OtterSec late-nights after high school, sometimes even before or during school, and on weekends.

42. Nevertheless, Robert frequently expressed to David that he was dissatisfied with the amount of time David was dedicating to the business, and as OtterSec grew Robert became increasingly demanding of David’s time. Robert even encouraged David to miss high school to work for OtterSec, or to drop-out of school entirely so that he could dedicate himself to the company full-time.

43. David did not wish to drop-out of high school and, by April 2022, the combination of David’s high school responsibilities and browbeating from Robert was taking a severe toll on David’s physical and mental health. He reached a breaking point by April 15, 2022, and concluded that he would be unable to dedicate the time to OtterSec that Robert was consistently demanding of him.

44. However, before advising Robert, David approached his father and proposed that Sam agree to transfer 10% of his membership interests in OtterSec to Robert. David expressed to Sam his view that the 10% transfer might appease Robert and help to resolve any disharmony over David's inability to dedicate himself to OtterSec full-time, which he believed would benefit the company.

45. Although Sam agreed to David's proposal, neither Sam nor David was aware at the time of Robert's discussions with Jump because of Robert's material misrepresentations and omissions.

46. On the basis of Robert's misrepresentations and omissions, David contacted Robert in the afternoon of April 15, 2022. He expressed to Robert his plan to finish high school, his regret that he would be unable to dedicate himself to OtterSec full-time, and conveyed the proposal for Sam to transfer 10% of his membership interests to Robert.

47. Without revealing and continuing to conceal the highly material facts he actually knew about Jump, Robert accepted. Robert also conveyed to David that he "hope[d] this doesn't mean you'll adjust ur work down." David responded that he did not intend to adjust his work down, but could not "adjust my work up any further."

48. Remaining unaware of the material facts concerning Jump that Robert had misrepresented and concealed, Sam agreed to an Amended Operating Agreement for OtterSec the next day, on April 16, 2022 (the "First Amendment"). Pursuant to the First Amendment, Sam transferred 10% of his membership interests to Robert, resulting in Robert owning 60% of OtterSec and Sam owning 40%.

49. Had Robert disclosed what he actually knew about Jump, as he was required to do, Sam would not have agreed to the transfer or the First Amendment.

#### **D. The Offer from Jump Crypto**

50. On April 18, 2022, Robert proceeded with his scheduled discussion with Mr. Kariya. Neither Sam nor David was invited to participate or made aware of the discussion at the time. Nonetheless, the discussion is confirmed by a text message Robert sent that day to Jonathan Claudius at 12:51 p.m., in which Robert stated that he “had a nice chat with kanav, I think we’re moving forward with the acquihire offer.”

51. An “acquihire” is a term that is often used in the start-up tech-industry, and generally refers to the purchase of a company for the purpose of acquiring its employees. The acquiring company in an “acquihire” is primarily interested in the skill set or expertise of the target company’s employees, rather than its products or services.

52. At least some of the terms of the “acquihire” that Robert discussed with Mr. Kariya were detailed in a follow-up text message exchange between them that began on the morning of April 19, 2022. According to a log of their discussion (which did not include Sam or David Chen), Jump proposed for Robert to “bring 3-5 of your top guys in” and, during the period of transitioning OtterSec’s employees to Jump, OtterSec would get to “keep the money” while they “work on winding down the contracts in a reasonable time frame.”

53. Robert advised David of his discussions with Jump for the first time in the afternoon of April 18, 2022, although he continued to conceal that those discussions had actually commenced prior to the First Amendment. Robert represented to David that Jump was proposing an acquihire, which David understood in the traditional sense to mean a purchase of OtterSec by Jump for the purpose of acquiring the talent of its personnel. Robert then invited David to participate in a call with Mr. Kariya later that afternoon.

54. Mr. Kariya did not show up for the call on April 18, and Robert attempted to arrange for a rescheduled call. On Wednesday, April 20, 2022, Robert reached out to David asking if David could “skip school” the next day for a “jump meeting at 10am.” David advised

Robert that he was “not going to be at school” and would be available because he was still “quarantining” as a result of an earlier COVID diagnosis. The call was eventually rescheduled to Friday, April 22, 2022 at 5:30 p.m.

55. In the interim, and unbeknownst to David or Sam Chen, Robert was continuing his side-discussions with Jonathan Claudius. For example, on April 21, 2022, Mr. Claudius sent a text message to Robert, thanking him for the opportunity “to meet everyone” and asking Robert for the names and work experience of the employees Robert would bring to Jump.

56. Robert responded that, in addition to himself, he “would probably just want to bring on william + kevin full time into jump for now (keep it smaller at first).” “[W]illiam” referred to William Wang and “kevin” referred to Kevin Chow, both of whom, as Robert later acknowledged, had executed OtterSec Employment Agreements containing the confidentiality, non-competition, non-solicitation, and other provisions referenced above.

57. Mr. Claudius then proceeded to request additional details from Robert. He asked, “ok, so if we put together an offer it would be for OSec + You/Will/Kevin? Or for just you/will/kevin as fulltime staff?” Robert responded that “the former would make more sense” and stated that “it wouldn’t make sense for me to still have significant equity in osec while focusing on work at jump.” He then falsely claimed that he had spoken with David, and that David had told him that “he would want to stay at osec as long as he also got part of the acquihire bonus” and suggested that “maybe david can stay at osec to help manage the remaining people + smooth out the transition.”

58. David spoke with Mr. Kariya the next day, April 22, 2022, remaining unaware of Robert’s discussions with Mr. Kariya the day before. During their call, Mr. Kariya conveyed the proposal Robert made to Mr. Claudius the day before, as though it was his own. David was surprised to hear that the supposed “acquihire” would not initially include him or an acquisition of Sam Chen’s membership interest in OtterSec.

59. David then spoke with Robert later the same day, April 22, 2022, after his call with Mr. Kariya. David relayed what they discussed and Robert not only pretended as though he did not know about it, but he also concealed that he had been the one to propose for the supposed “auihire” to be limited to himself, William Wang, and Kevin Chow. Worse, Robert attempted to persuade David that the idea made sense, telling him that it would be “very useful to have one of us at jump and the other running osec cause we can funnel audits back.” They then agreed to “wait for them to send the paperwork” before reaching a final decision, and David began to digest what had been discussed.

60. Robert proceeded to follow-up variously with Messrs. Claudius and Kariya in the days that followed, unbeknownst to David or Sam and without disclosing his discussions to them.

61. On April 29, 2022, Mr. Kariya sent Jump’s offer to Robert by text message. Jump proposed for Robert to receive a “\$2m sign on,” “\$500k CIB,” “\$1.5m guaranteed min bonus for 2 years,” and a “\$150k base.” Robert did not disclose the offer to David or Sam.

62. Moreover, after negotiating for and receiving his own offer, and while still a member of OtterSec, Robert negotiated offers for William Wang and Kevin Chow with Mr. Claudius. In text messages they exchanged on May 5, 2022, Robert advised Mr. Claudius that “they’ll both follow with no issue.” They then discussed potential compensation terms for William Wang and Kevin Chow, and Mr. Claudius advised Robert that he would “get you the written offer” for both.

63. Later that same day, Mr. Claudius also texted Robert that he wanted “to introduce you to my boss (Alex) via email, who functions as Jump Trading CTO, so you can meet him.” Robert immediately responded and asked, “will this be via my osec email? or my personal[?]” Mr. Claudius replied, “you pick I can do either” – to which Robert responded, “let’s do personal, me@robertchen.cc”.

64. On May 5, 2022, Mr. Claudius texted Robert, asking: “Any chance you, Kevin, or [W]ill have non-competes in place that would prevent bringing kevin and will along?” Robert responded and, confirming his knowledge of the terms of the OtterSec Employment Agreements, advised that “kevin and will both have non-compete clauses in their contract that prevent them from joining other audit firms” but that “it also specifies that the founder (me) can void it.” Robert did not inform Mr. Claudius that he was only permitted to “void” the “non-compete clauses” to the extent that it “would not significantly harm the Company’s legitimate, protectible interests.”

65. Neither Sam nor David were included in these discussions with Mr. Claudius, and Robert did not disclose them to either of Sam or David.

#### **E. The Corrosion of Robert’s Relationship with Sam and David**

66. After Sam and Robert executed the First Amendment on April 16, 2022, David continued to work for OtterSec consistent with his agreement not to adjust his work down or up any further. However, Robert persisted to make increasing demands of David’s time and continued to criticize his work ethic when David was unavailable for projects due to his high school responsibilities.

67. Moreover, after considering his conversations with Mr. Kariya and Robert on April 22, 2022, David was growing suspicious that Robert was not being forthright.

68. Indeed, although David had been led by Robert to believe that he was discussing an “acquihire” with Jump, it was becoming apparent to David that Jump was not actually proposing an “acquihire.” David was attuned to the fact that he had not been involved in discussions between Robert and Jump, and after reflecting upon his discussions with Mr. Kariya and Robert earlier that day it appeared to David that Robert had actually been negotiating a very different deal with Jump – one for Robert and other valuable OtterSec employees who had OtterSec Employment Agreements.

69. David expressed his views to Robert, beginning on April 22, 2022. Robert feigned ignorance and attempted to assuage David's concerns that he had been acting for himself and in his own interests to the detriment of OtterSec.

70. However, on the basis of David's observations of the manner in which the discussions with Robert and Jump had proceeded, David had lost faith in Robert's integrity. After some back and forth with Robert, David concluded by April 27, 2022, that he could no longer work with someone he did not trust and advised Robert that he would cease any further work for OtterSec.

71. Thereafter, David either took with him or removed Robert's and OtterSec's access to the personal code and other property that David had been using or allowing them to use previously. David notified Robert that he would be doing so, and Robert assented.

72. Subsequently, Robert asked David, over text on April 29, 2022, to return a specific subset of computer code, which he referred to as the "drift liquidator" code, that Robert claimed to own. David immediately returned it.

73. In the days and weeks that followed, Robert made a few additional requests for other information and materials related to OtterSec and, in each case, David provided the information or materials to Robert to the extent he had them. Otherwise, Robert raised no objections and took no action with respect to David's removal or retention of any other property or information.

74. Robert did, however, begin pressing for the remainder of Sam's membership interests, taking the position that it would be "unfair" for Sam to retain his 40% interest in OtterSec if David was no longer working for the company. Neither Sam nor David agreed with Robert's position, and they began requesting various documents and information relating to OtterSec and Robert's discussions with Jump. Robert responded by stonewalling.

75. For example, at one point, Sam and David simply requested from Robert a copy of the First Amendment. Robert refused, but David was eventually able to locate it in his own records.

76. Sam and David also requested that Robert share the logs of his discussions with the principals of Jump, but Robert refused. When they specifically asked Robert on May 4, 2022, to disclose the details of his negotiations with Jump, Robert initially dodged the question altogether, stating only that he would “let you know if/when I make a decision with jump.” He revisited that response shortly thereafter and disclosed for the first time that “jump made an offer to just me.” Robert falsely represented that “the details are still up in the air but this is all that I know.”

77. Robert then began to inquire about purchasing Sam’s 40% interest in OtterSec. In a text message sent by Robert to David on May 10, 2022, Robert threatened that, if Sam was unwilling to sell his membership interests, “I’ll probably dissolve the company and remake it.” David accurately noted to Robert in a reply text message sent on May 13, 2022, that Robert was precluded from doing so.

78. Indeed, although David did not point it out at the time specifically, both the Operating Agreement and the First Amendment included a provision in Section 8.1 that precluded any member from dissolving the company “for a loss of membership interest” – which was precisely what Robert was proposing to do.

79. Moreover, Robert was still a fiduciary and, by that point, already highly conflicted, self-interested, and lacking in the requisite independence to be entitled to any deference whatsoever that he could act in the best interests of OtterSec or its members with respect to any decision concerning a dissolution of OtterSec. Indeed, OtterSec was highly successful and there could be no legitimate basis to “dissolve the company and remake it,” except to further Robert’s personal interest in having the entire company for himself.

80. Nevertheless, David conveyed to Robert that Sam was willing to consider selling his membership interests. In order to determine the value of those interests, however, David requested that Robert disclose certain financial information and information in relation to the Jump “acquihire.” Robert refused, and the parties did not reach an agreement.

81. By that point, whatever trust there had been between the parties had evaporated completely and their dealings with each other were consistently acrimonious. After David pointed out to Robert that his conduct and actions appeared rife with conflicts of interest and were contrary to Robert’s fiduciary duties, Robert tacitly conceded the validity of David’s view when he again threatened, in a message sent on May 13, 2022, to “forfeit all my shares, and just start a new firm with no fiduciary conflict.”

#### **F. Robert Chen’s Theft of OtterSec**

82. On May 27, 2022, Iquan Fadaei, an attorney purporting to act on behalf of OtterSec, sent an email to Sam and David Chen advising that “Robert will be exercising his right to dissolve OtterSec shortly.” Mr. Fadaei did not offer an explanation or business justification for a dissolution of OtterSec.

83. However, on May 28-29, 2022, Robert exchanged text messages with an acquaintance he shared with David. Robert told the acquaintance that he had “signed” a deal with Jump. The acquaintance congratulated Robert and asked him what he planned to do “now that ur like officially a millionaire.” Robert responded that he needed to pay “taxes” and, when the acquaintance asked if “the deal” was “all cash,” Robert told him that the “deal [is] a bit weird” and “i think im gonna gap year and explore the world.”

84. The acquaintance also asked Robert in the same exchange if “everyone at osec [is] gonna work for jump now” and Robert responded, “that’s the messy part[,] i think i’ll figure out as we go.” The acquaintance then asked whether Robert specifically would be working for Jump, and Robert replied that it was “another thing to be decided soon.”

85. The acquaintance asked Robert about David and inquired whether Robert expected to be sued “now that uve signed the jump deal.” Robert replied, “nah the deal we structured is entirely legal” and described it as a “partial share acquisition” that “might change.”

86. During their discussion, Robert was also careful to tell the acquaintance that he “should not tell anybody abt this for now.” However, the acquaintance did indeed tell David about his discussion with Robert.

87. In the weeks that followed, David and Robert continued to exchange messages, and Robert consistently refused to share the details of his offer from and discussions with Jump, variously claiming that they were “personal” or “confidential,” or that they did not have “anything to do with osec” because (and contrary to what he had told the acquaintance) the deal with Jump was “not a share acquisition.”

88. Robert, moreover, would not even answer questions about the OtterSec employees involved in the supposed “acquihire,” whose deals with Jump were being negotiated by Robert despite Robert’s continuing fiduciary duties to OtterSec and the terms of the OtterSec Employment Agreements.

89. Sam and David retained their own counsel, the law firm of Hathaway & Kunz, LLP (“Hathaway”), and advised OtterSec’s attorney of the same by email on June 1, 2022.

90. Following a preliminary discussion between counsel, Mr. Fadaei followed up with Hathaway by email on June 4, 2022. Among other things, Mr. Fadaei claimed that Robert “has a right to dissolve the company” based on his “60% ownership interest” and confirmed Robert’s intent to proceed with the dissolution. His email also set forth Robert’s plan for dissolution, which included having “each member submit bids for the various intangible assets they are interested in owning.”

91. The email from Mr. Fadaei then proceeded to set forth “an initial list of the company’s assets” which included, among other things, client agreements, intellectual property

allegedly belonging to OtterSec (which he later amended in subsequent correspondence), OtterSec’s “Twitter account,” “Blog posts,” the “Company name, website, domain and general goodwill,” cash of approximately \$500,000, and amounts owed to OtterSec for work it had performed.

92. By letter dated June 9, 2022, Hathaway proceeded to serve OtterSec with a formal, statutory demand for various categories of records and information relating to OtterSec pursuant to Wyoming law, and in the same letter raised several concerns and objections to Robert’s proposed plan of dissolution.

93. Mr. Fadaei responded on June 23, 2022. The response contended that, because “Robert owns 60% of the Company’s capital interests … he is authorized to dissolve the Company whenever he so decides.” Mr. Fadaei also represented that “[t]he Company will seek to maximize the value of any of its assets sold as part of the dissolution” but that “as a practical matter, the Company is not aware of any interested third parties.”

94. Mr. Fadaei’s June 23, 2022, response agreed to produce some, but not all, of the records and information relating to OtterSec that were requested by Hathaway’s demand letter dated June 9, 2022. Notably, Mr. Fadaei’s letter agreed only to provide selected communications concerning Robert’s discussions with Jump and stated that “[t]he Company disagrees with your claim that communications regarding Jump Crypto’s hiring of Robert Chen are related to the Company’s business.” The letter also alleged that “Jump Crypto is no longer interested in hiring any Company personnel and did not ever hire any personnel” and, further, that “[t]he Company has not terminated any employee or independent contractor contracts in connection with Jump Crypto or otherwise.”

95. Moreover, Mr. Fadaei’s June 23, 2022, response raised for the first time claims of “misappropriation and competition” arising out of David’s departure from OtterSec that he alleged were breaches of David’s “fiduciary duty of care and loyalty” – even though David was

not a member of the company and owed no such duties. The letter made counter-demands for various categories of documents and information associated with the alleged violations of David's non-existent fiduciary duties.

96. After Hathaway responded, Mr. Fadaei withdrew several aspects of the allegations against David. Hathaway also confronted Robert, through Mr. Fadaei, with Robert's communications with the acquaintance on May 28-29, 2022, relating to the "deal" he had reached with Jump that was "structured" as a "partial share acquisition." Robert responded through Mr. Fadaei by claiming that he had lied to the acquaintance, but continued to withhold many of his communications with Jump.

97. While the parties were still discussing their disputes, Sam tragically passed away in a car accident on July 13, 2022. At the time of his passing, OtterSec had not been dissolved and Sam's membership interest in the company passed to the Estate.

98. Although the First Amendment, which was theoretically in effect at the time of Sam's death, would have required OtterSec to dissolve upon Sam's death, Robert executed a further amendment to the Operating Agreement on August 15, 2022 (the "Second Amendment"). The Second Amendment removed that provision so as to require dissolution upon the "termination of the membership of all members of the Company." The Second Amendment also added a provision stating: "For the avoidance of doubt, the dissociation of a member shall not cause the dissolution of the Company."

99. However, notwithstanding the Second Amendment, Robert proceeded to follow through with the threat he made months earlier to "dissolve the company and remake it."

100. On September 13, 2022, while he was still a member and fiduciary of OtterSec, Robert secretly formed two new companies in South Dakota: Defendants Otter Audits and RC Security.

101. Next, Mr. Fadaei notified Hathaway on September 20, 2022, that “Robert has dissolved OtterSec LLC, and the company is now beginning to wind up.” Articles of Dissolution were not filed with the Wyoming Secretary of State until October 6, 2022.

102. Mr. Fadaei also emailed Hathaway on September 20, 2022, stating that “[p]art of the winding up process will involve the sale of Company assets” and attaching “a list of assets that prospective purchasers may offer to purchase from the Company.” The list of assets changed from the original list he sent on June 4, 2022, but continued to include digital assets, “OtterSec trademarks,” the “OtterSec website and domain name,” “OtterSec code,” and various “Communication and Operational Accounts” that included the “Company’s Discord, Slack, Notion, and GSuite accounts.”

103. Robert did not make any offer to purchase the listed assets and did not disclose his formation of Otter Audits and RC Security in any of these communications or otherwise, because the last part of his plan to “dissolve the company and remake it” – which he has since executed on – was to simply take the listed assets (and others) for Otter Audits and RC Security, continue the exact same business through them, and thereby steal OtterSec for himself.

104. It is evident that Robert formed his new companies in South Dakota, rather than Wyoming, to avoid detection and circumvent Wyoming law prohibiting the use of a name (like “Otter Audits”) that is the same as, or deceptively similar to, the name “OtterSec.”<sup>2</sup> Robert’s scheme to “dissolve the company and remake it” specifically included using a deceptively similar name and other means to capitalize on OtterSec’s name and goodwill, and confuse third parties by outwardly portraying his new companies as though they are OtterSec.

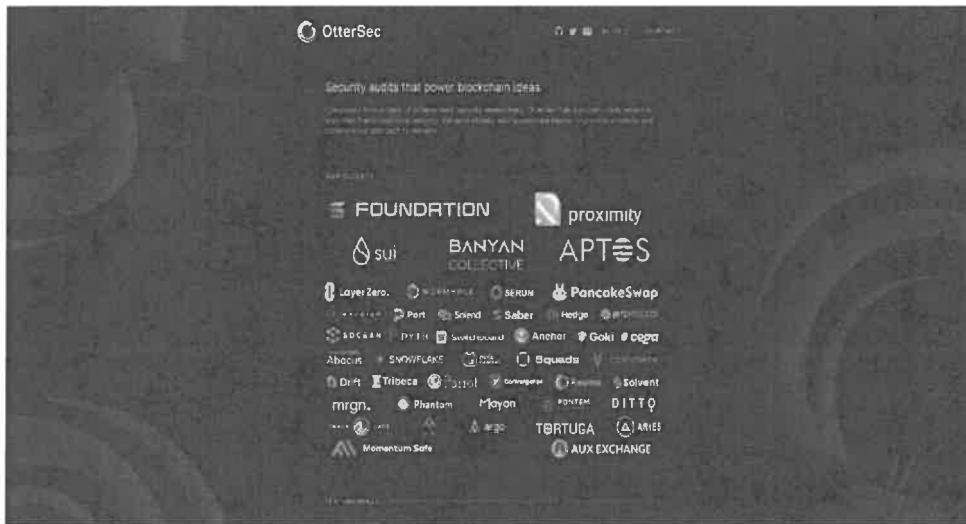
105. Indeed, despite having previously represented that “the Company is not aware of any … third parties” interested in acquiring any the OtterSec’s assets included on the list prepared by Mr. Fadaei, Robert plainly took at least some of those assets for Otter Audits and

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<sup>2</sup> See Wyo. Stat. Ann. § 17-29-108(a)(ii) (2015)

RC Security, including specifically “OtterSec trademarks,” the “OtterSec website and domain name,” and OtterSec “Communication and Operational Accounts.”

106. For example, Robert is using the “OtterSec website and domain name” for his companies’ website (<https://osec.io>), which on the front page displays the OtterSec name and logo, lists OtterSec’s clients, and describes a business identical to OtterSec:



107. Robert has also appropriated OtterSec’s social media accounts for his new companies, including its verified Twitter account:



108. Notably, despite OtterSec’s “dissolution,” the verified Twitter account has remained active utilizing the OtterSec name and logo, links to the OtterSec website, includes all of OtterSec’s pre-dissolution Tweets, describes a business identical to OtterSec, and even

notes that it was created in February 2022 – which was when OtterSec was formed, not Otter Audits or RC Security.

109. The transfer of OtterSec's assets and property to Defendants Otter Audits and RC Security is a classic example of a de facto merger, and Otter Audits and RC Security are the essence of a mere continuation of OtterSec. The dissolution of OtterSec and formation of Otter Audits and RC Security were fraudulent transactions arranged and effectuated by Robert Chen, in violation of his fiduciary duties, in furtherance of his scheme to “dissolve the company and remake it” without Sam Chen or the Estate.

110. Otter Audits and RC Security are the successors to OtterSec, and the Estate is therefore entitled to the same interest in Otter Audits and RC Security as it would be entitled to in OtterSec, together with an award of damages, profits, costs, and other relief as further detailed below.

### **CAUSES OF ACTION**

#### **FIRST CAUSE OF ACTION**

##### **Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (Against All Defendants)**

111. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

112. In connection with their commercial services, Defendants have used and are continuing to use in interstate commerce the OtterSec name, logo, trademarks, website, domain name, and social media and other communication accounts.

113. Defendants use of the OtterSec name, logo, trademarks, website, domain name, and social media and other communication accounts falsely portrays themselves as being OtterSec and constitute false or misleading descriptions or representations of fact.

114. Defendants use of the OtterSec name, logo, trademarks, website, domain name, and social media and other communication accounts are likely to cause (or are actually causing)

confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Defendants with OtterSec, or as to the origin, sponsorship or approval of Defendants' services or commercial activities by OtterSec.

115. In addition, Defendants' use of the OtterSec name, logo, trademarks, website, domain name, and social media and other communication accounts for purposes of commercial advertising or promotion, misrepresents the nature, characteristics, qualities or origin of Defendants' services or commercial activities.

116. Defendants' false or misleading representations of fact are material because they are intended and likely to influence the decisions of existing and target clients, employees, consumers, and other third parties who are interested in Defendants' services or commercial activities.

117. Defendants, in fact, are using the OtterSec name, logo, trademarks, website, domain name, and social media and other communication accounts for the express purpose of concealing from existing and target clients, employees, consumers, and other third parties their misappropriation and theft of OtterSec.

118. Defendants' false or misleading representations of fact are being widely disseminated in interstate commerce, including to the relevant industry and purchasing public.

119. The Estate has been damaged by Defendants' false or misleading representations of fact through the non-payment for Defendants' use of the OtterSec name, logo, trademarks, website, domain name, and social media and other communication accounts, the diversion of OtterSec's business and opportunities, and the loss of the Estate's interest in the company.

120. Defendants know that their representations of fact are false or misleading, and have made them in bad faith, fraudulently, maliciously, deliberately, and willfully.

121. Defendants' actions and conduct makes this an exceptional case within the meaning of 15 U.S.C. § 1117, thereby entitling the Estate to an award of attorneys' fees, in addition to Defendants' profits, damages, and costs.

122. Defendants are continuing to make false and misleading representations of fact and will continue to do so unless enjoined as provided in 15 U.S.C. § 1116.

**SECOND CAUSE OF ACTION**  
**Declaratory Judgment, 28 U.S.C §§ 2201 and 2202**  
**(Against All Defendants)**

123. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

124. The Declaratory Judgment Act, 28 U.S.C §§ 2201 and 2202, authorizes this Court to declare the rights and legal relations of the parties to this dispute, and to award necessary and proper relief based thereon.

125. An actual controversy has arisen and now exists between the Estate and Defendants, concerning their respective rights in and to the companies that were formerly known as OtterSec, but which are now known as Otter Audits and RC Security.

126. In particular, and as further detailed herein, Plaintiff contends, among other things, that Defendant Robert Chen acted without right or authority, in violation of his fiduciary duties of care and loyalty, committed fraud, and breached the Operating Agreement, the First Amendment, and the Second Amendment in connection with the dissolution of OtterSec and formation of Otter Audits and RC Security.

127. Plaintiff further contends that Robert Chen was highly conflicted, self-interested, and lacking in the requisite independence to consider objectively whether the dissolution of OtterSec was in the best interests of OtterSec or the Estate. Accordingly, his decision to dissolve OtterSec is not entitled to deference under the business judgment rule but

is instead subject to review for “entire fairness.” Viewed objectively, the dissolution was not fair, reasonable or in the best interests of OtterSec or the Estate and should be set aside.

128. Additionally, and as further detailed herein, Plaintiff contends, among other things, that Defendants have violated the Lanham Act, and converted and misappropriated OtterSec’s assets, property, goodwill, clients, and business opportunities for themselves. Defendants are using a deceptively similar name as OtterSec, are engaged in the same business as OtterSec, and are holding themselves out as though they are OtterSec.

129. Accordingly, Plaintiff seeks a declaration as follows:

- a. Robert Chen’s dissolution of OtterSec was improper, invalid, subject to review for entire fairness, and not fair, reasonable or in the best interests of OtterSec or the Estate;
- b. The transfer of OtterSec’s assets and property to Otter Audits and RC Security equates to a de facto merger of the companies;
- c. Otter Audits and RC Security are a mere continuation of OtterSec;
- d. The dissolution of OtterSec and formation of Otter Audits and RC Security were fraudulent transactions arranged and effectuated by Robert Chen, in violation of his fiduciary duties, to deprive the Estate of its interest in OtterSec;
- e. Otter Audits and RC Security are OtterSec’s successors in interest; and
- f. The Estate is entitled to the same interest in Otter Audits and RC Security as the Estate is entitled to have in OtterSec.

130. Pursuant to and on the basis of the foregoing, Plaintiff seeks the following necessary and proper relief:

- a. The imposition of a constructive trust over the Estate’s rightful interest in Otter Audits and RC Security; and

b. The termination of the constructive trust and distribution to the Estate of the Estate's rightful interest in Otter Audits and RC Security.

**THIRD CAUSE OF ACTION**

**Breach of Fiduciary Duty; Aiding and Abetting Breach of Fiduciary Duty  
(Against All Defendants)**

131. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

132. Defendant Robert Chen owed fiduciary duties to OtterSec, Sam Chen, and the Estate. He was required to act honestly, in good faith, and in the best interests of OtterSec, Sam Chen, and the Estate, and to exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances.

133. Defendant Robert Chen repeatedly failed to faithfully execute and violated his fiduciary duties in relation to, among other things, his dealings with Jump, the conduct and affairs of OtterSec, the formation of Otter Audits and RC Security, and the dissolution and winding up of OtterSec.

134. Defendant Robert Chen was well aware of, and even acknowledged, the fiduciary duties he owed to OtterSec, Sam Chen, and the Estate. Nevertheless, he willfully, wantonly, and intentionally abused his position to breach, and to conceal his breaches of, his fiduciary duties.

135. As a direct and proximate result of Defendant Robert Chen's breaches of his fiduciary duties, the Estate has been damaged.

136. Defendants Otter Audits and RC Security are also liable for aiding and abetting Robert Chen's breaches of his fiduciary duties. They provided substantial assistance to Robert Chen in achieving the breaches of his fiduciary duties alleged herein, were proximate causes of the Estate's losses and damages, and had knowledge of the breaches of fiduciary duty by and through Robert Chen

**FOURTH CAUSE OF ACTION**  
**Fraud; Aiding and Abetting Fraud**  
**(Against All Defendants)**

137. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

138. Defendant Robert Chen made or approved the materially false and misleading statements and omissions specified above in relation his dealings with Jump, the conduct and affairs of OtterSec, the formation of Otter Audits and RC Security, and the dissolution and winding up of OtterSec, which he knew (or deliberately or recklessly disregarded) were false and misleading in that they contained material misrepresentations or failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

139. Defendant Robert Chen made or approved the materially false and misleading statements and omissions specified above to the Estate and Sam Chen directly, or via David Chen with the knowledge or belief that that they would be conveyed to the Estate and Sam Chen and that the Estate and Sam Chen would rely on them.

140. Defendant Robert Chen had an affirmative duty to provide truthful, full, complete, and accurate disclosures of the material facts that were peculiarly within his knowledge. Defendant Robert Chen intentionally or recklessly failed to provide truthful, full, complete, and accurate disclosures of these material facts.

141. In addition, in choosing to speak, make representations, and disclose the matters described above in relation to his dealings with Jump, the conduct and affairs of OtterSec, the formation of Otter Audits and RC Security, and the dissolution and winding up of OtterSec, Defendant Robert Chen undertook an affirmative duty to make truthful, full, complete, and accurate disclosures as to those matters and ensure that the representations and disclosures he was making or had previously made were not materially false or misleading or omitted material

facts necessary in order to make the statements he was making or had previously made, in light of the circumstances under which they were made, not materially false or misleading.

142. The Estate and Sam Chen reasonably and justifiably relied to their detriment on Defendant Robert Chen's material misrepresentations and omissions, including Defendant Robert Chen's affirmative duty to provide truthful, full, complete, and accurate disclosures.

143. Defendant Robert Chen's material misrepresentations and omissions made on or before April 16, 2022, in relation to his dealings with Jump specifically, fraudulently induced Sam Chen to enter into the First Amendment and transfer 10% of his membership interests in OtterSec to Defendant Robert Chen, which Sam Chen would not have agreed to if he had been aware of the true and complete facts. As a direct and proximate result of these material misrepresentations and omissions, the Estate has been damaged. In addition (or in the alternative), the Estate is entitled to rescission of the transfer of 10% of Sam Chen's membership interests in OtterSec to Defendant Robert Chen, which would restore the parties to their positions prior to Defendant Robert Chen's fraud. Otter Audits and RC Security are OtterSec's successors in interest, such that the Estate is entitled to a 50% interest in Otter Audits and RC Security.

144. Defendant Robert Chen's material misrepresentations and omissions in relation to his dealings with Jump, the conduct and affairs of OtterSec, the formation of Otter Audits and RC Security, and the dissolution and winding up of OtterSec, further caused and resulted in the dissolution of OtterSec, the transfer of OtterSec's assets and property to Otter Audits and RC Security, and the loss of the Estate's interest in OtterSec. Otter Audits and RC Security are OtterSec's successors in interest. As a direct and proximate result these material misrepresentations and omissions, the Estate has been damaged.

145. Defendants Otter Audits and RC Security are also liable for aiding and abetting Robert Chen's fraud. They provided substantial assistance to Robert Chen in achieving the

fraud alleged herein, were proximate causes of the Estate's losses and damages, and had knowledge of the fraud by and through Robert Chen.

**FIFTH CAUSE OF ACTION**  
**Misappropriation and Conversion**  
**(Against All Defendants)**

146. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

147. Prior to his death, Sam Chen had legal rights in and title to his membership interest in OtterSec. Upon Sam's death on July 13, 2022, his interest and the legal rights in and title to that interest passed to the Estate.

148. Defendants have wrongfully misappropriated and converted the Estate's interest in OtterSec, to the exclusion of the Estate. Otter Audits and RC Security are OtterSec's successors in interest.

149. Defendants have exercised and are continuing to exercise dominion and control over the Estate's rightful interests in Otter Audits and RC Security so as to unlawfully deny the Estate its rightful interest in and to them.

150. As a direct and proximate result of Defendants' misappropriation and conversion, the Estate has been damaged.

**SIXTH CAUSE OF ACTION**  
**Breach of Contract**  
**(Against Robert Chen)**

151. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

152. Section 8.1 of OtterSec's Operating Agreement, the First Amendment, and the Second Amendment, prohibited the members of OtterSec, including Defendant Robert Chen, from dissolving OtterSec "for a loss of membership interest."

153. In addition, OtterSec's Operating Agreement, the First Amendment, and the Second Amendment included an implied contractual covenant of good faith and fair dealing.

154. Defendant Robert Chen dissolved OtterSec for the purpose of causing the loss of the Estate's interest in the company, and in furtherance of his scheme to misappropriate OtterSec and the Estate's interest in OtterSec.

155. By reason of the forgoing, Defendant Robert Chen breached Section 8.1 and the implied covenant of good faith and fair dealing included in OtterSec's Operating Agreement, the First Amendment, and the Second Amendment, and the Estate has been damaged.

#### **SEVENTH CAUSE OF ACTION**

##### **Tortious Interference (Against All Defendants)**

156. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

157. As detailed above, OtterSec had both existing and prospective contracts, relationships, business expectancies, and opportunities with its employees, clients, prospective employees, prospective clients, and other third parties (including Jump).

158. Defendants were fully aware of these existing and prospective contracts, relationships, business expectancies, and opportunities, and intentionally and improperly interfered with them, by inducing or causing a breach, termination or misappropriation of the contracts, relationships, expectancies, and opportunities.

159. By reason of Defendants' wrongful, tortious interference with OtterSec's existing and prospective contracts, relationships, business expectancies, and opportunities the Estate has been damaged.

**EIGHTH CAUSE OF ACTION**  
**Accounting**  
**(Against All Defendants)**

160. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

161. Defendants have profited through their misappropriation of OtterSec's assets, property, goodwill, clients, and business opportunities, their misappropriation and conversion of the Estate's interests in OtterSec, and their continuing and ongoing denial of the Estate's rightful interest in Otter Audits and RC Security.

162. Defendants have exercised complete dominion and control over the books, records, and financial affairs of OtterSec, Otter Audits, and RC Security, and have profited and been unjustly enriched thereby, to the exclusion of, and in defiance of the Estate's rights.

163. Defendants have never accounted for the transactions and affairs of OtterSec, Otter Audits or RC Security, and the Estate is without an adequate remedy at law.

164. Defendants are obligated to account, and must therefore fully account, for the transactions and affairs of OtterSec, Otter Audits and RC Security.

**REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully demands judgment in favor of the Estate and against Defendants as follows:

A. Awarding the Estate profits, damages and costs, attorneys fees, and injunctive relief pursuant to 15 U.S.C. §§ 1116 and 1117;

B. Awarding the Estate other damages, including punitive damages, in an amount to be determined at trial;

C. Rescinding the First Amendment and associated transfer of 10% of Sam Chen's membership interests to Defendant Robert Chen;

D. Declaring and determining the rights and legal relations of the parties to this dispute, and entering relief based thereon, pursuant 28 U.S.C §§ 2201 and 2202 as follows:

- (i) Declaring and determining that Robert Chen's dissolution of OtterSec was improper, invalid, subject to review for entire fairness, and not fair, reasonable or in the best interests of OtterSec or the Estate;
- (ii) Declaring and determining that the transfer of OtterSec's assets and property to Otter Audits and RC Security equates to a de facto merger of the companies;
- (iii) Declaring and determining that Otter Audits and RC Security are a mere continuation of OtterSec;
- (iv) Declaring and determining that the dissolution of OtterSec and formation of Otter Audits and RC Security were fraudulent transactions arranged and effectuated by Robert Chen, in violation of his fiduciary duties, to deprive the Estate of its rightful interest in OtterSec;
- (v) Declaring and determining that Otter Audits and RC Security are OtterSec's successors in interest;
- (vi) Declaring and determining that the Estate is entitled to the same interest in Otter Audits and RC Security as the Estate is entitled to have in OtterSec, equating to a 50% interest, but in any event no less than a 40% interest;
- (vii) Imposing a constructive trust over the Estate's rightful interest in Otter Audits and RC Security; and
- (viii) Terminating the constructive trust and distributing to the Estate its rightful interest in Otter Audits and RC Security.

E. Requiring Defendants to fully and completely account for the financial affairs and transactions of OtterSec, Otter Audits, and RC Security;

F. Requiring Defendant Robert Chen to disgorge all compensation and benefits he obtained during the course of his breaches of his fiduciary duties, faithless service, and other wrongful conduct described above;

G. Awarding the Estate pre-judgment and post-judgment interest;

H. Awarding the Estate costs, expenses, and reasonable attorneys' fees; and

I. Awarding the Estate such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: March 31, 2023

Respectfully Submitted,  
BARKLEY & KENNEDY, CHARTERED

/S/ Daniel M. Kennedy  
By: Daniel M. Kennedy, III  
BARKLEY & KENNEDY, CTRD.  
51 Monroe Street, Suite 1407  
Rockville, Maryland 20850  
301-251-6600, 301-762-2606  
dkennedy@barkenlaw.com  
*Attorneys for Plaintiff*

OF COUNSEL:

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Nathan D. Harp  
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28 Liberty Street  
New York, NY 10005  
212-238-8772  
plotnick@clm.com  
harp@clm.com

## **EXHIBIT B**



DL234600

B0233-1877 09/13/2022 5:13PM Rec'd by SD SOS

## ARTICLES OF ORGANIZATION

Secretary of State  
500 E. Capitol Ave  
Pierre, SD 57501-5070  
(605) 773-4845

DOMESTIC LIMITED LIABILITY COMPANY  
SDCL 47-34A-203, 212

Please Type or Print Clearly in Ink  
Please submit one Original  
Make payable to the SECRETARY OF STATE

**Filing Fee: \$150**

**Total Fee: \$150**

### Article I

The name of the Company: **Otter Audits LLC**

### Article II

The address of the initial designated office in or out of the State of South Dakota where the company conducts its business:

Actual Street Address  
**519 WEST 22ND STREET  
SUITE 100  
SIOUX FALLS, SD 57105**

Mailing Address  
**519 WEST 22ND STREET  
SUITE 100  
SIOUX FALLS, SD 57105**

### Article III

SDCL 59-11-6

The South Dakota Registered Agent's Name:

South Dakota law permits the registered agent to be either (a) a noncommercial registered agent or (b) a commercial registered agent.

(b) The South Dakota Commercial Registered Agent's name & CRA#

CRA: **LEGALINC CORPORATE SERVICES INC. (0000044)**

Actual Street Address in this State

Mailing Address in this State

**401 E 8TH STREET  
SUITE 214-3010  
SIOUX FALLS, SD 57103**

### Article IV

The name and address of each organizer

Name	Address
<b>Robert Chen</b>	<b>4710 142 PI. SE, Bellevue, WA 98006</b>

### Article V

The duration of the company if other than perpetual is: **Perpetual**

If the document is not to be effective upon filing by the Secretary of State, the delayed effective date is: \_\_\_\_\_



B0233-1878 09/13/2022 5:13PM Rec'd by SD SOS

## Article VI

Member-Managed     Manager-Managed

## Article VII

Beneficial Owners (optional): A beneficial owner is a person who has or in some manner controls an equity security. Please consult an attorney for legal advice if you have any questions concerning this entry. Any question under this heading is considered a request for legal advice and the secretary of state's office is, by statute, not permitted, to provide legal advice.

## Signature/Authorization

The Articles of Organization must be executed by the organizers.

No person may execute this report knowing it is false in any material respect. Any violation may be subject to a criminal penalty (SDCL 22-39-36).

Jonathan Gaskin

PRINTED NAME

*Jonathan Gaskin*

SIGNATURE

Partner

09/13/2022

TITLE

DATED

# State of South Dakota

## Office of the Secretary of State

### Certificate of Organization

Domestic Limited Liability Company

I, Steve Barnett, Secretary of State of the State of South Dakota, hereby certify that the ARTICLES OF ORGANIZATION for

**Otter Audits LLC**

BUSINESS ID# DL234600

with an effective date of: September 13, 2022, duly signed and verified, SDCL 47-34A-203, 212 has been received in this office and is found to conform to law.

ACCORDINGLY, and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the ARTICLES OF ORGANIZATION.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of South Dakota, in Pierre, the Capital City, this day, September 13, 2022.

A handwritten signature in black ink that reads "Steve Barnett".

Steve Barnett  
Secretary of State

**EXHIBIT C**



DL234605

B02333-19009 09/13/2022 6:34PM Rec'd by SD SOS

## ARTICLES OF ORGANIZATION

Secretary of State  
500 E. Capitol Ave  
Pierre, SD 57501-5070  
(605) 773-4845

DOMESTIC LIMITED LIABILITY COMPANY  
SDCL 47-34A-203, 212

Please Type or Print Clearly in Ink  
Please submit one Original  
Make payable to the SECRETARY OF STATE

**Filing Fee: \$150**

**Total Fee: \$150**

### Article I

The name of the Company: **RC Security LLC**

### Article II

The address of the initial designated office in or out of the State of South Dakota where the company conducts its business:

Actual Street Address

**519 WEST 22ND ST.  
SUITE 100  
SIOUX FALLS, SD 57105**

Mailing Address

**519 WEST 22ND ST.  
SUITE 100  
SIOUX FALLS, SD 57105**

### Article III

SDCL 59-11-6

The South Dakota Registered Agent's Name:

South Dakota law permits the registered agent to be either (a) a noncommercial registered agent or (b) a commercial registered agent.

(b) The South Dakota Commercial Registered Agent's name & CRA#

CRA: **LEGALINC CORPORATE SERVICES INC. (0000044)**

Actual Street Address in this State

Mailing Address in this State

**401 E 8TH STREET  
SUITE 214-3010  
SIOUX FALLS, SD 57103**

### Article IV

The name and address of each organizer

Name \_\_\_\_\_ Address \_\_\_\_\_

**Robert Chen 4710 142 PI. SE, Bellavue, WA 98006**

### Article V

The duration of the company if other than perpetual is: **Perpetual**

If the document is not to be effective upon filing by the Secretary of State, the delayed effective date is: \_\_\_\_\_

## Article VI

Member-Managed     Manager-Managed

## Article VII

Beneficial Owners (optional): A beneficial owner is a person who has or in some manner controls an equity security. Please consult an attorney for legal advice if you have any questions concerning this entry. Any question under this heading is considered a request for legal advice and the secretary of state's office is, by statute, not permitted, to provide legal advice.

## Signature/Authorization

The Articles of Organization must be executed by the organizers.

No person may execute this report knowing it is false in any material respect. Any violation may be subject to a criminal penalty (SDCL 22-39-36).

---

Jonathan Gaskin

PRINTED NAME

*Jonathan Gaskin*

SIGNATURE

Partner

09/13/2022

TITLE

DATED

# State of South Dakota

## Office of the Secretary of State

### Certificate of Organization

Domestic Limited Liability Company

I, Steve Barnett, Secretary of State of the State of South Dakota, hereby certify that the ARTICLES OF ORGANIZATION for

**RC Security LLC**

BUSINESS ID# DL234605

with an effective date of: September 13, 2022, duly signed and verified, SDCL 47-34A-203, 212 has been received in this office and is found to conform to law.

ACCORDINGLY, and by virtue of the authority vested in me by law, I hereby issue this Certificate of Organization and attach hereto a duplicate of the ARTICLES OF ORGANIZATION.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of South Dakota, in Pierre, the Capital City, this day, September 13, 2022.

A handwritten signature in black ink that reads "Steve Barnett".

Steve Barnett  
Secretary of State

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

LI FEN YAO, as Administrator of the Estate of Sam Mingsan Chen,

Plaintiff,

Civil Action No. TDC-23-0889

-v-

ROBERT CHEN; OTTER AUDITS LLC; and RC SECURITY LLC,

Defendants.

**DECLARATION OF DAVID CHEN  
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS  
COMPLAINT FOR LACK OF PERSONAL JURISDICTION**

DAVID CHEN, hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I was born on March 11, 2005. I am presently eighteen years old and live in Rockville, Maryland with my mother, Li Fen Yao. I graduated from Thomas S. Wootton High School in Rockville, Maryland in May 2023.
2. My father, Sam Mingsan Chen, was a co-owner of OtterSec LLC (“OtterSec”). He passed away in a car accident on July 13, 2022, and my mother was appointed as the representative of my father’s estate (the “Estate”) on January 27, 2023. A true and correct copy of the Letters of Administration issued to my mother on January 27, 2023, by the Register of Wills for Montgomery County, Maryland is attached as Exhibit A.
3. Prior to and at the time of my father’s passing, my mother, father and I lived together at 13717 Travilah Road in Rockville, Maryland. We have lived there since I was approximately five old.

**A. OtterSec LLC**

4. OtterSec was formed under Wyoming law on February 8, 2022, and it was dissolved on October 6, 2022. True and correct copies of OtterSec's Articles of Organization and Articles of Dissolution are attached as Exhibits B and C, respectively.

5. Prior to its dissolution, OtterSec was engaged in the business of performing security audits of software code used by companies operating on the blockchain. The idea for the company came about in early 2022, through my relationship with Defendant Robert Chen ("Robert" or "Robert Chen").

6. I met Robert in 2019, while competing in a cybersecurity competition that Robert helped organize. We were on different teams at the time, but my cybersecurity team eventually partnered with Robert's team in later competitions. We developed a friendship and frequently discussed matters related to cybersecurity, software coding, cryptocurrency and digital asset, oftentimes interspersed with personal matters.

7. Robert and I typically communicated using the Discord platform, but sometimes used Telegram as well. Both platforms allow for direct messaging and voice calling. We used the messaging and voice calling features of each, but most commonly communicated by direct messaging using Discord.

8. Robert and I first started discussing the business idea that became OtterSec over Discord on February 4, 2022. Robert expressed his belief that there were business opportunities in the cybersecurity space for auditing software code and, when I expressed my interest, he proposed that we start a company together. We moved quickly, agreeing on the name "OtterSec," developing a plan to market our services to potential clients, setting up a website (<https://osec.io>), choosing a logo, and creating email and social media accounts for the company in a matter of days.

9. On or about February 7, 2022, Robert and I discussed taking steps to form OtterSec as a legal entity. Robert suggested forming OtterSec as a limited liability company in Wyoming, and selected Wyoming because he had once helped form an entity in Wyoming for a cybersecurity team and was familiar with how to do so. I agreed and sent him money for the formation costs.

10. OtterSec was formed the next day, on February 8, 2022. *See Ex. B.* I knew that Robert lived in Washington, and Robert knew that I was a minor, in high school, and lived with my parents in Maryland. I am not aware of OtterSec ever having any office, operations, employees or consultants in Wyoming.

11. On February 11, 2022, Robert and I were messaging over Discord and discussing matters related to OtterSec, including the preparation of an operating agreement. In the course of our discussion, we both acknowledged that my status as a minor was likely to be problematic both with respect to entering into contracts and dealings with third parties. Robert suggested, as a work-around, that my parents serve as co-owners of OtterSec instead of me. I agreed that the idea made sense. Neither of us expected that they would play any active role in the business except as owners. In fact, we specifically agreed that I would act for my parents' interest as their "proxy" with respect to OtterSec. Our exchange over Discord appears below (Robert's screen name is "NotDeGhost" and mine is "ra").

Avatar ra 11-Feb-22 04:24 PM  
i can sign, its just that the agreements can't bind me to do anything  
i can't take money or anything but i can back out if it requires me to do x

NotDeGhost 11-Feb-22 04:24 PM  
filing documents

ra i can sign, its just that the agreements can't bind me to do anything i can't take money or anything but i can back out if it requires me to do x  
NotDeGhost 11-Feb-22 04:24 PM  
no like  
companies won't work with u  
cause of legal risk

Avatar ra 11-Feb-22 04:24 PM  
oh i see  
pepega

NotDeGhost 11-Feb-22 04:25 PM  
yeah hm  
16:25 im not rly sure how to get around that  
mby we can transfer ur stake to ur parents? (edited)  
and then have them transfer back legally  
when ur 18  
or i can ask the accountant for advice

Avatar ra 11-Feb-22 04:26 PM  
yeah i guess  
holding in trust or whatever  
and i act thru them as a proxy  
so they sign for the company stuff  
and i have them sign a contract w/ me that basically states that the company decisions for the stake are determined by me + they transfer to me when i turn 18 (edited)

NotDeGhost 11-Feb-22 04:27 PM  
yeah i mean  
hopefully u trust ur parents enough  
that u don't need a formal contract for that

12. The following is a true and accurate transcription of the relevant portions of the preceding Discord messages:

ra:

I can sign, its just that the agreements can't bind me to do anything  
I can't take money or anything but I can back out if it requires me to do  
...

NotDeGhost:

No like  
companies won't work with u  
cause of legal risk

ra:

oh I see  
pepega

NotDeGhost:

Yeah hm

Im not rly sure how to get around that  
mby we can transfer ur stake to ur parents? (edited)  
and then have them transfer back legally  
when ur 18  
or I can ask the accountant for advice

ra:

yeah I guess  
holding in trust or whatever  
and I act thru them as a proxy  
so they sign for the company stuff  
and I have them sign a contract w/me that basically states that the company decisions  
are determined by me + they transfer to me when I turn 18 (edited)

NotDeGhost:

yeah I mean  
hopefully u trust ur parents enough  
that u don't need a formal contract for that

13. While Robert and I were having this discussion, I was also discussing it with my parents. My father agreed to the proposal, and I told Robert that my father (and not my mother) would be the co-owner of OtterSec. Robert needed my father to immediately fill out some on-line forms for OtterSec and I was serving as the go-between for my father and Robert, relaying to my father what needed to be done and then relaying back to Robert (over Discord) when my father was done.

14. On February 13, 2022, Robert prepared an operating agreement for OtterSec, which formally documented the 50/50 ownership structure as between Robert and my father. Again, I served as the go-between for Robert and my father, providing Robert with our mailing address in Rockville for the operating agreement and then arranging for my father to sign the operating agreement on February 14, 2022, after Robert sent it to me. A true and correct copy of the operating agreement as signed is attached as Exhibit D.

## **B. Banking and Financial Operations**

15. Robert asked me to take responsibility for handling OtterSec's money, the majority of which was maintained in (a) a hardware Ledger wallet that was used for

cryptocurrency transactions on the blockchain, and (b) an account maintained with the now-defunct cryptocurrency exchange FTX Trading Ltd. (“FTX”). Neither could be used or accessed except from my home in Rockville, Maryland.

16. A hardware Ledger wallet is a type of cryptocurrency wallet used to send and receive cryptocurrency on the blockchain. Like other cryptocurrency wallets, it has public and private “keys,” which are alphanumeric codes used to send, receive, store and access cryptocurrency. A public key functions much like a bank account number, in the sense that it may be shared with others to use for sending cryptocurrency to the owner of the wallet. A private key functions much like a password, in the sense that it is kept private and is necessary to access the contents of the wallet. A person who holds the private key has full access to and control of the wallet; a person who does not have the private key has no access to or control of the wallet.

17. Unlike cryptocurrency wallets that are found online (or in an application on a phone or desktop), a hardware Ledger wallet is a physical device that exists in an environment separated from an internet connection, for better security. It stores the private key on the physical device and must be physically connected to an interface (*e.g.*, a computer) to send or receive cryptocurrency and access the wallet.

18. I maintained OtterSec’s hardware Ledger wallet in my home in Rockville, Maryland. Robert did not have the hardware Ledger wallet or the private key associated with the hardware Ledger wallet (because it was stored on a computer chip in the physical device).

19. Similarly, access to OtterSec’s FTX account was protected by multi-factor authentication, requiring both a passcode and a hardware security key. Like a hardware Ledger wallet, a hardware security key is a physical device that must be connected to an interface to gain access to the account. OtterSec used a hardware security key known as a “YubiKey” for

the FTX account, which I maintained in my home in Rockville, Maryland. Robert did not have a YubiKey or the passcode to the FTX account.

**C. Borrowing and Revenue**

20. OtterSec borrowed \$292,870.14 from me on or about February 26, 2022, to help fund its operations. The majority of the loan was repaid to me by OtterSec in two installments, on April 13 and April 27, 2022.

21. In addition, during the period of February-April 2022, OtterSec generated approximately \$925,000 in revenue from auditing work. I worked on one-half of the audits during that period, from my home in Rockville. The audits that I worked on were responsible for \$625,000 (approximately 67.5%) of the total auditing revenue generated by OtterSec during that period.

**D. Employees and Consultants**

22. I was not the only person who worked for OtterSec in Maryland.

23. OtterSec had at least three other employees or consultants located in Maryland. Each signed an employment or consulting agreement indicating his name and address, and Robert counter-signed for OtterSec:

- a. Harikesh Kailad, 5304 Bangor Drive, Kensington MD;
- b. Andrei Kotliarov, 13972 Saddleview Drive, North Potomac MD; and
- c. William Wang, 9706 Watts Branch Dr, Rockville, MD.

True and correct copies of their employment or consulting agreements are attached as Exhibits E, F, and G, respectively.

24. William Wang is referenced in the Complaint filed in this case, because Robert was secretly negotiating to bring Mr. Wang with him to a firm named Jump Trading in April 2022, while Robert was a member of OtterSec and Mr. Wang was still under contract with

OtterSec. Compl., ¶¶ 55-64. Mr. Wang appears to have joined Robert at his new companies, Defendants Otter Audits LLC and RC Security LLC.

25. Indeed, as detailed in the Complaint, Defendants Otter Audits LLC and RC Security LLC are utilizing OtterSec's former website (<https://osec.io>). On that website is a section listing all audits (including OtterSec audits) from February 16, 2022 through October 6, 2023. The report for one of the listed audits, for a company named Ellipsis Labs, identifies Mr. Wang as one of the auditors and the company responsible for the audit as "OtterSec." The audit report is dated February 8, 2023, which over four months after Robert dissolved OtterSec. True and correct copy of the Ellipsis Labs audit report is attached as Exhibit H.

26. I have reviewed other audit reports available on the website, as well as other publicly available information, and it appears that there may be at least eight other former OtterSec employees or consultants working for the Defendants: Ajay Kunapareddy, Aleksandre Khokhiashvili, Christian Cuffari, Daryl Yeo, Harrison Green, Alec Petridis, Akash Gurugunti, and Shiva Shankar.

#### **E. Computer Server**

27. OtterSec utilized a computer server I built from spare parts, located in my home in Rockville, Maryland. Robert and other OtterSec employees or consultants were granted access to the server, and regularly logged into and accessed it for executing code and performing auditing work.

28. Robert knew that the server was located in my home. For example, on January 13, 2022, I sent a message to Robert showing him pictures of parts I ordered. Robert responded, asked if it was going in my basement, and I told him that it was (I later moved it to a different room in my house):

ra 01/13/2022 4:33 PM

**Thank You For Your Order!**

Order #: 533813333  
Estimated delivery: Jan 19 - Jan 21

Order #: 533813353  
Estimated delivery: Wed, Jan 19

Order #: 533813373  
Estimated delivery: Wed, Jan 19

NotDeGhost 01/13/2022 4:33 PM

❶ pog

ra 01/13/2022 4:33 PM

Seller steals\_ndeals

[Pay only this seller](#) | [Request total](#)

Noctua NH-U14S TR4-SP3 Premium-Grade 140mm CPU Cooler for AMD TR4/SP3  
New

Qty  \$108.96  
Standard Shipping Free shipping

[Save for later](#) | [Remove](#)

Seller mem-store

[Pay only this seller](#) | [Request total](#)

SNPP2MYXC/64G 64GB DDR4 3200MHz ECC TSV 2S4Rx4 RDIMM Memory Dell  
New

Qty  \$1,950.00  
USPS First Class Free shipping

[Save for later](#) | [Remove](#)

going to have to split this into 2 or 3 transactions

NotDeGhost 01/13/2022 4:34 PM

lol is this all in ur basement

ra 01/13/2022 4:34 PM

yeah

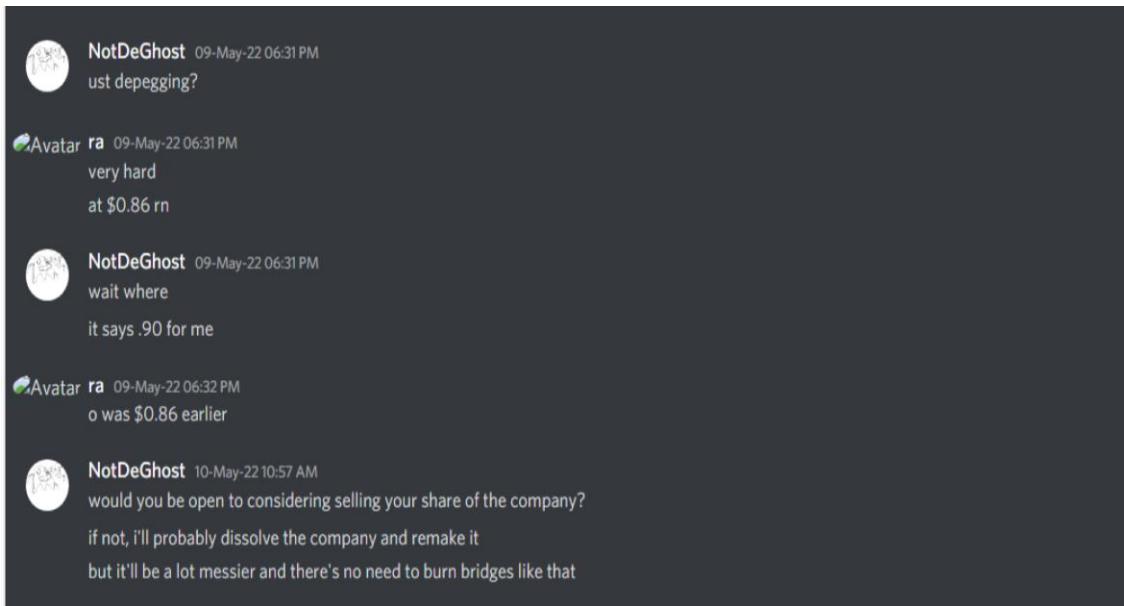
29. On January 21, 2022, after I assembled the server, I sent another message to Robert letting him know it would be functional soon:



#### F. Communications

30. The Complaint filed in this case details just a few of the many communications between me and Robert that took place between the date OtterSec was formed (February 8, 2022) and the date it was dissolved (October 6, 2022).

31. For context, utilizing a feature on Discord, I was able to determine that Robert and I exchanged, over that platform alone, a total of 18,543 messages during that period. Of those, 8,088 were messages sent by me to Robert and 10,455 were messages sent by Robert to me. The vast majority of those messages related to OtterSec, and many are cited in the Complaint. They include Robert's statement to me on May 10, 2022, that he was going to "dissolve the company and remake it":



32. The following is a true and accurate transcription of the relevant portion of the preceding Discord messages:

...

NotDeGhost:

would you be open to considering selling your share of the company?  
if not, I'll probably dissolve the company and remake it  
but it'll be a lot messier and there's no need to burn bridges like that

#### **G. Lack of Transparency**

33. I am aware from having read Robert's filings in this case that he is claiming to have paid for OtterSec's assets. He has never previously disclosed that to my family, and we have been provided with no information from Robert whatsoever regarding any of the details of the dissolution of OtterSec or the disposition of its assets. He has never disclosed how much he paid, what he purchased or how he arrived at a purchase price.

34. Although I transitioned responsibility for handling OtterSec's money to Robert when I ceased working for the company, having been responsible for handling OtterSec's money for a period of time I am aware that it was very profitable. Based on the audits posted on its website the company appears to be experiencing continued success. Nevertheless, the Estate has not received any distribution of any funds from OtterSec.

35. In fact, my family has received no financial information from Robert concerning OtterSec at all. We have not even received forms K-1 or 1099 for our 2022 tax returns.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on: November 6, 2023

  
\_\_\_\_\_  
David Chen

## **EXHIBIT A**



**STATE OF MARYLAND**  
**LETTERS OF ADMINISTRATION**

ESTATE NO. W112298

I certify that administration of the Estate of

SAM MINGSAN CHEN

was granted on the 27th day of JANUARY, 2023,  
to LI FEN YAO

as personal representative(s) and the appointment is in effect

this 30th day of JANUARY 2023

- Will probated January 27, 2023  
(date)

Intestate estate

Joseph M. Giffen

JOSEPH M GRIFFIN

## Register of Wills for

## MONTGOMERY COUNTY

**VALID ONLY IF SEALED WITH THE SEAL OF THE COURT OR THE REGISTER**

## **EXHIBIT B**



Secretary of State

Case 8:23-cv-00899-TDC Document 28-7 Filed 11/06/23 Page 2 of 5

Wyoming Secretary of State  
Herschler Bldg East, Ste.100 & 101

WY Secretary of State  
FILED: Feb 8 2022 11:06AM  
Original ID: 2022-001078733

Cheyenne, WY 82002-0020  
Ph. 307-777-7311

---

## Limited Liability Company Articles of Organization

**I. The name of the limited liability company is:**

OtterSec LLC

**II. The name and physical address of the registered agent of the limited liability company is:**

Registered Agents Inc.  
30 N Gould St Ste R  
Sheridan, WY 82801

**III. The mailing address of the limited liability company is:**

30 N Gould St  
Ste R  
Sheridan, WY 82801

**IV. The principal office address of the limited liability company is:**

30 N Gould St  
Ste R  
Sheridan, WY 82801

**V. The organizer of the limited liability company is:**

Registered Agents Inc.  
30 N Gould St Ste R, Sheridan, WY 82801

Signature:

*Riley Park*

Date: 02/08/2022

Print Name:

Riley Park

Title:

Authorized individual

Email:

reports@registeredagentsinc.com

Daytime Phone #: (307) 200-2803



Secretary of State

Wyoming Secretary of State

Herschler Bldg East, Ste.100 &amp; 101

Cheyenne, WY 82002-0020

Ph. 307-777-7311

- I am the person whose signature appears on the filing; that I am authorized to file these documents on behalf of the business entity to which they pertain; and that the information I am submitting is true and correct to the best of my knowledge.
- I am filing in accordance with the provisions of the Wyoming Limited Liability Company Act, (W.S. 17-29-101 through 17-29-1105) and Registered Offices and Agents Act (W.S. 17-28-101 through 17-28-111).
- I understand that the information submitted electronically by me will be used to generate Articles of Organization that will be filed with the Wyoming Secretary of State.
- I intend and agree that the electronic submission of the information set forth herein constitutes my signature for this filing.
- I have conducted the appropriate name searches to ensure compliance with W.S. 17-16-401.
- I consent on behalf of the business entity to accept electronic service of process at the email address provided with Article IV, Principal Office Address, under the circumstances specified in W.S. 17-28-104(e).

**Notice Regarding False Filings: Filing a false document could result in criminal penalty and prosecution pursuant to W.S. 6-5-308.**

**W.S. 6-5-308. Penalty for filing false document.**

- (a) A person commits a felony punishable by imprisonment for not more than two (2) years, a fine of not more than two thousand dollars (\$2,000.00), or both, if he files with the secretary of state and willfully or knowingly:
- (i) Falsifies, conceals or covers up by any trick, scheme or device a material fact;
- (ii) Makes any materially false, fictitious or fraudulent statement or representation; or
- (iii) Makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement or entry.

- I acknowledge having read W.S. 6-5-308.

**Filer is:**  An Individual  An Organization

The Wyoming Secretary of State requires a natural person to sign on behalf of a business entity acting as an incorporator, organizer, or partner. The following individual is signing on behalf of all Organizers, Incorporators, or Partners.

**Filer Information:**

**By submitting this form I agree and accept this electronic filing as legal submission of my Articles of Organization.**

Signature: Riley Park

Print Name: Riley Park

Title: Authorized individual

Email: reports@registeredagentsinc.com

Daytime Phone #: (307) 200-2803

Date: 02/08/2022



Secretary of State

## Consent to Appointment by Registered Agent

**Registered Agents Inc.**, whose registered office is located at **30 N Gould St Ste R, Sheridan, WY 82801**, voluntarily consented to serve as the registered agent for **OtterSec LLC** and has certified they are in compliance with the requirements of W.S. 17-28-101 through W.S. 17-28-111.

I have obtained a signed and dated statement by the registered agent in which they voluntarily consent to appointment for this entity.

Signature: Riley Park

Date: 02/08/2022

Print Name: Riley Park

Title: Authorized individual

Email: reports@registeredagentsinc.com

Daytime Phone #: (307) 200-2803

**STATE OF WYOMING**  
**Office of the Secretary of State**

I, EDWARD A. BUCHANAN, Secretary of State of the State of Wyoming, do hereby certify that the filing requirements for the issuance of this certificate have been fulfilled.

**CERTIFICATE OF ORGANIZATION**

**OtterSec LLC**

I have affixed hereto the Great Seal of the State of Wyoming and duly executed this official certificate at Cheyenne, Wyoming on this **8th day of February, 2022 at 11:06 AM.**

Remainder intentionally left blank.



Filed Date: 02/08/2022

Edward A. Buchanan

Secretary of State

Filed Online By:

Riley Park

on 02/08/2022

## **EXHIBIT C**



**Wyoming Secretary of State**  
 Herschler Building East, Suite 101  
 122 W 25<sup>th</sup> Street  
 Cheyenne, WY 82002-0020  
 Ph. 307.777.7311  
 Email: [Business@wyo.gov](mailto:Business@wyo.gov)

**WY Secretary of State**  
**FILED: 10/06/2022 02:49 PM**  
**Original ID: 2022-001078733**  
**Amendment ID: 2022-003862322**

## Limited Liability Company Articles of Dissolution

1. The name of the limited liability company is:

*(Name must match exactly to the Secretary of State's records)*

OtterSec LLC

2. Certification. *(Please check the box to complete the required certification.)*



I hereby certify that I am in compliance with W.S. 17-29-701, and I have met all requirements for dissolution and winding up as required in the Limited Liability Company Act. I further certify that I have the authority to complete the dissolution of this business entity. The limited liability company is now dissolved.

**Signature:** Robert Chen  
*(Shall be executed by a person authorized by the company.)*

**Date:** 09/27/2022  
*(mm/dd/yyyy)*

Print Name: Robert Chen

Contact Person: Stacy Fredericks

Title: Member

Daytime Phone Number: 801-924-4131

Email: sfredericks@michaelbest.com

*(An email address is required. Email(s) provided will receive important reminders, notices and filing evidence.)*

### Checklist

- Filing Fee: \$60.00** Make check or money order payable to Wyoming Secretary of State.
- The business entity is **active and in good standing** with this office.
- Processing time is up to 15 business days** following the date of receipt in our office.
- Please mail with payment to the address at the top of this form. **This form cannot be accepted via email.**
- Please review the form prior to submission. **The Secretary of State's Office is unable to process incomplete forms.**



**STATE OF WYOMING**  
**Office of the Secretary of State**

I, KARL ALLRED, Secretary of State of the State of Wyoming, do hereby certify that the filing requirements for the issuance of this certificate have been fulfilled.

**CERTIFICATE OF DISSOLUTION**

**OtterSec LLC**

I have affixed hereto the Great Seal of the State of Wyoming and duly executed this official certificate at Cheyenne, Wyoming on this **6th** day of **October, 2022**



*Karl T Allred*

Secretary of State

By: \_\_\_\_\_ Cici Mohren \_\_\_\_\_

Filed Date: 10/06/2022

## **EXHIBIT D**

## OPERATING AGREEMENT

FOR

### OtterSec LLC

A MULTIPLE MEMBER-MANAGED LIMITED LIABILITY COMPANY

#### ARTICLE I Company Formation

- 1.1. **FORMATION.** The members have formed a Limited Liability Company (the "Company") according to the laws of the state in which the Company was formed. This operating agreement is entered into and effective as of the date it is adopted by the members.
- 1.2. **REGISTERED AGENT.** The name and location of the Company's registered agent will be stated in the company's formation documents.
- 1.3. **TERM.** The Company will continue perpetually unless:
  - (a) Members whose capital interest as defined in Article 2.2 exceeds 50 percent vote for dissolution;
  - (b) Any event which causes the Company's business to become unlawful; (c) The death, resignation, expulsion, bankruptcy, retirement of a member or the occurrence of any other event that terminates the continued membership of a member of the Company; or
  - (d) Any other event causing dissolution of the Company under applicable state laws.
- 1.4. **CONTINUANCE OF COMPANY.** In the event of an occurrence described in Section 1.3(c), if there are at least two remaining members, those members have the right to continue the business of the Company. This right can be exercised only by the unanimous vote of the remaining members within ninety (90) days after the occurrence of an event described in Section 1.3(c). If not exercised, the right of the members to continue the business of the Company will expire.
- 1.5. **BUSINESS PURPOSE.** The Company will conduct any lawful business deemed appropriate in carrying out the company's objectives.
- 1.6. **PRINCIPAL PLACE OF BUSINESS.** The Company's principal place of business will be stated in the formation documents, or as selected by the members.
- 1.7. **THE MEMBERS.** The name and residential address of each member are listed in Certification of Member section of this agreement.
- 1.8. **ADMISSION OF ADDITIONAL MEMBERS.** Additional members may only be admitted to the Company through a Certificate of New Membership issuance by the company of new interest in the Company or as otherwise provided in this agreement.

## **ARTICLE II** **Capital Contributions**

- 2.1. **INITIAL CONTRIBUTIONS.** The members will not initially contribute capital to the Company.
- 2.2. **ADDITIONAL CONTRIBUTIONS.** Except as provided in ARTICLE 6.2, no member will be obligated to make any additional contribution to the Company's capital.

## **ARTICLE III** **Profits, Losses and Distributions**

- 3.1. **PROFITS/LOSSES.** For financial accounting and tax purposes, the Company's net profits or net losses will be determined on an annual basis. These profits and losses will be allocated to the members in proportion to each member's capital interest in the Company as set forth in this agreement below, as amended, and in accordance with Treasury Regulation 1.704-1.
- 3.2. **DISTRIBUTIONS.** The members will determine and distribute available funds annually or as they see fit. "Available funds" refers to the net cash of the Company available after expenses and liabilities are paid. Upon liquidation of the Company or liquidation of a member's interest, distributions will be made in accordance with the positive capital account balances or pursuant to Treasury Regulation 1.704-1(b)(2)(ii)(b) (2). To the extent a member has a negative capital account balance, there will be a qualified income offset, as set forth in Treasury Regulation 1.704-1(b)(2)(ii)(d).

## **ARTICLE IV** **Management**

- 4.1. **MANAGEMENT OF THE BUSINESS.** The members are responsible for the management of the Company.
- 4.2. **MEMBERS.** The liability of the members will be limited according to state law. No member is an agent of any other member of the Company, solely by reason of being a member.
- 4.3. **POWERS OF MEMBERS.** All members are authorized on the Company's behalf to make decisions as to:
  - (a) the sale, development, lease, or other disposition of the Company's assets;
  - (b) the purchase or other acquisition of other assets;
  - (c) the management of all or any part of the Company's assets;
  - (d) the borrowing of money and the granting of security interests in the Company's assets;
  - (e) the pre-payment, refinancing, or extension of any loan affecting the Company's assets;
  - (f) the compromise or release of any of the Company's claims or debts;

(g) the employment of persons, firms, or corporations for the operation and management of the Company's business.

The members are further authorized to execute and deliver:

- (w) all contracts, conveyances, assignments leases, sub-leases, franchise agreements, licensing agreements, management contracts and maintenance contracts covering or affecting Company assets;
- (x) all checks, drafts, and other orders for the payment of the Company's funds;
- (y) all promissory notes, loans, security agreements, and other similar documents; and
- (z) all other instruments of any other kind relating to the Company's affairs.

**4.4. CHIEF EXECUTIVE MEMBER.** The members may elect a Chief Executive Member. The Chief Executive Member has primary responsibility for managing the operations of the Company and for carrying out the decisions of the members. If a Chief Executive Member is elected, then the powers listed in Section 4.3 shall be held by the Chief Executive Member. If a Chief Executive Member is elected, then the other members will take no part in the control, management, direction, or operation of the Company's affairs and will have no power to bind the Company in legal agreements. The Chief Executive Member may seek advice from the members, but need not follow such advice.

**4.5. NOMINEE.** Title to the Company's assets must be held in the Company's name or in the name of any nominee that the members may designate. Pursuant to the powers listed in Section 4.3, the members have power to enter into a nominee agreement with any such person, and such agreement may contain provisions indemnifying the nominee, except for his or her willful misconduct.

**4.6. COMPANY INFORMATION.** The Chief Executive Member must supply information regarding the company or its activities to any member upon request. Any member, or their authorized representative, will have access to and may inspect and copy all books, records, and materials in the Chief Executive Member's possession regarding the Company or its activities. Access and inspection of information will be at the requesting member's expense.

**4.7. EXCULPATION.** Any act or omission of the Chief Executive Member, the effect of which may cause loss or damage to the Company or the members, if done in good faith to promote the best interests of the Company, will not subject the Chief Executive Member to any liability.

**4.8. INDEMNIFICATION.** The Company will indemnify any person who was or is a party defendant or is threatened to be made a party defendant, in a pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Company) by reason of the fact that the person is or was a member of the Company, employee, or agent of the Company, or is or was serving at the request of the Company, for instant expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if the members determine that the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Company, and with respect to any criminal

action proceeding, has no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of "no lo Contendere" or its equivalent, does not in itself create a presumption that the person did or did not act in good faith and in a manner which he or she reasonably believed to be in the best interest of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was lawful.

**4.9. RECORDS.** The members must keep the following at the company's principal place of business or other location:

- (a) A current list of the full name and the last known street address of each member;
- (b) A copy of the Articles of Organization, this operating agreement, and all amendments to either document;
- (c) Copies of Company's federal, state and local income tax returns and reports for the three (3) most recent years;
- (d) Copies of the Company's financial statements for the three (3) most recent years.

## ARTICLE V Compensation

**5.1. MANAGEMENT FEE.** Any member rendering services to the Company is entitled to compensation proportionate with the value of those services.

**5.2. REIMBURSEMENT.** The Company must reimburse the members for all direct out-of-pocket expenses incurred by them in managing the Company.

## ARTICLE VI Bookkeeping

**6.1. BOOKS.** The Chief Executive Member will maintain a complete and accurate accounting of the Company's affairs at the Company's principal place of business. The members may select the method of accounting and the company's accounting period will be the calendar year.

**6.2. MEMBER'S ACCOUNTS.** The members must maintain separate capital and distribution accounts for each member. Each member's capital account will be determined and maintained in the manner set forth in Treasury Regulation 1.704-1(b)(2)(iv) and will consist of his or her initial capital contribution increased by:

- (a) Any additional capital contribution made by the member;
  - (b) Credit balances transferred from the member's distribution account to his or her capital account;
- and decreased by:
- (x) Distributions to the member in reduction of Company capital;
  - (y) The member's share of Company losses if charged to his or her capital

**6.3. REPORTS.** The Chief Executive Member will close the books of account after the close

of each calendar year and will prepare and send to each member, a statement of such member's distributive share of income and expense for income tax reporting purposes.

## ARTICLE VII Transfers

**7.1. ASSIGNMENT.** If a member proposes to sell, assign, or otherwise dispose of all or any part of his or her interest in the Company, that member must first make a written offer to sell his or her interest to the other members at a price determined by mutual agreement. If the other members decline or fail to elect such interest within thirty (30) days, and if the sale or assignment is made and the members fail to approve this sale or assignment unanimously then, pursuant to the applicable law, the purchaser or assignee will have no right to participate in the management of the business and affairs of the Company. The purchaser or assignee will only be entitled to receive the share of the profits or other compensation by way of income and the return of contributions to which that member would otherwise be entitled.

## ARTICLE VIII Dissolution

**8.1. DISSOLUTION.** The member(s) may dissolve the company at any time. The member may NOT dissolve the company for a loss of membership interests. Upon dissolution the company must pay its debts first before distributing cash, assets, and/or initial capital to the member or the members interests. The dissolution may only be ordered by the member(s), not by the owner of the members interests.

### CERTIFICATION OF MEMBER

The undersigned hereby agree, acknowledge, and certify that the foregoing operating agreement is adopted and approved by each member as of this 14th day of February, 2022.

**Members:**

Name: Robert Chen. Percent 50%      X: Robert Chen

Address: 4710 142nd PL SE Bellevue WA 98006

Name: Sam Chen. Percent 50%      X: Sam Chen

Address: 13717 Travilah Rd Rockville Md 20850

## **EXHIBIT E**

## AT-WILL EMPLOYMENT AGREEMENT

**THIS AT-WILL EMPLOYMENT AGREEMENT** ("Agreement") is entered into on this 4/25/2022 by and between OtterSec LLC, a Wyoming limited liability company (the "Company"), and the person identified as Employee in the signature line below ("Employee").

1. **AT-WILL EMPLOYMENT.** Employee understands and agrees that Employee's employment with the Company is "at will" for no definite term and, as such, can be terminated by the Company for any reason or cause or without any reason or cause at any time so long as the termination does not violate federal, state, or local law. Nothing contained in this Agreement is intended to or shall be interpreted to create employment for a definite term. This Agreement will be effective as of the date Employee affixes Employee's signature below. Employee understands and agrees that any work Employee performs on behalf of the Company shall be referred to herein as the "Services".
2. **EMPLOYEE'S REPRESENTATIONS.** Employee affirms that all oral and written statements made by Employee to Company representatives during the hiring process are true and complete.
3. **CONFIDENTIAL INFORMATION.** During the term of this Agreement, Employee has or will receive information that is proprietary and confidential to the Company ("Confidential Information"), including but not limited to customer lists and names, customer information, vendors, intellectual property, inventions, discoveries, financial information, policies, procedures, operations, plans, methods of doing business, strategic plans, computer systems and finances, intellectual property (whether or not reduced to writing and in any and all stages of development), information, data, trade secrets, know-how, ideas, processes, computer programs, source code, flowcharts, logic diagrams, pricing policies, forecasts, research, designs, drawings, formulas, marketing techniques and plans, and anything else of a similar nature. The term "Confidential Information" as used herein shall encompass all such information in all forms (*i.e.* electronic, written or oral) whether it originates from the Company or from third parties that have shared such Confidential Information with the Company and/or Employee.
  - (a) **Confidential Information of Third Parties.** Employee understands that, from time to time, Confidential Information may be submitted to the Company by third parties (*i.e.* by other persons or entities) and that said Confidential Information falls within the scope of this Agreement. Employee further understands that as a condition for receiving said Confidential Information, the Company may enter into an agreement with said third party restricting or prohibiting use, transfer or disclosure of said Confidential Information. Employee agrees to respect any such agreement and to avoid any action or inaction that is inconsistent with the obligations lawfully imposed on the Company thereunder and to treat said Confidential Information with the same (or greater) degree of care than is afforded to the Company's Confidential Information addressed herein.
  - (b) **Delivery of Confidential Information on Termination of Agreement.** Employee agrees that all Confidential Information which Employee creates or to which Employee has access as a result of Employee's performance of the Services is, and shall remain, the sole and exclusive property of the Company. In addition, all documents, records and files, in any media of whatever kind and description, relating to the business, present or otherwise, of the Company and any copies, in whole or in part, thereof (collectively, the "Documents"), whether or not prepared by Employee, are and shall remain the sole and exclusive property of the Company. Upon the termination of this Agreement for any reason, and at such other times as may be specified by the Company, Employee shall immediately deliver to the Company any and all Confidential Information and Documents (and all copies thereof including, without limitation, all electronically stored versions) and all other property of the Company then in Employee's possession or under Employee's control. Employee agrees that Employee will not copy Company information to personal devices and/or accounts without written authorization from the Company and, that even with authorization, Employee must delete and/or remove such copied information upon request by the Company.
  - (c) **No Use or Disclosure of Confidential Information.** Except as necessary in the performance of the Services or as expressly authorized in writing by the Company, Employee shall not directly or indirectly: (a) disclose, reveal or make available any Confidential Information to any other person or entity; (b) aid, encourage or allow any other person or entity to gain possession of or access to any Confidential Information; (c) use, sell, transfer or exploit any Confidential Information or aid, encourage or allow any other person or entity to use, sell or exploit any Confidential Information; (d) exercise judgment or perform analysis based upon knowledge of Confidential Information; or (e) otherwise enter into any agreement or understanding

(oral or written) with any party, or otherwise circumvent, avoid, bypass, and/or obviate the Company with respect to its relationship with any party whose identity is Confidential Information, including any work to be performed by the Company with respect thereto. This Section 3 shall survive the expiration of this Agreement.

(d) **Immunity.** Pursuant to 18 U.S.C. § 1833(b), an individual shall not be held criminally liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b). An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

4. **WORK FOR HIRE.** Employee expressly agrees that everything Employee creates, writes or develops in the course of providing the Services shall be "works made for hire" as defined by U.S. copyright law and the property of the Company, including all inventions, technology, programs, text, ideas, computer code, processes, trade secrets, techniques, operating ideas, Confidential Information, processes and materials, whether or not published, patented, copyrighted, registered or suitable therefor, and all intellectual property rights therein, that are made, developed, written, conceived or first reduced to practice by Employee in part or in whole, whether alone or with others, during Employee's employment with Company, to the extent they relate to the Company's business (including future or anticipated business) or are developed using the Company's time, equipment or materials (collectively, "Works"). To the extent such "work for hire" doctrine may be legally inapplicable for any reason, Employee hereby assigns to the Company all right, title and interest in the Works, including all rights of patent, trademark, copyright and other intellectual property rights, and agrees to execute at the Company's request subsequent documents as further evidence of this assignment. Employee further assigns to the Company all right, title and interest in any invention, patentable or not, made or conceived solely or jointly during the course of developing the Services. Employee also agrees to assist the Company, at the Company's expense, as reasonably requested in any efforts the Company may make to obtain a patent or other intellectual property protection with respect to the Works or any portion thereof. If Employee has any rights to the Works that cannot be assigned to the Company, during the term of such rights Employee unconditionally and irrevocably grants to the Company an exclusive, irrevocable, perpetual, worldwide, fully-paid and royalty-free license, with rights to sublicense through multiple levels of sublicensees, to reproduce, create derivative works of, distribute, publicly perform and publicly display, by all means now known or later developed, such rights and to use, make, have made, or offer for sale, by all means now known or later developed, such rights. Employee agrees to promptly disclose the existence, use and manner of operation of any Works to the Company. For the avoidance of doubt, the parties hereto acknowledge and agree that (a) the term "Works" shall not include any of the foregoing created prior to the date hereof or any tools, methodologies, architecture, code, programs or processes used to create the Works, and (b) Employee possesses certain skills, knowledge, know-how, experience, techniques, methods and tools by which Employee performs services and none of such shall be deemed Works.

(a) **Ownership of Rights.** The Company shall be the sole owner of the Works and all rights therein throughout the world, including without limitation all intellectual property rights therein. Employee specifically waives any and all "artist's rights" or "moral rights" Employee may have with respect to the Works pursuant to any law or statute. Employee and the Company agree that the Services and Works provided to the Company pursuant to this Agreement may be used by the Company in its sole discretion.

(b) **Warranties.** Employee represents and warrants (a) that the Works provided by Employee to the Company are and shall be Employee's original work and will not infringe any copyright or other intellectual property rights of any third party, invade any right of privacy, contain any libelous material, or infringe or violate any other right of any third party; (b) that Employee is able to perform the Services specified in this Agreement and does not have any understanding or agreement with anyone else which restricts Employee's ability to perform such Services; and (c) that any Services Employee provides and Works Employee develops for or discloses to the Company will not in any way be based upon confidential or proprietary information derived from any source other than the Company, unless Employee is specifically authorized in writing by such source and by the Company to use such proprietary information.

## 5. **RESTRICTIVE COVENANTS.**

(a) **Definitions.** The following defined terms shall be used in these restrictive covenants:

"Restricted Area" shall be worldwide. Employee understands and agrees that this broad Restricted Area is necessary, given that the Company operates online, and its Clients may be located anywhere in the world.

"Client" shall mean any person or entity that has a business relationship with the Company such that the Company provides services to the person or entity.

"Prospective Client" shall mean any person or legal entity that has sent or received communication to or from the Company at any time within one year prior to the termination of this Agreement, or at any time during the Non-solicitation Period, regarding the possibility of becoming a Client. Prospective Clients shall include former Clients, to the extent they satisfy the definition above as a Prospective Client.

"Non-solicitation Period" shall mean the period of time during the term of this Agreement and for two years following the termination this Agreement for any reason.

**(b) Non-Competition.** The business of the Company is highly competitive, and Employee shall have direct access to the Company's customers and Confidential Information. Due to Employee's access to Company's Confidential Information, the Company's business and its ability to retain clients and attain its goals could be materially jeopardized and irreparably and continually damaged if Employee competes with the Company or assist other persons to compete with the Company. Accordingly, Employee shall abide by the non-competition restrictions contained herein and acknowledges that they are reasonable and necessary for the protection of the immediate interests of the Company and that any violation of these restrictions could cause substantial injury to the Company. During Employee's employment with the Company and for a period of one year following the cessation of Employee's employment with the Company for any reason, Employee shall not—either directly or indirectly—without the express written permission of the Company, be employed by, own, manage, operate, contract with, consult for, control, have any financial interest in, or lend his/her name to any person or entity engaged in, a business or enterprise that competes with the Company within the Restricted Area. Employee shall not undertake any planning for any outside business that will engage in a business competitive with the Company within the Restricted Area.

**(c) Non-solicitation.** As an inducement to the Company to enter into this Agreement, Employee shall not, without the Company's prior written consent, on his/her own account or as an employee, agent, or independent contractor of any other person, firm or entity or in any other capacity, do any of the following during the Non-solicitation Period:

(i) Directly or indirectly solicit any Client or Prospective Client for any commercial purpose that is not in the interest of the Company, including but not limited to, obtaining business from the Client or Prospective Client for a person or entity other than the Company or inducing the Client or Prospective Client to discontinue or diminish its relationship with the Company; and/or

(ii) Directly or indirectly—regardless of who initiates contact—do business with or provide services for any Client or Prospective Client; and/or

(iii) Directly or indirectly notify any Client or Prospective Client of the termination, or prospective termination, of Employee's engagement with the Company for the purpose of notifying the Client or Prospective Client of Employee's availability to provide services at any other location; and/or

(iv) Directly or indirectly solicit or induce any employee, agent, or independent contractor of the Company to discontinue his/her employment or business relationship with the Company; and/or

(v) Directly or indirectly solicit any vendor of the Company to discontinue or diminish its relationship with the Company.

**(d) Limited Waiver of Covenants under Exceptional Circumstances.** The Company may consider modifying and/or waiving the restrictive covenants in this Agreement in exceptional circumstances in which the Company determines—in its sole discretion—that certain activities in which the Employee might engage, which may otherwise technically violate the restrictive covenants herein, would not significantly harm the Company's legitimate, protectible interests. Any such request for modification or waiver must be in writing and can only be authorized in writing signed by the Company's Founder.

(e) **Fairness of Covenants.** Employee agrees that the duration and scope of activities restricted under these restrictive covenants are reasonable and necessary to protect the Company's legitimate business interests. If any court determines that these provisions or any portion of these provisions are unenforceable because of the duration or scope of activities restricted hereunder, such court shall have the power to and shall reduce such duration or scope to the maximum allowed by applicable law. In its reduced form, such provision shall then be enforced, and Employee shall abide by such provisions as altered.

(f) **Extension of Covenants.** In the event of Employee's breach of any of Employee's obligations under these restrictive covenants, the periods stated under such restrictive covenants shall be automatically extended for the same amount of time during which Employee was in breach.

6. **ENFORCEMENT; REMEDIES.** Employee acknowledges that if Employee breaches any obligation under this Agreement, including a breach of provisions regarding confidentiality or non-solicitation, the Company will suffer immediate and irreparable harm and damage and that a remedy at law would be inadequate. Employee therefore agrees that upon such breach or threatened breach of any obligation under this Agreement, in addition to any and all legal remedies, Company shall be entitled to any injunctive relief available without the posting of a bond or other security, in order to prevent or restrain any such breach by Employee or by Employee's partners, agents, representatives, employees, affiliates and/or any and all persons directly or indirectly acting for or with Employee. This paragraph shall not be construed as an election of any remedy, or as a waiver of any right available to Company under this Agreement or the law, including the right to seek damages from Employee for a breach of any provision of this Agreement.

7. **SEVERABILITY.** If any part of this Agreement violates any statute or public policy, that part will have no effect, and the rest of the Agreement shall be fully enforceable. If any part of this Agreement is unenforceable, the court shall narrow its scope and then enforce that part to the maximum effect permissible. The term "Company" wherever used herein includes any current or future subsidiaries or affiliates of the Company.

8. **FINAL AGREEMENT.** This Agreement constitutes the final complete and exclusive agreement between the Company and Employee concerning the subject matter of this Agreement. Any modification, rescission or amendment of this Agreement shall not be effective unless made in a writing executed by both parties.

9. **WAIVER.** Any waiver of, or promise not to enforce, any right under this Agreement shall not be enforceable unless evidenced by a writing signed by the party making said waiver or promise. No claim nor right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless said waiver or renunciation is evidenced by writing signed by the aggrieved party. Any waiver or renunciation by a party of any claim or right arising out of a breach by the other party of any provision of this Agreement shall not be deemed a waiver or renunciation of any claim or right arising out of a subsequent breach of the same provision and shall not affect said other party's obligation to comply with the same provision in the future.

10. **ATTORNEYS' FEES.** If any party is required to bring any action to enforce the terms of this Agreement, the prevailing party will be entitled to attorneys' fees.

11. **HEADINGS.** The subject headings of this Agreement are included for purposes of convenience only, and shall not affect the construction of any of the provisions of this Agreement.

12. **ASSIGNMENT.** Company may assign this Agreement to a successor to all or part of its business or assets without restriction.

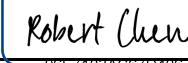
13. **EMPLOYMENT-AT-WILL ACKNOWLEDGMENT.** Employee understands and agrees that this Agreement does not constitute a contract of employment for a specific term and that either the Company or Employee may terminate Employee's employment at any time, with or without notice or cause.

14. **APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wyoming, without regard to conflicts of law. Any dispute concerning this Agreement must be brought in the state or federal courts located in Wyoming.

Company and Employee have executed this Agreement to be effective as of the date first written above.

**OTTERSEC LLC:**

By:

DocuSigned by:  


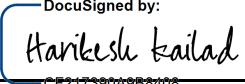
Robert Chen

96E7103AC67D406...

Printed Name: Robert Chen

Title:

Founder

**EMPLOYEE:**DocuSigned by:  


Harikesh Kailad

CF217390A956406...

Printed Name: Harikesh Kailad

Address: 5304 Bangor Drive, Kensington MD

Email: harikeshkailad@gmail.com

**EMPLOYEE'S PARENT/GUARDIAN:**

549202AB379F49A...

Printed Name: Gopal Kailad

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**ADDENDUM TO AT-WILL EMPLOYMENT AGREEMENT**

**THIS ADDENDUM** amends the **AT-WILL EMPLOYMENT AGREEMENT** ("Agreement") entered into between Employee and the Company. All defined terms used in the Agreement are incorporated herein.

1. **CONSIDERATION.** As additional consideration for entering into the Agreement, and notwithstanding Paragraphs 1 and 13 of the Agreement, for a period of 90 days after Employee signs this Addendum, Employee shall not be deemed an at-will employee and may only be discharged for Cause as defined in this Addendum. Upon the expiration of the 90-day period after Employee signs this Addendum, however, Employee shall again be deemed an at-will employee in accordance with the terms of the Agreement.
2. **CAUSE.** The term "Cause" shall mean any of the following: (i) willful misconduct or gross negligence in performance of the Services; (ii) a material breach of the provisions of the Agreement; (iii) repeated failure to perform one or more of Employee's essential duties and responsibilities under the Agreement; or (iv) indictment or conviction of, or a plea of nolo contendere by, Employee for a (A) a felony or (B) a crime involving moral turpitude.

This addendum is executed on the 4/25/2022.

**OTTERSEC LLC:** DocuSigned by:

By:

 Robert Chen

96E7105AC07D400...

Printed Name: Robert Chen

Title:

Founder

**EMPLOYEE:** DocuSigned by:

By:

 Harikesh Kailad

CF217390A9B8408...

Printed Name: Harikesh Kailad

Address:

5304 Bangor Drive, Kensington MD

Email:

harikeshkailad@gmail.com  
@

*Remainder of page intentionally left blank*

**EXHIBIT F**

## CONTRACTOR SERVICES AGREEMENT

**THIS CONTRACTOR SERVICES AGREEMENT** ("Agreement") is entered into on this 4/10/2022 by and between OtterSec LLC, a Wyoming limited liability company (the "Company"), and the person or entity identified as Contractor in the signature line below ("Contractor").

1. **INTRODUCTION.** The Company and Contractor agree that Contractor shall provide the services described in the Work Order attached hereto (the "Services") to the Company pursuant to this Agreement. Company and Contractor may agree to additional Work Orders during the term of this Agreement. All such Work Orders shall be incorporated into this Agreement and made a part hereto.
2. **NON-EXCLUSIVE SERVICES.** During the term of this Agreement, Contractor may perform services for other persons or entities; provided, however, that until the termination of this Agreement, Contractor shall ensure that there is no conflict between the performance of the Services for the Company and any services performed by Contractor for any other person or entity. Contractor hereby represents and warrants that it is customarily engaged in an independently established trade, occupation, profession, or business, and that it advertises for its independent business or trade. Contractor further represents and warrants that it has not and will not receive any training directly from Company and that it is contracting only to complete specifically identified projects.
3. **COMPENSATION.** The Company agrees to pay, and Contractor agrees to accept, the amounts described in the applicable Work Order as full and complete compensation for the Services ("Compensation"), plus reimbursement for expenses as set forth below. Contractor agrees to submit invoices to the Company on a semi-monthly basis for Services rendered during that time period. Invoices must include a complete and accurate record of all time Contractor spent in performing the Services.
4. **EXPENSES.** Contractor will be reimbursed for such expenses that are incurred in connection with the performance of Services only if such expenses are approved in advance in writing by an authorized representative of the Company. Contractor agrees to include in Contractor's semi-monthly invoices a record of all expenses, with receipts, for all expenses incurred in performing the Services for which Contractor seeks reimbursement.
5. **INDEPENDENT CONTRACTOR.** It is understood and agreed, and it is the express intention of the parties, that the relationship between the Company and Contractor at all times be that of an "independent contractor" and not that of an employee, agent, joint venturer or partner of the Company for any purpose whatsoever. Contractor will determine the method, details and means of performing the Services, is not subject to control by the Company in performing the Services, and is free to exercise Contractor's own professional judgment with respect to the manner in which Contractor provides the Services so long as the Services are performed to the best of Contractor's ability, in accordance with applicable law and in a competent and professional manner consistent with the representations and warranties set forth in this Agreement. Contractor acknowledges and agrees that the Company shall not deduct any amount for withholding, unemployment, Social Security, or other taxes from the Compensation as the Company would in the case of an employee, and Contractor further acknowledges and agrees that Contractor shall not have any claim under this Agreement for overtime pay, sick leave, holiday or vacation pay, retirement benefits, worker's compensation benefits, or employee benefits of any kind from the Company. Contractor acknowledges and agrees that Contractor is obligated to report as income all Compensation received by Contractor pursuant to this Agreement, and Contractor agrees to, and acknowledges, the obligation to pay all employment and other taxes due as a result of receiving payment for performing Services. Neither party may bind the other to any agreement with another party. Any access to the Company's premises granted to Contractor will not be construed as indicating that Contractor is an employee of the Company or that Contractor has the rights of a Company employee.
6. **WORK SCHEDULE AND LOCATION.** Contractor retains complete discretion in setting his/her work schedule and location, provided, however, that Company's expectation is that the Services are completed in a timely manner and that Contractor agrees not to work in excess of 40 hours per week on behalf of Company without prior written consent from Company. Contractor shall be permitted to refuse to perform Services in Contractor's sole discretion.
7. **EQUIPMENT.** Contractor possesses and will supply all tools and equipment necessary to perform the Services.
8. **CONFIDENTIAL INFORMATION.** During the term of this Agreement, Contractor has or will receive information that is proprietary and confidential to the Company ("Confidential Information"), including but not limited to customer lists and names,

customer information, vendors, intellectual property, inventions, discoveries, financial information, policies, procedures, operations, plans, methods of doing business, strategic plans, computer systems and finances, intellectual property (whether or not reduced to writing and in any and all stages of development), information, data, trade secrets, know-how, ideas, processes, computer programs, source code, flowcharts, logic diagrams, pricing policies, forecasts, research, designs, drawings, formulas, marketing techniques and plans, and anything else of a similar nature. The term "Confidential Information" as used herein shall encompass all such information in all forms (*i.e.* electronic, written or oral) whether it originates from the Company or from third parties that have shared such Confidential Information with the Company and/or Contractor.

(a) **Confidential Information of Third Parties.** Contractor understands that, from time to time, Confidential Information may be submitted to the Company by third parties (*i.e.* by other persons or entities) and that said Confidential Information falls within the scope of this Agreement. Contractor further understands that as a condition for receiving said Confidential Information, the Company may enter into an agreement with said third party restricting or prohibiting use, transfer or disclosure of said Confidential Information. Contractor agrees to respect any such agreement and to avoid any action or inaction that is inconsistent with the obligations lawfully imposed on the Company thereunder and to treat said Confidential Information with the same (or greater) degree of care than is afforded to the Company's Confidential Information addressed herein.

(b) **Delivery of Confidential Information on Termination of Agreement.** Contractor agrees that all Confidential Information which Contractor creates or to which Contractor has access as a result of Contractor's performance of the Services is, and shall remain, the sole and exclusive property of the Company. In addition, all documents, records and files, in any media of whatever kind and description, relating to the business, present or otherwise, of the Company and any copies, in whole or in part, thereof (collectively, the "Documents"), whether or not prepared by Contractor, are and shall remain the sole and exclusive property of the Company. Upon the termination of this Agreement for any reason, and at such other times as may be specified by the Company, Contractor shall immediately deliver to the Company any and all Confidential Information and Documents (and all copies thereof including, without limitation, all electronically stored versions) and all other property of the Company then in Contractor's possession or under Contractor's control. Contractor agrees that Contractor will not copy Company information to personal devices and/or accounts without written authorization from the Company and, that even with authorization, Contractor must delete and/or remove such copied information upon request by the Company.

(c) **No Use or Disclosure of Confidential Information.** Except as necessary in the performance of the Services or as expressly authorized in writing by the Company, Contractor shall not directly or indirectly: (a) disclose, reveal or make available any Confidential Information to any other person or entity; (b) aid, encourage or allow any other person or entity to gain possession of or access to any Confidential Information; (c) use, sell, transfer or exploit any Confidential Information or aid, encourage or allow any other person or entity to use, sell or exploit any Confidential Information; (d) exercise judgment or perform analysis based upon knowledge of Confidential Information; or (e) otherwise enter into any agreement or understanding (oral or written) with any party, or otherwise circumvent, avoid, bypass, and/or obviate the Company with respect to its relationship with any party whose identity is Confidential Information, including any work to be performed by the Company with respect thereto. This Paragraph shall survive the expiration of this Agreement.

(d) **Immunity.** Pursuant to 18 U.S.C. § 1833(b), an individual shall not be held criminally liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b). An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

9. **WORK FOR HIRE.** Contractor expressly agrees that everything Contractor creates, writes or develops in the course of providing the Services shall be "works made for hire" as defined by U.S. copyright law and the property of the Company, including all inventions, technology, programs, text, ideas, computer code, processes, trade secrets, techniques, operating ideas, Confidential Information, processes and materials, whether or not published, patented, copyrighted, registered or suitable therefor, and all intellectual property rights therein, that are made, developed, written, conceived or first reduced to practice by Contractor in part or in whole, whether alone or with others, during the term of this Agreement, to the extent they relate to the Company's business (including future or anticipated business) or are developed using the Company's time, equipment or materials (collectively, "Works"). To the extent such "work for hire" doctrine may be legally inapplicable for any reason, Contractor hereby assigns

to the Company all right, title and interest in the Works, including all rights of patent, trademark, copyright and other intellectual property rights, and agrees to execute at the Company's request subsequent documents as further evidence of this assignment. Contractor further assigns to the Company all right, title and interest in any invention, patentable or not, made or conceived solely or jointly during the course of developing the Services. Contractor also agrees to assist the Company, at the Company's expense, as reasonably requested in any efforts the Company may make to obtain a patent or other intellectual property protection with respect to the Works or any portion thereof. If Contractor has any rights to the Works that cannot be assigned to the Company, during the term of such rights Contractor unconditionally and irrevocably grants to the Company an exclusive, irrevocable, perpetual, worldwide, fully-paid and royalty-free license, with rights to sublicense through multiple levels of sublicensees, to reproduce, create derivative works of, distribute, publicly perform and publicly display, by all means now known or later developed, such rights and to use, make, have made, or offer for sale, by all means now known or later developed, such rights. Contractor agrees to promptly disclose the existence, use and manner of operation of any Works to the Company. For the avoidance of doubt, the parties hereto acknowledge and agree that (a) the term "Works" shall not include any of the foregoing created prior to the date hereof or any tools, methodologies, architecture, code, programs or processes used to create the Works, and (b) Contractor possesses certain skills, knowledge, know-how, experience, techniques, methods and tools by which Contractor performs services and none of such shall be deemed Works.

(a) **Ownership of Rights.** The Company shall be the sole owner of the Works and all rights therein throughout the world, including without limitation all intellectual property rights therein. Contractor specifically waives any and all "artist's rights" or "moral rights" Contractor may have with respect to the Works pursuant to any law or statute. Contractor and the Company agree that the Services and Works provided to the Company pursuant to this Agreement may be used by the Company in its sole discretion.

(b) **Warranties.** Contractor represents and warrants (a) that the Works provided by Contractor to the Company are and shall be Contractor's original work and will not infringe any copyright or other intellectual property rights of any third party, invade any right of privacy, contain any libelous material, or infringe or violate any other right of any third party; (b) that Contractor is able to perform the Services specified in this Agreement and does not have any understanding or agreement with anyone else which restricts Contractor's ability to perform such Services; and (c) that any Services Contractor provides and Works Contractor develops for or discloses to the Company will not in any way be based upon confidential or proprietary information derived from any source other than the Company, unless Contractor is specifically authorized in writing by such source and by the Company to use such proprietary information.

## 10. **RESTRICTIVE COVENANTS.**

(a) **Definitions.** The following defined terms shall be used in these restrictive covenants:

"Restricted Area" shall be worldwide. Employee understands and agrees that this broad Restricted Area is necessary, given that the Company operates online, and its Clients may be located anywhere in the world

"Client" shall mean any person or entity that has a business relationship with the Company such that the Company provides services to the person or entity.

"Prospective Client" shall mean any person or legal entity that has sent or received communication to or from the Company at any time within one year prior to the termination of this Agreement, or at any time during the Non-solicitation Period, regarding the possibility of becoming a Client. Prospective Clients shall include former Clients, to the extent they satisfy the definition above as a Prospective Client.

"Non-solicitation Period" shall mean the period of time during the term of this Agreement and for two years following the termination this Agreement for any reason.

(b) **Non-Competition.** The business of the Company is highly competitive, and Contractor shall have direct access to the Company's customers and Confidential Information. Due to Contractor's access to Company's Confidential Information, the Company's business and its ability to retain clients and attain its goals could be materially jeopardized and irreparably and continually damaged if Contractor competes with the Company or assist other persons to compete with the Company. Accordingly, in consideration of the Company compensating Contractor as an independent contractor, Contractor shall abide by the non-competition restrictions contained herein and acknowledges that they are reasonable and necessary for the protection of the immediate interests of the Company and that any violation of these restrictions could cause substantial injury to the

Company. During Contractor's time as an independent contractor of the Company and for a period of one year following the termination of this Agreement for any reason, Contractor shall not—either directly or indirectly—without the express written permission of the Company, be employed by, own, manage, operate, contract with, consult for, control, have any financial interest in, or lend his/her name to any person or entity engaged in, a business or enterprise that competes with the Company within the Restricted Area. Contractor shall not undertake any planning for any outside business that will engage in a business competitive with the Company within the Restricted Area.

(c) **Non-solicitation.** As an inducement to the Company to enter into this Agreement, Contractor shall not, without the Company's prior written consent, on his/her own account or as an employee, agent, or independent contractor of any other person, firm or entity or in any other capacity, do any of the following during the Non-solicitation Period:

(i) Directly or indirectly solicit any Client or Prospective Client for any commercial purpose that is not in the interest of the Company, including but not limited to, obtaining business from the Client or Prospective Client for a person or entity other than the Company or inducing the Client or Prospective Client to discontinue or diminish its relationship with the Company; and/or

(ii) Directly or indirectly—regardless of who initiates contact—do business with or provide services for any Client or Prospective Client; and/or

(iii) Directly or indirectly notify any Client or Prospective Client of the termination, or prospective termination, of Contractor's engagement with the Company for the purpose of notifying the Client or Prospective Client of Contractor's availability to provide services at any other location; and/or

(iv) Directly or indirectly solicit or induce any employee, agent, or independent contractor of the Company to discontinue his/her employment or business relationship with the Company; and/or

(v) Directly or indirectly solicit any vendor of the Company to discontinue or diminish its relationship with the Company.

(d) **Limited Waiver of Covenants under Exceptional Circumstances.** The Company may consider modifying and/or waiving the restrictive covenants in this Agreement in exceptional circumstances in which the Company determines—in its sole discretion—that certain activities in which the Contractor might engage, which may otherwise technically violate the restrictive covenants herein, would not significantly harm the Company's legitimate, protectible interests. Any such request for modification or waiver must be in writing and can only be authorized in writing signed by the Company's Founder.

(e) **Fairness of Covenants.** Contractor agrees that the duration and scope of activities restricted under these restrictive covenants are reasonable and necessary to protect the Company's legitimate business interests. If any court determines that these provisions or any portion of these provisions are unenforceable because of the duration or scope of activities restricted hereunder, such court shall have the power to and shall reduce such duration or scope to the maximum allowed by applicable law. In its reduced form, such provision shall then be enforced and Contractor shall abide by such provisions as altered.

(f) **Extension of Covenants.** In the event of Contractor's breach of any of Contractor's obligations under these restrictive covenants, the periods stated under such restrictive covenants shall be automatically extended for the same amount of time during which Contractor was in breach.

11. **ENFORCEMENT; REMEDIES.** Contractor acknowledges that if Contractor breaches any obligation under this Agreement, including a breach of provisions regarding confidentiality or non-solicitation, the Company will suffer immediate and irreparable harm and damage and that a remedy at law would be inadequate. Contractor therefore agrees that upon such breach or threatened breach of any obligation under this Agreement, in addition to any and all legal remedies, Company shall be entitled to any injunctive relief available without the posting of a bond or other security, in order to prevent or restrain any such breach by Contractor or by Contractor's partners, agents, representatives, employees, affiliates and/or any and all persons directly or indirectly acting for or with Contractor. This paragraph shall not be construed as an election of any remedy, or as a waiver of any right available to Company under this Agreement or the law, including the right to seek damages from Contractor for a breach of any provision of this Agreement.

12. **SEVERABILITY.** If any part of this Agreement violates any statute or public policy, that part will have no effect, and the rest of the Agreement shall be fully enforceable. If any part of this Agreement is unenforceable, the court shall narrow its scope and then enforce that part to the maximum effect permissible. The term "Company" wherever used herein includes any current or future subsidiaries or affiliates of the Company.

13. **FINAL AGREEMENT.** This Agreement, including all Work Orders and addenda signed by Company and Contractor, constitutes the final complete and exclusive agreement between the Company and Contractor concerning the subject matter of this Agreement. Any modification, rescission or amendment of this Agreement shall not be effective unless made in a writing executed by both parties.

14. **WAIVER.** Any waiver of, or promise not to enforce, any right under this Agreement shall not be enforceable unless evidenced by a writing signed by the party making said waiver or promise. No claim nor right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless said waiver or renunciation is evidenced by writing signed by the aggrieved party. Any waiver or renunciation by a party of any claim or right arising out of a breach by the other party of any provision of this Agreement shall not be deemed a waiver or renunciation of any claim or right arising out of a subsequent breach of the same provision and shall not affect said other party's obligation to comply with the same provision in the future.

15. **ATTORNEYS' FEES.** If any party is required to bring any action to enforce the terms of this Agreement, the prevailing party will be entitled to attorneys' fees.

16. **HEADINGS.** The subject headings of this Agreement are included for purposes of convenience only, and shall not affect the construction of any of the provisions of this Agreement.

17. **TERM AND TERMINATION.** The term of this Agreement shall be from its execution by both parties until its termination. This Agreement may be terminated at any time by either party for any reason or no reason.

18. **APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wyoming, without regard to conflicts of law. Any dispute concerning this Agreement must be brought in the state or federal courts located in Wyoming.

Company and Contractor have executed this Agreement to be effective as of the date first written above.

**OTTERSEC LLC:** DocuSigned by:

By:



96E7103AC67D406...

Printed Name: Robert Chen

Title:

Founder

**CONTRACTOR:** DocuSigned by:

By:



4A34491717F6470...

Printed Name: Andrei Kotliarov

Address:

13972 Saddleview Drive, North Potomac MD

Email:

kotliarov.andrei123@gmail.com

## ADDENDUM TO CONTRACTOR SERVICES AGREEMENT

**THIS ADDENDUM** amends the **CONTRACTOR SERVICES AGREEMENT** ("Agreement") entered into between Contractor and the Company. All defined terms used in the Agreement are incorporated herein.

1. **CONSIDERATION.** As additional consideration for entering into the Agreement, and notwithstanding Paragraph 17 of the Agreement, for a period of 90 days after Contractor signs this Addendum, Company may only terminate the Agreement for Cause as defined in this Addendum. Upon the expiration of the 90-day period after Contractor signs this Addendum, however, Paragraph 17 of the Agreement shall again be operative, and Company may terminate the Agreement for any reason or no reason.
2. **CAUSE.** The term "Cause" shall mean any of the following: (i) willful misconduct or gross negligence in performance of the Services; (ii) a material breach of the provisions of the Agreement; (iii) repeated failure to perform one or more of Contractor's essential duties and responsibilities under the Agreement; or (iv) indictment or conviction of, or a plea of nolo contendere by, Contractor for a (A) a felony or (B) a crime involving moral turpitude.

This addendum is executed on the 4/10/2022.

**OTTERSEC LLC:** DocuSigned by:

By:

 Robert Chen

90E7103AC07D400...

Printed Name: Robert Chen

Title:

Founder

**CONTRACTOR:** DocuSigned by:

By:

 Andrei Kotliarov

4A34491717F6470...

Printed Name: Andrei Kotliarov

Address:

13972 Saddleview Dr, North Potomac MD

Email: kotliarov.andrei123@gmail.com

*Remainder of page intentionally left blank*

**EXHIBIT G**

## CONTRACTOR SERVICES AGREEMENT

**THIS CONTRACTOR SERVICES AGREEMENT** ("Agreement") is entered into on this 4/11/2022 by and between OtterSec LLC, a Wyoming limited liability company (the "Company"), and the person or entity identified as Contractor in the signature line below ("Contractor").

1. **INTRODUCTION.** The Company and Contractor agree that Contractor shall provide the services described in the Work Order attached hereto (the "Services") to the Company pursuant to this Agreement. Company and Contractor may agree to additional Work Orders during the term of this Agreement. All such Work Orders shall be incorporated into this Agreement and made a part hereto.
2. **NON-EXCLUSIVE SERVICES.** During the term of this Agreement, Contractor may perform services for other persons or entities; provided, however, that until the termination of this Agreement, Contractor shall ensure that there is no conflict between the performance of the Services for the Company and any services performed by Contractor for any other person or entity. Contractor hereby represents and warrants that it is customarily engaged in an independently established trade, occupation, profession, or business, and that it advertises for its independent business or trade. Contractor further represents and warrants that it has not and will not receive any training directly from Company and that it is contracting only to complete specifically identified projects.
3. **COMPENSATION.** The Company agrees to pay, and Contractor agrees to accept, the amounts described in the applicable Work Order as full and complete compensation for the Services ("Compensation"), plus reimbursement for expenses as set forth below. Contractor agrees to submit invoices to the Company on a semi-monthly basis for Services rendered during that time period. Invoices must include a complete and accurate record of all time Contractor spent in performing the Services.
4. **EXPENSES.** Contractor will be reimbursed for such expenses that are incurred in connection with the performance of Services only if such expenses are approved in advance in writing by an authorized representative of the Company. Contractor agrees to include in Contractor's semi-monthly invoices a record of all expenses, with receipts, for all expenses incurred in performing the Services for which Contractor seeks reimbursement.
5. **INDEPENDENT CONTRACTOR.** It is understood and agreed, and it is the express intention of the parties, that the relationship between the Company and Contractor at all times be that of an "independent contractor" and not that of an employee, agent, joint venturer or partner of the Company for any purpose whatsoever. Contractor will determine the method, details and means of performing the Services, is not subject to control by the Company in performing the Services, and is free to exercise Contractor's own professional judgment with respect to the manner in which Contractor provides the Services so long as the Services are performed to the best of Contractor's ability, in accordance with applicable law and in a competent and professional manner consistent with the representations and warranties set forth in this Agreement. Contractor acknowledges and agrees that the Company shall not deduct any amount for withholding, unemployment, Social Security, or other taxes from the Compensation as the Company would in the case of an employee, and Contractor further acknowledges and agrees that Contractor shall not have any claim under this Agreement for overtime pay, sick leave, holiday or vacation pay, retirement benefits, worker's compensation benefits, or employee benefits of any kind from the Company. Contractor acknowledges and agrees that Contractor is obligated to report as income all Compensation received by Contractor pursuant to this Agreement, and Contractor agrees to, and acknowledges, the obligation to pay all employment and other taxes due as a result of receiving payment for performing Services. Neither party may bind the other to any agreement with another party. Any access to the Company's premises granted to Contractor will not be construed as indicating that Contractor is an employee of the Company or that Contractor has the rights of a Company employee.
6. **WORK SCHEDULE AND LOCATION.** Contractor retains complete discretion in setting his/her work schedule and location, provided, however, that Company's expectation is that the Services are completed in a timely manner and that Contractor agrees not to work in excess of 40 hours per week on behalf of Company without prior written consent from Company. Contractor shall be permitted to refuse to perform Services in Contractor's sole discretion.
7. **EQUIPMENT.** Contractor possesses and will supply all tools and equipment necessary to perform the Services.
8. **CONFIDENTIAL INFORMATION.** During the term of this Agreement, Contractor has or will receive information that is proprietary and confidential to the Company ("Confidential Information"), including but not limited to customer lists and names,

customer information, vendors, intellectual property, inventions, discoveries, financial information, policies, procedures, operations, plans, methods of doing business, strategic plans, computer systems and finances, intellectual property (whether or not reduced to writing and in any and all stages of development), information, data, trade secrets, know-how, ideas, processes, computer programs, source code, flowcharts, logic diagrams, pricing policies, forecasts, research, designs, drawings, formulas, marketing techniques and plans, and anything else of a similar nature. The term "Confidential Information" as used herein shall encompass all such information in all forms (*i.e.* electronic, written or oral) whether it originates from the Company or from third parties that have shared such Confidential Information with the Company and/or Contractor.

(a) **Confidential Information of Third Parties.** Contractor understands that, from time to time, Confidential Information may be submitted to the Company by third parties (*i.e.* by other persons or entities) and that said Confidential Information falls within the scope of this Agreement. Contractor further understands that as a condition for receiving said Confidential Information, the Company may enter into an agreement with said third party restricting or prohibiting use, transfer or disclosure of said Confidential Information. Contractor agrees to respect any such agreement and to avoid any action or inaction that is inconsistent with the obligations lawfully imposed on the Company thereunder and to treat said Confidential Information with the same (or greater) degree of care than is afforded to the Company's Confidential Information addressed herein.

(b) **Delivery of Confidential Information on Termination of Agreement.** Contractor agrees that all Confidential Information which Contractor creates or to which Contractor has access as a result of Contractor's performance of the Services is, and shall remain, the sole and exclusive property of the Company. In addition, all documents, records and files, in any media of whatever kind and description, relating to the business, present or otherwise, of the Company and any copies, in whole or in part, thereof (collectively, the "Documents"), whether or not prepared by Contractor, are and shall remain the sole and exclusive property of the Company. Upon the termination of this Agreement for any reason, and at such other times as may be specified by the Company, Contractor shall immediately deliver to the Company any and all Confidential Information and Documents (and all copies thereof including, without limitation, all electronically stored versions) and all other property of the Company then in Contractor's possession or under Contractor's control. Contractor agrees that Contractor will not copy Company information to personal devices and/or accounts without written authorization from the Company and, that even with authorization, Contractor must delete and/or remove such copied information upon request by the Company.

(c) **No Use or Disclosure of Confidential Information.** Except as necessary in the performance of the Services or as expressly authorized in writing by the Company, Contractor shall not directly or indirectly: (a) disclose, reveal or make available any Confidential Information to any other person or entity; (b) aid, encourage or allow any other person or entity to gain possession of or access to any Confidential Information; (c) use, sell, transfer or exploit any Confidential Information or aid, encourage or allow any other person or entity to use, sell or exploit any Confidential Information; (d) exercise judgment or perform analysis based upon knowledge of Confidential Information; or (e) otherwise enter into any agreement or understanding (oral or written) with any party, or otherwise circumvent, avoid, bypass, and/or obviate the Company with respect to its relationship with any party whose identity is Confidential Information, including any work to be performed by the Company with respect thereto. This Paragraph shall survive the expiration of this Agreement.

(d) **Immunity.** Pursuant to 18 U.S.C. § 1833(b), an individual shall not be held criminally liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Nothing in this Agreement is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b). An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

9. **WORK FOR HIRE.** Contractor expressly agrees that everything Contractor creates, writes or develops in the course of providing the Services shall be "works made for hire" as defined by U.S. copyright law and the property of the Company, including all inventions, technology, programs, text, ideas, computer code, processes, trade secrets, techniques, operating ideas, Confidential Information, processes and materials, whether or not published, patented, copyrighted, registered or suitable therefor, and all intellectual property rights therein, that are made, developed, written, conceived or first reduced to practice by Contractor in part or in whole, whether alone or with others, during the term of this Agreement, to the extent they relate to the Company's business (including future or anticipated business) or are developed using the Company's time, equipment or materials (collectively, "Works"). To the extent such "work for hire" doctrine may be legally inapplicable for any reason, Contractor hereby assigns

to the Company all right, title and interest in the Works, including all rights of patent, trademark, copyright and other intellectual property rights, and agrees to execute at the Company's request subsequent documents as further evidence of this assignment. Contractor further assigns to the Company all right, title and interest in any invention, patentable or not, made or conceived solely or jointly during the course of developing the Services. Contractor also agrees to assist the Company, at the Company's expense, as reasonably requested in any efforts the Company may make to obtain a patent or other intellectual property protection with respect to the Works or any portion thereof. If Contractor has any rights to the Works that cannot be assigned to the Company, during the term of such rights Contractor unconditionally and irrevocably grants to the Company an exclusive, irrevocable, perpetual, worldwide, fully-paid and royalty-free license, with rights to sublicense through multiple levels of sublicensees, to reproduce, create derivative works of, distribute, publicly perform and publicly display, by all means now known or later developed, such rights and to use, make, have made, or offer for sale, by all means now known or later developed, such rights. Contractor agrees to promptly disclose the existence, use and manner of operation of any Works to the Company. For the avoidance of doubt, the parties hereto acknowledge and agree that (a) the term "Works" shall not include any of the foregoing created prior to the date hereof or any tools, methodologies, architecture, code, programs or processes used to create the Works, and (b) Contractor possesses certain skills, knowledge, know-how, experience, techniques, methods and tools by which Contractor performs services and none of such shall be deemed Works.

(a) **Ownership of Rights.** The Company shall be the sole owner of the Works and all rights therein throughout the world, including without limitation all intellectual property rights therein. Contractor specifically waives any and all "artist's rights" or "moral rights" Contractor may have with respect to the Works pursuant to any law or statute. Contractor and the Company agree that the Services and Works provided to the Company pursuant to this Agreement may be used by the Company in its sole discretion.

(b) **Warranties.** Contractor represents and warrants (a) that the Works provided by Contractor to the Company are and shall be Contractor's original work and will not infringe any copyright or other intellectual property rights of any third party, invade any right of privacy, contain any libelous material, or infringe or violate any other right of any third party; (b) that Contractor is able to perform the Services specified in this Agreement and does not have any understanding or agreement with anyone else which restricts Contractor's ability to perform such Services; and (c) that any Services Contractor provides and Works Contractor develops for or discloses to the Company will not in any way be based upon confidential or proprietary information derived from any source other than the Company, unless Contractor is specifically authorized in writing by such source and by the Company to use such proprietary information.

## 10. **RESTRICTIVE COVENANTS.**

(a) **Definitions.** The following defined terms shall be used in these restrictive covenants:

"Restricted Area" shall be worldwide. Employee understands and agrees that this broad Restricted Area is necessary, given that the Company operates online, and its Clients may be located anywhere in the world

"Client" shall mean any person or entity that has a business relationship with the Company such that the Company provides services to the person or entity.

"Prospective Client" shall mean any person or legal entity that has sent or received communication to or from the Company at any time within one year prior to the termination of this Agreement, or at any time during the Non-solicitation Period, regarding the possibility of becoming a Client. Prospective Clients shall include former Clients, to the extent they satisfy the definition above as a Prospective Client.

"Non-solicitation Period" shall mean the period of time during the term of this Agreement and for two years following the termination this Agreement for any reason.

(b) **Non-Competition.** The business of the Company is highly competitive, and Contractor shall have direct access to the Company's customers and Confidential Information. Due to Contractor's access to Company's Confidential Information, the Company's business and its ability to retain clients and attain its goals could be materially jeopardized and irreparably and continually damaged if Contractor competes with the Company or assist other persons to compete with the Company. Accordingly, in consideration of the Company compensating Contractor as an independent contractor, Contractor shall abide by the non-competition restrictions contained herein and acknowledges that they are reasonable and necessary for the protection of the immediate interests of the Company and that any violation of these restrictions could cause substantial injury to the

Company. During Contractor's time as an independent contractor of the Company and for a period of one year following the termination of this Agreement for any reason, Contractor shall not—either directly or indirectly—without the express written permission of the Company, be employed by, own, manage, operate, contract with, consult for, control, have any financial interest in, or lend his/her name to any person or entity engaged in, a business or enterprise that competes with the Company within the Restricted Area. Contractor shall not undertake any planning for any outside business that will engage in a business competitive with the Company within the Restricted Area.

(c) **Non-solicitation.** As an inducement to the Company to enter into this Agreement, Contractor shall not, without the Company's prior written consent, on his/her own account or as an employee, agent, or independent contractor of any other person, firm or entity or in any other capacity, do any of the following during the Non-solicitation Period:

(i) Directly or indirectly solicit any Client or Prospective Client for any commercial purpose that is not in the interest of the Company, including but not limited to, obtaining business from the Client or Prospective Client for a person or entity other than the Company or inducing the Client or Prospective Client to discontinue or diminish its relationship with the Company; and/or

(ii) Directly or indirectly—regardless of who initiates contact—do business with or provide services for any Client or Prospective Client; and/or

(iii) Directly or indirectly notify any Client or Prospective Client of the termination, or prospective termination, of Contractor's engagement with the Company for the purpose of notifying the Client or Prospective Client of Contractor's availability to provide services at any other location; and/or

(iv) Directly or indirectly solicit or induce any employee, agent, or independent contractor of the Company to discontinue his/her employment or business relationship with the Company; and/or

(v) Directly or indirectly solicit any vendor of the Company to discontinue or diminish its relationship with the Company.

(d) **Limited Waiver of Covenants under Exceptional Circumstances.** The Company may consider modifying and/or waiving the restrictive covenants in this Agreement in exceptional circumstances in which the Company determines—in its sole discretion—that certain activities in which the Contractor might engage, which may otherwise technically violate the restrictive covenants herein, would not significantly harm the Company's legitimate, protectible interests. Any such request for modification or waiver must be in writing and can only be authorized in writing signed by the Company's Founder.

(e) **Fairness of Covenants.** Contractor agrees that the duration and scope of activities restricted under these restrictive covenants are reasonable and necessary to protect the Company's legitimate business interests. If any court determines that these provisions or any portion of these provisions are unenforceable because of the duration or scope of activities restricted hereunder, such court shall have the power to and shall reduce such duration or scope to the maximum allowed by applicable law. In its reduced form, such provision shall then be enforced and Contractor shall abide by such provisions as altered.

(f) **Extension of Covenants.** In the event of Contractor's breach of any of Contractor's obligations under these restrictive covenants, the periods stated under such restrictive covenants shall be automatically extended for the same amount of time during which Contractor was in breach.

11. **ENFORCEMENT; REMEDIES.** Contractor acknowledges that if Contractor breaches any obligation under this Agreement, including a breach of provisions regarding confidentiality or non-solicitation, the Company will suffer immediate and irreparable harm and damage and that a remedy at law would be inadequate. Contractor therefore agrees that upon such breach or threatened breach of any obligation under this Agreement, in addition to any and all legal remedies, Company shall be entitled to any injunctive relief available without the posting of a bond or other security, in order to prevent or restrain any such breach by Contractor or by Contractor's partners, agents, representatives, employees, affiliates and/or any and all persons directly or indirectly acting for or with Contractor. This paragraph shall not be construed as an election of any remedy, or as a waiver of any right available to Company under this Agreement or the law, including the right to seek damages from Contractor for a breach of any provision of this Agreement.

12. **SEVERABILITY.** If any part of this Agreement violates any statute or public policy, that part will have no effect, and the rest of the Agreement shall be fully enforceable. If any part of this Agreement is unenforceable, the court shall narrow its scope and then enforce that part to the maximum effect permissible. The term "Company" wherever used herein includes any current or future subsidiaries or affiliates of the Company.

13. **FINAL AGREEMENT.** This Agreement, including all Work Orders and addenda signed by Company and Contractor, constitutes the final complete and exclusive agreement between the Company and Contractor concerning the subject matter of this Agreement. Any modification, rescission or amendment of this Agreement shall not be effective unless made in a writing executed by both parties.

14. **WAIVER.** Any waiver of, or promise not to enforce, any right under this Agreement shall not be enforceable unless evidenced by a writing signed by the party making said waiver or promise. No claim nor right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless said waiver or renunciation is evidenced by writing signed by the aggrieved party. Any waiver or renunciation by a party of any claim or right arising out of a breach by the other party of any provision of this Agreement shall not be deemed a waiver or renunciation of any claim or right arising out of a subsequent breach of the same provision and shall not affect said other party's obligation to comply with the same provision in the future.

15. **ATTORNEYS' FEES.** If any party is required to bring any action to enforce the terms of this Agreement, the prevailing party will be entitled to attorneys' fees.

16. **HEADINGS.** The subject headings of this Agreement are included for purposes of convenience only, and shall not affect the construction of any of the provisions of this Agreement.

17. **TERM AND TERMINATION.** The term of this Agreement shall be from its execution by both parties until its termination. This Agreement may be terminated at any time by either party for any reason or no reason.

18. **APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wyoming, without regard to conflicts of law. Any dispute concerning this Agreement must be brought in the state or federal courts located in Wyoming.

Company and Contractor have executed this Agreement to be effective as of the date first written above.

**OTTERSEC LLC:** DocuSigned by:

By:



96E7103AC67D406...

Printed Name: Robert Chen

Title:

Founder

**CONTRACTOR:** DocuSigned by:

By:



D6DT55679AEF44F...

Printed Name: William Wang

Address:

9706 Watts Branch Dr, Rockville, MD 20850

Email:

defund@protonmail.com

**ADDENDUM TO CONTRACTOR SERVICES AGREEMENT**

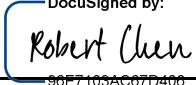
**THIS ADDENDUM** amends the **CONTRACTOR SERVICES AGREEMENT** ("Agreement") entered into between Contractor and the Company. All defined terms used in the Agreement are incorporated herein.

1. **CONSIDERATION.** As additional consideration for entering into the Agreement, and notwithstanding Paragraph 17 of the Agreement, for a period of 90 days after Contractor signs this Addendum, Company may only terminate the Agreement for Cause as defined in this Addendum. Upon the expiration of the 90-day period after Contractor signs this Addendum, however, Paragraph 17 of the Agreement shall again be operative, and Company may terminate the Agreement for any reason or no reason.
2. **CAUSE.** The term "Cause" shall mean any of the following: (i) willful misconduct or gross negligence in performance of the Services; (ii) a material breach of the provisions of the Agreement; (iii) repeated failure to perform one or more of Contractor's essential duties and responsibilities under the Agreement; or (iv) indictment or conviction of, or a plea of nolo contendere by, Contractor for a (A) a felony or (B) a crime involving moral turpitude.

This addendum is executed on the 4/11/2022.

**OTTERSEC LLC:** DocuSigned by:

By:

  
Robert Chen

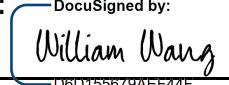
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Printed Name: Robert Chen

Title: Founder

**CONTRACTOR:** DocuSigned by:

By:

  
William Wang

D6D155679AEF44F...

Printed Name: William Wang

Address: 9706 Watts Branch Dr, Rockville, MD 20850

Email: defund@protonmail.com

*Remainder of page intentionally left blank*

## **EXHIBIT H**



# Ellipsis Labs

# Audit

---

Presented by:



**OtterSec**

**Robert Chen**

**William Wang**

**Nicola Vella**

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# 01 | Executive Summary

## Overview

Ellipsis Labs engaged OtterSec to perform an assessment of the phoenix program. This assessment of the source code was conducted between January 9th and February 8th, 2023. For more information on our auditing methodology, see [Appendix C](#).

Critical vulnerabilities were communicated to the team prior to the delivery of the report to speed up remediation. After delivering our audit report, we worked closely with the team to streamline patches and confirm remediation. We delivered final confirmation of the patches February 8th, 2023.

## Key Findings

Over the course of this audit engagement, we produced 9 findings total. For a more detailed discussion of our analysis, see [Discussion](#).

In particular, we found a Rust soundness issue in the core red-black tree implementation ([OS-EPS-ADV-00](#)). While this does not have immediate implications for the onchain orderbook, independent users of the library could experience undefined behavior.

We also noted a number of denial of service scenarios ([OS-EPS-ADV-02](#), [OS-EPS-ADV-03](#)).

In addition, we provided recommendations around validating critical invariants ([OS-EPS-SUG-00](#)), optimizing data structures ([OS-EPS-SUG-01](#)), and general code quality to improve resilience.

Overall, we commend the Ellipsis Labs team for being responsive and knowledgeable. The codebase was well written, documented, and tested prior to our audit with clear attention to detail.

## 02 | Scope

A brief description of the programs and scopes is as follows.

Name	Description
phoenix	On-chain, crankless orderbook built on top of sokoban. We reviewed <a href="https://github.com/Ellipsis-Labs/phoenix-v1">github.com/Ellipsis-Labs/phoenix-v1</a> commit ee9cc03.
phoenix-seat-manager	On-chain program which automatically manages seats for markets on the Phoenix protocol. We reviewed <a href="https://github.com/Ellipsis-Labs/phoenix-seat-manager">github.com/Ellipsis-Labs/phoenix-seat-manager</a> commit e9630fc
sokoban	Memory-efficient data structures library. For this engagement, we focused our analysis on the red black tree and node allocator. We reviewed <a href="https://github.com/Ellipsis-Labs/sokoban">github.com/Ellipsis-Labs/sokoban</a> commit 9a7c2d0.
ellipsis-macros	Miscellaneous macros for Solana program code, primarily intended for use by phoenix. We reviewed <a href="https://github.com/Ellipsis-Labs/ellipsis-macros">github.com/Ellipsis-Labs/ellipsis-macros</a> commit 142c920.
phoenix-sdk	Core SDK for interacting with the Phoenix onchain orderbook, built on ellipsis-client. We reviewed <a href="https://github.com/Ellipsis-Labs/phoenix-sdk">github.com/Ellipsis-Labs/phoenix-sdk</a> commit a92a875.
ellipsis-client	Lightweight unified interface around RPC and BanksClient. We reviewed <a href="https://github.com/Ellipsis-Labs/ellipsis-client">github.com/Ellipsis-Labs/ellipsis-client</a> commit 1b5168d.

As part of this audit, we also provided proofs of concept to demonstrate certain scenarios. In particular, see our [Adversarial Eviction POC](#).

## 03 | Discussion

As part of this engagement, we evaluated the onchain program and data structures for a variety of issues. Drawing on our work with previous orderbooks such as Serum, we are able to make important parallels to our past engagements. While we are unable to document all of our discussions, we include the important ones here.

### **Adversarial Eviction**

Part of our analysis focused on the design of the orderbook. One interesting feature which we analyzed heavily was eviction behavior when the orderbook was filled. We also provided a proof of concept to fully demonstrate this behavior in [Adversarial Eviction POC](#).

This behavior is mitigated by two main factors. First, makers on the book need to have their seats explicitly reserved, making them semi-trusted. Second, phoenix allows for large configurations of up to 4096 orders, making clearing the orderbook relatively expensive for adversaries.

### **Data Structure Concerns**

One subcomponent of this audit was ensuring that the data structures operated as intended. This has implications both for phoenix and also as an independent library. We sought to ensure that both use cases were sound.

Here we noted a critical issue in the Rust soundness of the red-black tree ([OS-EPS-ADV-00](#)). We also made suggestions around improving data structure efficiency ([OS-EPS-SUG-01](#)).

### **Denial of Service**

We preface this section by noting that it is difficult to fully evaluate a program for denial of service issues. We applied a best-effort analysis to try and find critical areas where the program might not have performed sufficient validation of data inputs and unintentionally abort. We noted two potential issues here, [OS-EPS-ADV-02](#) and [OS-EPS-ADV-03](#).

### **Solana Specific Issues**

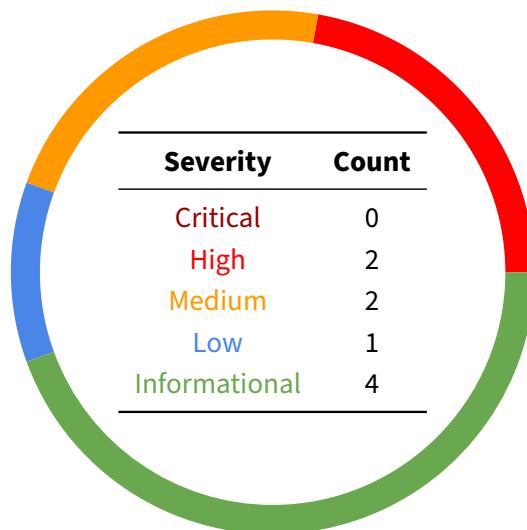
One other area we looked into was quirks with the Solana VM that the Ellipsis team overlooked or was unaware of. This includes various behaviors around account creation or reallocation, of which we've reported [novel bugs around](#).

In particular, a quirk with Solana account creation ended up being the root cause of [OS-EPS-ADV-02](#).

## 04 | Findings

Overall, we report 9 findings.

We split the findings into **vulnerabilities** and **general findings**. Vulnerabilities have an immediate impact and should be remediated as soon as possible. General findings don't have an immediate impact but will help mitigate future vulnerabilities.



## 05 | Vulnerabilities

Here we present a technical analysis of the vulnerabilities we identified during our audit. These vulnerabilities have *immediate* security implications, and we recommend remediation as soon as possible.

Rating criteria can be found in [Appendix B](#).

<b>ID</b>	<b>Severity</b>	<b>Status</b>	<b>Description</b>
OS-EPS-ADV-00	High	Resolved	In Sokoban, the critbit, AVL tree, and red-black tree do not correctly implement Rust's DoubleEndedIterator trait.
OS-EPS-ADV-01	High	Resolved	Phoenix SDK parses all transactions, even those with errors. This can allow an attacker to spoof log transactions by manually calling the Phoenix program.
OS-EPS-ADV-02	Medium	Resolved	Edge case during account creation with extra lamports causes denial of service.
OS-EPS-ADV-03	Medium	Resolved	Overflows can occur during normal operation of the order-book under certain parameter configurations.
OS-EPS-ADV-04	Low	Resolved	In the phoenix-seat-manager, lack of checks when claiming the market authority could potentially result in a seat eviction DOS vulnerability.

## OS-EPS-ADV-00 [high] [resolved] | Invalid DoubleEndedIterator Trait Implementations

### Description

The critbit, AVL tree, and red-black tree do not correctly implement Rust's `DoubleEndedIterator` trait, which is described [here](#).

For instance, the red-black tree iterator's `next` and `next_back` method will cross each other, "double-counting" each element. This does not follow the spec, and can even be unsafe: when using `iter_mut`, one can obtain multiple mutable references to the same value.

RUST

```
let mut rbtree = RedBlackTree::<u64, u64, 100>::new();
rbtree.insert(0, 0);
rbtree.insert(1, 0);

let mut iter = rbtree.iter_mut();
let x: &mut u64 = iter.next().unwrap().1;
let y: &mut u64 = iter.next().unwrap().1;

*x = 1337;
assert_eq!(y, 1337);
```

### Remediation

Rewrite `next` and `next_back` so that they do not cross each other, or remove the implementations of `DoubleEndedIterator` altogether.

### Patch

Resolved in [#11](#).

## OS-EPS-ADV-01 [high] [resolved] | SDK Transaction Spoofing

### Description

When parsing events from transactions, the Phoenix SDK iterates over all the inner instructions to try and parse out `PhoenixInstruction::Log` instructions. Unfortunately, this loop fails to return when the transaction has errored, as specified in the `is_err` field.

*sdk\_client.rs*

RUST

```
for inner_iks in tx.inner_instructions.iter() {  
    for inner_ix in inner_iks.iter() {  
        let current_program_id = inner_ix.instruction.program_id.clone();  
        if current_program_id != phoenix::id().to_string() {  
            continue;  
        }  
        if inner_ix.instruction.data.is_empty() {  
            continue;  
        }  
    }  
}
```

If a malicious user were to manually invoke the Phoenix program from a separate onchain program, inaccurate log events could be subsequently processed in `parse_phoenix_events`.

In conjunction with [OS-EPS-SUG-02](#), this could lead to a denial of service condition for users of the SDK.

### Remediation

Check if the transaction was successfully completed, and if not, skip processing of the transaction.

### Patch

Resolved in [#50](#).

## OS-EPS-ADV-02 [med] [resolved] | Account Creation DOS

### Description

Account creation primitives in phoenix will error if the account already has lamports.

This could, for example, allow an attacker to deny seat creation.

processor/manage\_seat.rs

RUST

```
let space = size_of::<Seat>();
invoke_signed(
    &system_instruction::create_account(
        payer.key,
        seat.key,
        Rent::get()?.minimum_balance(space),
        space.try_into().unwrap(),
        &crate::ID,
    ),
    &[payer.clone(), seat.clone(), system_program.clone()],
    &[&[b"seat", market_key.as_ref(), trader.as_ref(), &[bump]]],
```

### Remediation

Use transfer and allocate instead of create\_account similar to what [Anchor does](#).

RUST

```
// Fund the account for rent exemption.
// ...
// Allocate space.
// ...
// Assign to the spl token program.
```

### Patch

Resolved in [#1](#).

## OS-EPS-ADV-03 [med] [resolved] | Explicate Overflow Boundaries

### Description

Throughout phoenix, the largest numerical calculation occurs in the matching engine when calculating adjusted quote lots.

RUST

```
inflight_order.adjusted_quote_lot_budget =
    inflight_order.adjusted_quote_lot_budget.saturating_sub(
        self.tick_size_in_quote_lots_per_base_unit
            * order_id.price_in_ticks
            * num_base_lots_quoted,
    );
```

Note that adjusted quote lots are declared as a `basic_u64_struct` with an internal maximum u64 representation.

RUST

```
macro_rules! basic_u64_struct {
    ($type_name:ident) => {
        #[derive(Debug, Clone, Copy, PartialOrd, Ord, Zeroable, Pod)]
        #[repr(transparent)]
        pub struct $type_name {
            inner: u64,
        }

        basic_u64!($type_name);
    };
}
```

More concretely, let

1.  $q$  be the number of quote atoms transacted
2.  $b$  be the number of decimals in the base token
3.  $lots_q$  be quote atoms per lot
4.  $lots_b$  be base atoms per lot

This calculation will abort if

$$q * lots_q * lots_b * 10^b \geq 2^{64}$$

## Remediation

Because adjusted quote lots are multiplied by an additional factor of `base_lots_per_base_unit`, the maximum size can exceed the representable limit for `u64`.

Consider either increasing the internal representation for adjusted quote lots to `u128` or explicating constraints on lot sizes.

## Patch

The Ellipsis team acknowledges the issue and agrees to select parameters carefully with these constraints in mind. In particular, they note that upon large price fluctuations, new markets will likely be created, mitigating this issue for most practical usecases.

## OS-EPS-ADV-04 [low] [resolved] | Seat Eviction DOS

### Description

Upon claiming the market authority for a specified Phoenix market via the phoenix-seat-manager program, there is no check for the number of lamports in seat\_deposit\_collector.

This will cause subsequent executions of EvictSeat to fail due to missing funds.

### Remediation

In process\_claim\_market\_authority method, it should be verified that the seat\_deposit\_collector associated with the market possesses an adequate number of lamports to handle the rent for two TokenAccount for each seat currently occupied within the market.

### Patch

Resolved in [#15](#).

## 06 | General Findings

Here we present a discussion of general findings during our audit. While these findings do not present an immediate security impact, they represent antipatterns and could lead to security issues in the future.

ID	Description
OS-EPS-SUG-00	Consider stronger enforcement of critical orderbook invariants.
OS-EPS-SUG-01	The red-black tree's node removal algorithm can be slightly improved.
OS-EPS-SUG-02	Consider using explicit error handling over hard panics
OS-EPS-SUG-03	Use checked truncation over potentially unsafe typecasts

## OS-EPS-SUG-00 | Enforce Critical Orderbook Invariants

### Description

Certain phoenix functions could use additional validation.

For example, `process_multiple_new_orders` could ensure that quote and base lots to deposit is equal to zero if there are no bids or asks respectively.

```
processor/new_order.rs RUST

if !bids.is_empty() {
    maybe_invoke_deposit(***)?;
} // else assert quote_lots_to_deposit == 0
if !asks.is_empty() {
    maybe_invoke_deposit(***)?;
} // else assert base_lots_to_deposit == 0
```

In `process_cancel_orders`, withdrawn quantities could similarly be asserted to zero if context is `None`.

```
processor/cancel_multiple_orders.rs RUST

if let Some(PhoenixVaultContext {
    ...
}) = vault_context_option
{
    try_withdraw(***)?;
} // else assert num_base_lots_out == 0 && num_quote_lots_out == 0
```

### Remediation

Consider adding relevant asserts to ensure critical orderbook invariants.

## OS-EPS-SUG-01 | Red-Black Tree Optimization

As part of its balancing procedure, the red-black tree's `_remove_tree_node` method identifies a pivot node, which represents the subtree which has lost a black node. If the pivot node is also the root, the tree is already balanced. Otherwise, we invoke the `_fix_remove` method to balance the tree through rotations.

src/red\_black\_tree.rs

RUST

```
if self.is_root(pivot_node_index) {  
    self._color_black(pivot_node_index);  
} else {  
    self._fix_remove(pivot_node_index, parent_and_dir);  
}
```

However, notice that if the pivot node is red, we can color it black to immediately balance the red-black tree. This case is ignored in `_fix_remove` because it immediately begins traversing up the tree.

### Remediation

The `_remove_tree_node` should immediately color the node black if the pivot node is red.

```
if self.is_root(pivot_node_index) || self.is_red(pivot_node_index) {  
    self._color_black(pivot_node_index);  
} else {  
    self._fix_remove(pivot_node_index, parent_and_dir);  
}
```

## OS-EPS-SUG-02 | Improved SDK Error Handling

In multiple areas in the Phoenix SDK, hard panics are used for error handling when encountering unexpected conditions.

*sdk\_client\_core.rs*

RUST

```
let header = match header_event {  
    MarketEvent::Header { header } => Some(header),  
    _ => {  
        panic!("Expected a header event");  
    }  
}?:
```

*sdk\_client\_core.rs*

RUST

```
}),  
_ => {  
    panic!("Unexpected Event!");  
}  
}
```

As demonstrated in [OS-EPS-ADV-04](#), some of these invariants may be violated.

### Remediation

Manually log errors and return None instead of panicking.

## OS-EPS-SUG-03 | Potentially Unsafe Truncation

### Description

Phoenix uses unsafe typecasting to truncate integers. While we were unable to find a way to exploit these as is, it could lead to potentially unsafe behavior in a future refactor if integer bounds change.

```
markets/fifo.rs RUST

fn size_post_fee_adjustment(&self, size_in_adjusted_quote_lots:
    ↪ AdjustedQuoteLots) -> u64 {
    let fee_adjustment =
        ↪ self.compute_fee(AdjustedQuoteLots::MAX).as_u128() + u64::MAX as
        ↪ u128;
    (size_in_adjusted_quote_lots.as_u128() * u64::MAX as u128 /
    ↪ fee_adjustment) as u64
}
```

```
markets/fifo.rs RUST

fn compute_fee(&self, size_in_adjusted_quote_lots: AdjustedQuoteLots) ->
    ↪ AdjustedQuoteLots {
    AdjustedQuoteLots::new(
        ((size_in_adjusted_quote_lots.as_u128() * self.taker_fee_bps as
        ↪ u128 + 10000 - 1)
        / 10000) as u64,
    )
}
```

### Remediation

Use safe casting variants such as `try_from` over potentially unsafe `as` casting.

# A | Proofs of Concept

## Adversarial Eviction

RUST

```

fn test_malicious_eviction() {
    let mut empty_func = |_| {};
    let mut market = setup_market();
    let maker = 0;
    let trader = 1;

    for i in 1..5 {
        place_limit_order(
            &mut market,
            maker,
            100 + 10 * i,
            1000 + 100 * i,
            Side::Ask,
            &mut empty_func,
        )
        .unwrap();
    }
    print_ladder(&market);

    // place aggressive orders
    let mut order_ids = vec![];
    for _i in 0..BOOK_SIZE {
        if let (Some(order_id), _) =
            place_post_only_order(&mut market, trader, 105, 1, Side::Ask,
→         &mut empty_func).unwrap()
        {
            order_ids.push(order_id);
        } else {
            panic!("unreachable");
        }
    }
    for order_id in order_ids {
        cancel_order(
            &mut market,
            trader,
            &order_id,
            Side::Ask,
        )
    }
}

```

```
        true,
        &mut empty_func,
    )
    .unwrap();
}
print_ladder(&market);
}
```

## B | Vulnerability Rating Scale

We rated our findings according to the following scale. Vulnerabilities have immediate security implications. Informational findings can be found in the [General Findings](#) section.

**Critical** Vulnerabilities that immediately lead to loss of user funds with minimal preconditions

Examples:

- Misconfigured authority or access control validation
- Improperly designed economic incentives leading to loss of funds

**High** Vulnerabilities that could lead to loss of user funds but are potentially difficult to exploit.

Examples:

- Loss of funds requiring specific victim interactions
- Exploitation involving high capital requirement with respect to payout

**Medium** Vulnerabilities that could lead to denial of service scenarios or degraded usability.

Examples:

- Malicious input that causes computational limit exhaustion
- Forced exceptions in normal user flow

**Low** Low probability vulnerabilities which could still be exploitable but require extenuating circumstances or undue risk.

Examples:

- Oracle manipulation with large capital requirements and multiple transactions

**Informational** Best practices to mitigate future security risks. These are classified as general findings.

Examples:

- Explicit assertion of critical internal invariants
- Improved input validation

## C | Procedure

As part of our standard auditing procedure, we split our analysis into two main sections: design and implementation.

When auditing the design of a program, we aim to ensure that the overall economic architecture is sound in the context of an on-chain program. In other words, there is no way to steal funds or deny service, ignoring any chain-specific quirks. This usually requires a deep understanding of the program's internal interactions, potential game theory implications, and general on-chain execution primitives.

One example of a design vulnerability would be an on-chain oracle that could be manipulated by flash loans or large deposits. Such a design would generally be unsound regardless of which chain the oracle is deployed on.

On the other hand, auditing the implementation of the program requires a deep understanding of the chain's execution model. While this varies from chain to chain, some common implementation vulnerabilities include reentrancy, account ownership issues, arithmetic overflows, and rounding bugs.

As a general rule of sum, implementation vulnerabilities tend to be more “checklist” style. In contrast, design vulnerabilities require a strong understanding of the underlying system and the various interactions: both with the user and cross-program.

As we approach any new target, we strive to get a comprehensive understanding of the program first. In our audits, we always approach targets with a team of auditors. This allows us to share thoughts and collaborate, picking up on details that the other missed.

While sometimes the line between design and implementation can be blurry, we hope this gives some insight into our auditing procedure and thought process.

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

LI FEN YAO, as Administrator of the Estate of Sam  
Mingsan Chen,

Plaintiff,

Civil Action No. TDC-23-0889

-v-

ROBERT CHEN; OTTER AUDITS LLC; and  
RC SECURITY LLC,

Defendants.

**[PROPOSED] ORDER DENYING MOTION TO DISMISS  
COMPLAINT FOR LACK OF PERSONAL JURISDICTION**

Upon consideration of Defendants' Motion to Dismiss the Complaint for Lack of Personal Jurisdiction, including all papers submitted by the defendants in support thereof, by the plaintiff in opposition thereto, and by the defendant in reply it is hereby ORDERED on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, that Defendants' Motion to Dismiss the Complaint for Lack of Personal Jurisdiction is denied.

SO ORDERED.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Hon. Theodore D. Chuang  
United States District Judge