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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

Case No. BC626780

[Assigned to Hon. S. Bruguera]

BROGAN BAMBROGAN, an individual;  
KNUT SAUER, an individual; DAVID  
PENDERGAST, an individual; and  
WILLIAM MULHOLLAND, an individual,

Plaintiffs and Cross-  
Defendants,

v.

HYPERLOOP TECHNOLOGIES, INC.  
(d/b/a HYPERLOOP ONE), a Delaware  
corporation; SHERVIN PISHEVAR, an  
individual; JOSEPH LONSDALE, an  
individual; ROBERT LLOYD, an individual;  
AFSHIN PISHEVAR, an individual; and  
DOES 1-50,

Defendants and Cross-  
Claimant Hyperloop One

**CROSS-COMPLAINT FOR:**

- 1) **Breach of Non-Solicitation Agreement**
- 2) **Breach of Non-Compete Agreement**
- 3) **Breach of Confidential Information Agreement**
- 4) **Breach of Proprietary Information Agreement**
- 5) **Breach of Non-Disparagement Agreement**
- 6) **Breach of Fiduciary Duty**
- 7) **Breach of Duty of Loyalty**
- 8) **Breach of the Faithless Servant Doctrine**
- 9) **Intentional Interference with Contractual Relations**
- 10) **Violation of California Business and Professions Code § 17200, et seq.**

**JURY TRIAL REQUESTED**

1 Cross-Claimant Hyperloop One (“Hyperloop One” or the “Company”) brings this Cross-  
2 Complaint against Plaintiffs and Cross-Defendants Brogan BamBrogan, David Pendergast, Knut  
3 Sauer, and William Mulholland (collectively, “Cross-Defendants”), as follows:

4 **SUMMARY OF ACTION**

5 1. Hyperloop One is an innovative technology company that is developing a  
6 revolutionary transportation network—the Hyperloop—that will change the world of travel forever.  
7 By using linear electric motors to propel levitated vehicles through pressure-reduced vacuum tubes,  
8 Hyperloop One aims to transport people and cargo through Hyperloop networks around the world at  
9 nearly the speed of sound with little direct emissions or noise. In just two years, the Company has  
10 raised over \$100 million from leading Silicon Valley investment firms and investors across the globe  
11 that support the bold mission of Hyperloop One. The Company has dozens of pending patent  
12 applications and strong protections over its valuable intellectual property developed by its world-  
13 class engineers. With 160 employees—including some of the best and brightest engineers working in  
14 technology today—Hyperloop One has already demonstrated that it has a team capable of building  
15 the Hyperloop, and in the process, change transportation forever.

16 2. This action arises from an illegal and failed plot by four former Hyperloop One  
17 employees to take over the Company through a coordinated coup. As will be addressed in detail in  
18 the factual allegations below, each of these four employees was on notice for poor performance and  
19 had good reason to believe his days at the Company were numbered. In pursuing their botched  
20 power grab, the four leaders of the coup—Cross-Defendants Brogan BamBrogan, David Pendergast,  
21 William Mulholland, and Knut Sauer, referred to in this Cross-Complaint as the “Gang of Four” or  
22 the “Gang”—engaged in gross misconduct toward the Company and their fellow employees, putting  
23 their own greed and personal interests ahead of the Company they were duty-bound to protect. When  
24 their ill-conceived plan failed, the Gang of Four set out to raid the Company’s workforce and launch  
25 a venture to compete with the Company—“Hyperloop Two” or “NewCo,” as the Gang members  
26 called it. BamBrogan went so far as to purchase one or more internet domain names for his planned  
27 new competing venture—including “hyperlooptoo.com,” which BamBrogan purchased the day  
28 before he and his co-conspirators announced their insurrection. Then, when their coup failed, the

1 Gang of Four filed a sham complaint in this Court (the “Sham Complaint”) filled with lies and half-  
2 truths, and followed with a malicious smear campaign in the media. The Sham Complaint was not  
3 filed to vindicate legitimate legal claims; it was a preemptive strike, crass media ploy, and last-ditch  
4 effort to damage the Company the Gang of Four so desperately sought to control—or compete  
5 against.

6 3. The Gang of Four staged their unlawful plot in bad faith. Each member was legally  
7 obligated to act in the best interests of his employer with undivided fidelity and loyalty. Instead, the  
8 Gang members combined and conspired to do the opposite, manufacturing a rebellion and inciting  
9 conflict in a transparent attempt to seize control of the Company and enrich themselves at the  
10 expense of the Company, its employees, and its investors. And then, when their gambit failed, the  
11 Gang launched Plan B—attempts to steal the Company’s employees and form a new venture that  
12 would compete with Hyperloop One. The Gang of Four are liable to the Company for their illegal  
13 conduct. The Company will hold each of them, and any other party that assists these devious  
14 individuals in forming or building a venture to compete with Hyperloop One—including through  
15 financing, in-kind services, or advisory services—fully responsible under the law.

16 4. The Gang of Four—some of whom had been at the Company for only a few months  
17 before they began their scheme—knew their positions at Hyperloop One were precarious in light of  
18 their performance lapses, abusive behavior toward fellow employees and outside partners, and  
19 egregious insubordination. Shortly before the attempted coup, the Company had reduced  
20 Pendergast’s and Mulholland’s responsibilities due to sloppy and unauthorized interactions with the  
21 Company’s potential investors and business partners. Mulholland knew that he would not be  
22 promoted, and Pendergast knew that he would likely be fired. And when he was hired by the  
23 Company in November 2014, BamBrogan built himself up as a major contributor at his previous  
24 employer when, in fact, he was a slightly below average engineer who failed to disclose to the  
25 Company that the last project he worked on for his previous employer had failed. BamBrogan had  
26 become increasingly disruptive to the Company with his profane, erratic, sexist, and inebriated  
27 outbursts toward management, fellow employees, and outside consultants including screaming in the  
28 face of a co-worker for no rational reason, punching a wall, and breaking a beer bottle. Knowing

1 they were on their way out, these four men either wanted to control the Company, or failing that, to  
2 inflict maximum damage and—as they explained to at least one employee they tried to recruit—to be  
3 fired as “martyrs” so that other employees would leave with them. While Hyperloop One’s talented  
4 and dedicated workforce was working hard to support the Company’s groundbreaking advances in  
5 Hyperloop technology, the Gang of Four was secretly plotting and fomenting a coup, aimed at  
6 destabilizing Hyperloop One’s leadership and gaining leverage.

7 5. The coup came to a head in late-May 2016 when the Gang—led by the increasingly  
8 erratic BamBrogan—hand-picked seven of the Company’s key employees to join their scheme and  
9 most had less than a day or two to decide whether they were in or out. After trying unsuccessfully to  
10 solicit the Company’s CEO and head of HR to join them, the Gang then sent a threatening and  
11 inflammatory “demand” letter (the “Letter”) to some of the Company’s Board members under the  
12 guise of attempting to “reform” the Company. In reality, these demands did not represent a good  
13 faith effort to negotiate better policies and compensation for employees. Tellingly, the demands were  
14 so extreme that the Gang omitted them when reprinting the Letter in the Sham Complaint, and failed  
15 to mention that they gave the Board fewer than 24 hours right before the Memorial Day weekend to  
16 respond to and adopt each of the Gang’s ten demands. The Letter itself constituted a demand to gain  
17 control, extract for themselves disproportionate equity equal to that of the Company’s lead investors  
18 who had provided the initial financing to launch the venture, and ultimately to drive these principal  
19 investors from the Company altogether.

20 6. Over the next few days and weeks, the Company’s Board rejected the Gang’s  
21 audacious demands and agreed to implement the reasonable demands, including reasonable changes  
22 to the Company’s equity compensation program for employees and adding the Company’s top  
23 engineer to the Board. But the Gang of Four would not be appeased by anything less than complete  
24 control of the Company, and deemed the Board’s response a rejection of their unreasonable demands.  
25 In reality, these men never were interested in negotiating in good faith with the Company’s Board to  
26 help their fellow employees; they were interested in advancing their own individual agenda. For this  
27 reason, they tried to execute a plan they had been secretly plotting for months, knowing that their  
28 power grab was unlikely to succeed. They attempted to lead a mutiny of key Company employees,

1 destroy Hyperloop One's relationships with its current and prospective investors, and launch a  
2 competing venture—"NewCo" or "Hyperloop Two," as they called it.

3 7. Indeed, acting as though they already could disregard the leadership of the Company,  
4 Pendergast and Mulholland had actively undermined the Board's financing strategy and approval to  
5 engage Fideras LLC ("Fideras") as the Company's advisor for arranging a convertible debt financing.  
6 Stripped of responsibilities they had wished to keep, Pendergast and Mulholland secretly contacted  
7 investors and investment bankers themselves without the permission or approval of the Board,  
8 management, or Fideras, which undermined the Company's financing efforts and disrupted the  
9 Company's relationships with potential investors throughout Asia. Pendergast later called on his  
10 personal contacts and doubled down on his bad faith tactics, making false and disparaging statements  
11 about the Company's Board and senior leadership.

12 8. BamBrogan took this seditious and destructive conduct a step further by contacting the  
13 Company's major investors in Russia and making disparaging statements to them about the  
14 Company, its leadership, and the Company's prospects—telling these investors, among other things,  
15 that they should be careful with their investments and reconsider entering into pending commercial  
16 agreements with the Company. As designed, BamBrogan made these statements while knowing that  
17 Shervin Pishevar, Hyperloop One's co-founder and Executive Chairman, was at that very moment  
18 traveling to Moscow to meet with these key investors. BamBrogan's actions undermined Shervin  
19 and the Company, and aimed to jeopardize the Company's relationships with key investors of the  
20 highest quality and integrity who, as BamBrogan knew, were interested in making major additional  
21 significant investments in the Company and had been working for months to facilitate important  
22 meetings and commercial arrangements. BamBrogan hoped that by attacking the Company, he  
23 would have more leverage in his gambit to wrest control of Hyperloop One—or that these investors  
24 might switch their allegiance to the Gang of Four's planned Hyperloop Two.

25 9. The Gang of Four carefully solicited particular employees to join their scheme  
26 because they were secretly plotting to launch a competing venture. These individuals included hand-  
27 picked employees across the Company's functions—engineering, finance, legal, operations, sales,  
28 and HR, for example—who would fill a cross-section of necessary roles in a potential new competing

1 start-up. At the meeting where the Gang of Four lined up these employees and sent the Letter to the  
2 Company's two Board members, the Gang members made clear to the others that a competing  
3 venture was at the top of their mind. BamBrogan told these employees that he had personally set  
4 aside \$250,000 of his own money to pay their salaries to get "NewCo" off the ground. And  
5 Pendergast told them that he promptly would line up millions in initial financing from his contacts.  
6 Even more, BamBrogan, the titular leader of the Gang, had already purchased the domain name  
7 "hyperlooptoo.com" on May 25, 2016—the day before this meeting and the day before the Gang sent  
8 the Letter—and public websites show that the domain names "hyperlooptwo.com" and  
9 "hyperloop2.com" were created on May 9 and May 11, 2016, respectively.

10 10. In the aftermath of the Letter, Hyperloop One's executives and Board members spent  
11 several weeks attempting to reach an amicable outcome, with the Board agreeing to make  
12 considerable changes for the benefit of employees. But the Gang of Four kept adding demands to  
13 poison the possibility of a deal. In a perplexing and disturbing act befitting their unprofessionalism,  
14 BamBrogan and Pendergast insisted that their family members—including, for Pendergast, his wife  
15 and two children—be present at the Company's headquarters during heated discussions. At the  
16 climax of these discussions with Rob Lloyd, the Company's CEO, Pendergast demanded that the  
17 CEO fire him—shrieking, with his children and wife beside him, "If you're going to fire me, do it  
18 now! Fire me! Fire me right here and now!" Lloyd refused to take the bait and later asked  
19 Pendergast to join him, in a separate meeting room, along with Company counsel. Pendergast arrived  
20 carrying his young daughter and was requested several times not to have his daughter in the room.  
21 After being informed that his employment with the Company was terminated, he yelled, "What's the  
22 [settlement] number? How much are you going to pay me?" and warned Lloyd that Pendergast had  
23 engaged counsel months earlier for this purpose. BamBrogan, Sauer, and Mulholland resigned the  
24 next day.

25 11. Each of the seven employees who joined the Gang in the hope of making  
26 improvements to the Company have since returned and continued their mission of creating the  
27 Hyperloop. Today, the Company's entire senior engineering team remains in place. None of the  
28

1 Gang of Four had any interest in returning to help the Company despite the Company's good faith  
2 efforts and transparency; they were and remain interested only in themselves.

3 12. After their failed power-grab, the Gang of Four knew that it was only a matter of time  
4 before the full extent of their bad acts would come to light. Thus, on July 12, 2016, in a preemptive  
5 strike, the Gang of Four filed the Sham Complaint in a further attempt to harm their former  
6 employer's reputation and minimize their own corrupt actions. Their sensationalized and tabloid-  
7 ready allegations are meritless, categorically false, and offensive. For example, the Sham Complaint  
8 attempts to dramatize a workplace incident—a rope tied with a lasso knot, not a hangman's knot, left  
9 on the desk where BamBrogan's kept his trademark cowboy hat—into a story about a threatening  
10 “hangman's noose” that is tabloid fodder and fiction. BamBrogan went so far as to file a reckless  
11 request for a restraining order—part of his publicity stunt aimed to gain leverage in this litigation—  
12 and the judge in that case summarily dismissed his request in a hearing that lasted less than one  
13 minute. Even though there was no threat of physical harm, leaving the rope was ill-considered and in  
14 poor taste, and the Company promptly terminated its former General Counsel, Afshin Pischevar, upon  
15 learning he was responsible for the stunt.

16 13. The Sham Complaint is larded up with other false character smears dressed up as  
17 factual allegations. For example, it claims that Shervin participated in a *quid pro quo* “pay-to-play”  
18 scheme and has placed his own interests above those of the Company. But the Sham Complaint does  
19 not present a single fact to support this defamatory lie. Indeed, Shervin and his fund, Sherpa Capital,  
20 introduced the Company to at least fifteen investors that are not investors in Sherpa funds, disproving  
21 the allegation of a *quid pro quo* arrangement. Equally false is its accusation that “nepotism” drove  
22 the Board's retention of Fideras or its dealings with the Company's former General Counsel. To the  
23 contrary, the Board's decision to coordinate its financing through Fideras, a talented group with ties  
24 to the Company and which it trusted, was a direct result of Pendergast's and Mulholland's  
25 incompetent work in connection with the Company's prior round of financing. The retention of  
26 Fideras was approved by the independent members of the Board, and Joe Lonsdale, the brother of  
27 Fideras's principal, recused himself from the vote. Moreover, the former General Counsel, Shervin's  
28

brother, was involved daily in helping transition Hyperloop One from a few-person company operating from a garage (joining initially without pay), into the extraordinary company it is today.

14. Of all of the fictions told in the Sham Complaint, perhaps most offensive is the allegation that the Company hired and set the compensation for one of the most sought-after PR firms in Silicon Valley based simply on a personal relationship with Shervin. Not only do the timing and facts demonstrate that this allegation is false—the increase from an initial discounted \$15,000 rate to the PR firm’s standard \$40,000 monthly rate was due to the expanded scope of the firm’s work and the Company’s ability to pay it, not Shervin’s relationship—but it also misogynistically discredits the talent and qualifications of this accomplished professional and her highly respected firm in a cheap grab at a suggestive headline.

15. The Gang of Four, through their lawyers and agents, continue to this day to attempt to smear Hyperloop One, inundating the media and others with false and misleading information about the Company and its leadership, while burying their own despicable conduct. This is improper.

16. The Company’s Board and senior management made every effort to avoid resorting to litigation. But these conspirators have never wanted a reasonable resolution and have never been engaged in good faith discussions with the Company. Now, after the filing of the Sham Complaint, the Company has no choice but to respond to their false and reckless allegations by shining a spotlight on the true story of their disloyalty, incompetence, and illegal conduct.

17. The manufactured coup has failed, but the Gang of Four must be held responsible for their illegal actions. Accordingly, Hyperloop One now brings claims for breach of fiduciary duty, breach of the duty of loyalty, breach of the faithless servant doctrine, intentional interference with contractual relations, unfair competition, and breach of contract. The allegations here also correct the demonstrably false and malicious attacks on the individual defendants and establish that the Board and management at all times acted in the best interests of the Company, with professionalism and as honest and loyal fiduciaries. Simply put, the gratuitous and personal attacks dumped into the Sham Complaint are lies, and only further demonstrate the bad faith and bad character of the Gang of Four.



1 **JURISDICTION AND VENUE**

2 18. Jurisdiction is proper in the courts of this State because Cross-Defendants are residents  
3 of the State of California. Venue is proper in the County of Los Angeles because Cross-Defendants  
4 are residents of Los Angeles County and the transactions, activities, and misconduct giving rise to  
5 this action occurred in Los Angeles.

6 **THE PARTIES**

7 19. Defendant and Cross-Claimant Hyperloop One is a corporation organized and existing  
8 under the laws of the State of Delaware, with its principal place of business in Los Angeles,  
9 California. Hyperloop One is winning the highly competitive race to bring the Hyperloop to life.

10 20. Defendant Shervin Pishevar (“Shervin”) is the co-founder and Executive Chairman of  
11 Hyperloop One. He has played a key role in setting the Company’s goals, raising its financing, and  
12 hiring key leadership. Shervin is co-founder and managing director of Sherpa Capital, a venture  
13 capital firm that invests in world-changing companies and helps incubate new companies, such as  
14 Uber, Airbnb, Munchery, etsy, Shyp, Beepi, Rent the Runway, and Cue Health. He has been  
15 recognized for the last three years in a row as one of the top 100 venture capital investors by track  
16 record on Forbes Midas List. Sherpa Capital closed a \$154 million fund in July 2014, and in spring  
17 of 2016 raised \$470 million in paid-in capital for two new funds. In an article on the 2016 fundraiser,  
18 Fortune reported that Shervin’s track record of investments had generated 72.4 times Multiple-of-  
19 Money (MoM) returns of approximately \$5 billion (on paper) on \$66.2 million in venture capital  
20 investments. He was previously a managing director at Menlo Ventures from 2011 to 2013, where he  
21 led investments in Warby Parker, Tumblr, Machine Zone, and Uber Series B. Shervin is a strategic  
22 advisor to Uber, and served as a board advisor to the company from 2011 to 2015. From 1999 to  
23 2011, Shervin founded and operated technology-enabled companies including webs.com (founding  
24 President and COO), SGN (founder and CEO), HyperOffice (co-founder), and WebOS (co-founder,  
25 CEO and President). Webs.com sold to Vistaprint for \$117.5 million in cash in 2011. In 2010, he  
26 was appointed chief application officer and GM at Mozilla Corporation. As a personal investor,  
27 Shervin has seeded more than 60 companies with exits to companies such as Facebook, LinkedIn,  
28 Google, eBay, and more. Shervin graduated from the University of California, Berkeley and has

1 been awarded several U.S. patents. A refugee and immigrant from Iran who escaped revolution and  
2 war, Shervin is the son of hardworking immigrant parents who started off in America as a taxi driver  
3 and a hotel housekeeper. Shervin has received numerous recognitions for his entrepreneurial  
4 achievements. In 2016, Shervin was awarded the Ellis Island Medal of Honor, and in 2015, he was  
5 appointed by President Barack Obama to the J. William Fulbright Foreign Scholarship Board.  
6 Shervin was chosen by the U.S. Government as the 99th Outstanding American by Choice in 2012,  
7 which recognizes the achievements of naturalized Americans. He was an inaugural member of the  
8 UN Foundation's Global Entrepreneurs Council, and has served as an entrepreneurial ambassador in  
9 U.S. State Department delegations to the Middle East and Russia. Shervin deeply believes in giving  
10 back and has served on several non-profit boards, started a scholarship, and volunteered in Africa for  
11 organizations like Invisible Children, Charity:water, and the UN Global Entrepreneurs Council.  
12 Before starting his first company at the age of 23, Shervin co-authored a seminal article in the Journal  
13 of the American Medical Association that helped lead to the Istanbul Protocol, the first set of  
14 international guidelines for documentation of torture. Shervin invented and patented a new method  
15 for lysing Malaria-infected erythrocytes while an undergraduate at UC-Berkeley.

16 21. Defendant Joseph Lonsdale is Vice-Chairman of Hyperloop One. He invested in the  
17 Company early and when it was most risky out of a deep belief that Hyperloop technology can  
18 revolutionize transportation. Lonsdale is currently founder and managing partner of 8VC, a venture  
19 capital firm. He co-founded Formation 8, his previous venture capital firm, where he still helps  
20 manage over \$1.5 billion; Formation 8 backs companies such as Oculus, RelateIQ, Color Genomics,  
21 Blend, Illumio, Wish, Radius, BuildZoom, Oscar, MemeBox, Bolt, Plated, ZenReach, and Gusto.  
22 Lonsdale has backed over 150 private technology companies during the last decade and is frequently  
23 sought out for his advice in the technology start-up community; in 2016, he was named as the  
24 youngest member of the Forbes Midas 100 List of top-performing technology investors. He currently  
25 serves as Chairman of Addepar, a wealth management technology platform he co-founded, Chairman  
26 of OpenGov, a company he co-founded that focuses on making government budget and financial data  
27 accessible and enabling municipal collaboration, and on other boards including those of Oscar,  
28 Radius, and Wish. Lonsdale is also a founder of Palantir, a \$20-billion data technology company that

1 develops information systems used by government, law enforcement, and financial organizations  
2 around the world, and which is widely credited with notable philanthropic activities. Previously,  
3 Lonsdale joined Clarium Capital as an early executive, which he helped grow into a fund with \$5  
4 billion in assets under management. Prior to Clarium Capital, Lonsdale worked with the financial  
5 arm of PayPal while he was still a student at Stanford, where he received a B.S. in Computer Science.  
6 Lonsdale's other philanthropic activities include serving as Chairman of California Common Sense  
7 (CACS.org), a non-partisan non-profit dedicated to opening government to the public, developing  
8 data-driven policy analysis, and educating citizens about how government works. He is also the  
9 Chairman of ONEHOPE Wine and its charity ONEHOPE Foundation, a social enterprise company  
10 that donates a portion of its profits to charity. Lonsdale also serves on the board of Strive for  
11 College. Lonsdale is a supporter and adviser to Thorn, a non-profit founded by Ashton Kutcher and  
12 Demi Moore, which partners with innovative technology companies to prevent child-trafficking and  
13 child pornography. Lonsdale often speaks at technology events and conferences around the world.

14         22. Defendant Robert Lloyd is Chief Executive Officer and Board Member of Hyperloop  
15 One. Lloyd was recruited to become the Chief Executive of the Company in June 2015, after  
16 announcing his retirement after a successful 20-year career at Cisco Systems Inc., a Fortune 100  
17 company. He joined the board of directors of Hyperloop One in July 2015 and began his duties as  
18 CEO in September 2015. Prior to joining Cisco in 1998, Lloyd was founder and CEO of a successful  
19 Canadian technology start-up. In his most recent position at Cisco, Lloyd was president of  
20 development and sales, reporting directly to the CEO and had direct responsibility for approximately  
21 40,000 employees. He is a seasoned executive who is knowledgeable in organizational and talent  
22 development, large-scale product launches and events, global partnerships, and enterprise sales, and  
23 regularly represented his previous employer at meetings with investors, analysts and the press. He is  
24 experienced in executive development, performance management, and appropriate legal practices  
25 regarding employee terminations. His previous employer is recognized for its rigorous policies  
26 regarding compliance and integrity. As part of his regular duties at Cisco, Lloyd participated in the  
27 selection of, and worked directly with, contractors providing communications, PR, event  
28 management and marketing services. Public records indicate that Lloyd's total annual compensation

1 at Cisco Systems for the previous three years averaged approximately \$2,000,000 per annum,  
2 excluding the value of annual stock grants. He accepted the position as CEO of Hyperloop One at  
3 approximately 10% of that amount, convinced of the long-term potential and likely appreciation of  
4 the Company's equity. Furthermore, he personally invested \$2.5 million in the Company's equity on  
5 the same terms as other investors through a family trust.

6 23. Defendant Afshin Pishevar ("Afshin") is former General Counsel of Hyperloop One.  
7 Before joining Hyperloop One as the Company's third employee in 2014, Afshin owned his own  
8 broad law practice for 20 years, where he engaged in business litigation, regulatory, transportation,  
9 tort litigation, and corporate transactions. He served as trustee and advisor to various political leaders  
10 and executives in the area of local and national transportation infrastructure and High Speed Rail,  
11 which made him instrumental in Hyperloop One's land deals and obtaining regulatory approval for  
12 the Company's successful open-air test at its site in Nevada. He was a Captain in the Reserves, JAG  
13 Unit-Maryland Military Defense Force. Recently, Afshin was honored in the Top 25 list of  
14 Washingtonian Magazine's year-end legal review (ranked #8 for D.C., Maryland, and Virginia). He  
15 is an active member of the Maryland Bar and other professional associations, and he has served in  
16 leadership roles in these associations such as Committee Chair and President for decades. Afshin  
17 received his B.A. in Government and Politics from the University of Maryland, College Park, and his  
18 Juris Doctorate from Cleveland State University's Cleveland-Marshall College of Law, where he was  
19 student body president.

20 24. Plaintiff and Cross-Defendant Brogan BamBrogan is an individual who has been a  
21 resident of Los Angeles County in the State of California at all relevant times. BamBrogan was hired  
22 to help lead Hyperloop One, initially served as interim CEO and Chief Technology Officer ("CTO"),  
23 and then served only as CTO from Lloyd's arrival until his resignation in June 2016.

24 25. Plaintiff and Cross-Defendant David Pendergast is an individual who has been a  
25 resident of Los Angeles County in the State of California at all relevant times. Pendergast was  
26 employed as Assistant General Counsel to Hyperloop One from January 2016 until his termination in  
27 June 2016. Pendergast is admitted to practice law in the State of Arizona.

26. Plaintiff and Cross-Defendant William Mulholland is an individual who has been a resident of Los Angeles County in the State of California at all relevant times. Mulholland was employed as Vice President of Finance at Hyperloop One from February 2015 until his resignation in June 2016.

27. Plaintiff and Cross-Defendant Knut Sauer is an individual who is a resident of Switzerland, but has also resided in Los Angeles County in the State of California at all relevant times. Sauer was employed as Vice President of Business Development at Hyperloop One from January 2016 until his resignation in June 2016.

## FACTUAL ALLEGATIONS

### A. Hyperloop One

28. Hyperloop One seeks to reinvent transportation to efficiently and sustainably eliminate barriers of time and distance. Comprised of the world's leading experts in aerospace and transportation technology, Hyperloop One is developing a revolutionary transportation network—the Hyperloop—which will transfer passenger and cargo capsules through low-pressure tubes at speeds of approximately 760 miles per hour. The Hyperloop promises greener, interconnected cities, by moving passengers and cargo across great distances immediately, safely, and efficiently.

29. Entrepreneur Elon Musk first proposed the Hyperloop in 2013 and called on other transportation innovators to develop his vision. Founded in June 2014, Hyperloop One is currently leading the race to make Musk's vision a reality.

30. Shervin's belief in the idea, efforts, ideas, and financial backing were instrumental in advancing the Hyperloop concept into the concrete reality that is Hyperloop One. Shervin took the idea and formulated a plan of action for developing, building, testing, and making a reality this new mode of transportation through the company that today is Hyperloop One.

31. Shervin also leveraged his personal and business connections to attract significant financial investors, board members, high-quality employees, and other stakeholders. In 2014, Shervin put up the initial capital to finance the nascent start-up, and he personally raised all of the money for the Company's initial—and highly successful—first round of financing for a company with only a few employees at the time and little more than a PowerPoint presentation. Shervin's

1 strong commitment to the nascent Company was instrumental in arranging early financing. For  
2 example, Shervin committed that, in the event that his valuable equity stakes in some of his private  
3 companies become liquid as a result of an initial public offering, Shervin will invest \$40 million in  
4 Hyperloop One at whatever the fair value of the Company is at that time. This demonstration of his  
5 faith in Hyperloop One was an important validation of the Company's future prospects—and the  
6 commitment still stands. Shervin also recruited highly influential and well-respected board members  
7 from the technology, regulatory, and political spheres, which gave Hyperloop One instant credibility  
8 and a rock-solid foundation for executing a transformative strategy. He also lined up the most  
9 respected advisors and consultants to assist Hyperloop One—often at below market rates that Shervin  
10 negotiated to help the Company get off the ground. Shervin worked with a leading PR firm to land  
11 the highly successful March 2015 Forbes cover story on the successful launch of Hyperloop One—a  
12 transformative event that put the Company on the map for many investors and observers. Though he  
13 did not have a day-to-day operational role at the Company, Hyperloop One would not exist today  
14 without Shervin's efforts.

15         32. The Company hired BamBrogan in November 2014. Then, before Hyperloop One's  
16 second round of financing, Shervin recruited Lloyd as the Company's first full-time CEO. Lloyd is a  
17 highly respected, seasoned senior executive with extensive technology experience. Lloyd's hiring—  
18 and his well-deserved reputation for building growth companies and managing complex  
19 organizations—helped demonstrate to investors and observers that Hyperloop One is a serious  
20 company attracting the best and brightest from across the world of technology. Shortly after Lloyd's  
21 hiring, Hyperloop One's engineering team was restructured. BamBrogan—who was originally hired  
22 as CTO and who served as interim CEO for a time—was left with four direct reports, plus Josh  
23 Giegel, the Senior Vice President of Engineering, to whom roughly seventy other engineers reported.  
24 Giegel, not BamBrogan, would be the key manager of the engineers building the Hyperloop.

25         33. Hyperloop One has now raised over \$100 million, including from leading private  
26 equity companies around the world that recognize the Company's massive potential and hope to  
27 bring Hyperloop technology to various markets. The Company raised most of this financing from  
28

1 other investors identified by the Company's lead investors. Hyperloop One also continues to attract  
2 and recruit an industry-leading workforce, including a world-class team of engineers.

3 34. Since its inception, Hyperloop One has made unparalleled technological  
4 advancements. The Company currently has dozens of pending patent applications relating to  
5 Hyperloop technology. On May 11, 2016, in a demonstration of its success and leading position in  
6 the development of the Hyperloop, Hyperloop One ran the first-ever live Hyperloop demonstration at  
7 its facility in North Las Vegas. Watched by more than 1.6 million viewers on YouTube.com, and  
8 with media impressions of over 40 billion around the world, the demonstration proved remarkably  
9 successful. Hyperloop One's groundbreaking no-contact electric engine seamlessly propelled a sled  
10 to 116 miles per hour in just 1.1 seconds, proving to the world that the Hyperloop is possible. The  
11 following month, Hyperloop One contracted to begin developing a plan to build the world's first  
12 Hyperloop network in Moscow and released its first pre-feasibility study in northern Europe. Many  
13 other Hyperloop networks around the world are in the development stage.

#### 14 **B. The Gang of Four Clamors for Control**

15 35. The Gang of Four sowed the seeds of their illegal conspiracy after increasingly  
16 disruptive misconduct, after learning they would be terminated, or learning they would be passed  
17 over for advancement. Thus, these conspirators had every incentive to either overthrow the  
18 Company's leadership, or leave and inflict maximum damage to pave the way for their own  
19 competing Hyperloop venture. In executing their plan, each member of the Gang of Four acted with  
20 full knowledge of their wrongful conduct and in furtherance of their joint scheme. Pendergast even  
21 expressed concern to others that his participation with the Gang and staging the coup would put his  
22 law license at risk—a candid admission that he understood he was violating his ethical duties to the  
23 Company.

#### 24 ***Brogan BamBrogan***

25 36. BamBrogan has had a long history of instability, misbehavior, unprofessionalism, and  
26 sexism. Before working for Hyperloop One, BamBrogan worked in a position that the Company  
27 believed prepared BamBrogan well for a leading role at Hyperloop One. When he was being  
28 considered by the Company for a job at Hyperloop One, however, BamBrogan hid that he had failed



1 at his last project at his previous company before leaving, aggrandized his role at his previous  
2 employer, and hid the fact that he was considered a slightly below average engineer. Had  
3 BamBrogan told the truth about his past behavior and troublesome employment history, the Company  
4 never would have hired BamBrogan to work for it.

5 37. BamBrogan was originally hired as CTO of Hyperloop One, but served as the interim  
6 CEO at the outset of his tenure with the Company, until the Company hired the highly qualified and  
7 seasoned Lloyd to fill the role. Increasingly over time, BamBrogan was erratic, immature, and  
8 unprofessional. At one point during his short-lived stint as the Company's interim CEO, BamBrogan  
9 boasted to a friend visiting the office: "Can you believe all these bitches work for me?"  
10 BamBrogan's brazen management style and irrational decision-making put Hyperloop One at risk,  
11 including by recklessly disregarding the Company's interest in protecting its intellectual property,  
12 against the advice of Company lawyers. For example, with one vendor, a corrugated box company,  
13 BamBrogan freely shared the Company's intellectual property, rejecting counsel's admonition that  
14 the information should only be shared pursuant to a confidentiality agreement. The box company  
15 took the confidential information BamBrogan disclosed and sought its own patent on the idea.

16 38. Although BamBrogan exhibited unprofessional behavior throughout his time with  
17 Hyperloop One, he became increasingly unstable and erratic in the months leading up to his  
18 separation from the Company. BamBrogan often appeared inebriated at the office (with liquor on his  
19 breath) and during late-night screaming rants with the Company's leadership.

20 39. Despite his titular role as Chief Technology Officer, BamBrogan was not Hyperloop  
21 One's top engineering leader. That has always been Josh Giegel, since the day he joined the  
22 Company. Over the past year, BamBrogan's role was externally focused, rather than engaging with  
23 and developing the Company's technology. He was rarely in the office. When he was at the office,  
24 BamBrogan was well known for screaming at and berating employees and co-workers, often using  
25 obscenities. He began engaging in brazen sexism. BamBrogan repeatedly antagonized female  
26 partners, vendors, and employees. He repeatedly refused to work with women who led the world-  
27 renowned messaging company that ran Hyperloop One's marketing efforts for its successful open-air  
28 demonstration. And, after their very successful demonstration, the communications consultant



commented that working with BamBrogan was one of the most difficult assignments she had ever experienced. BamBrogan's abusive behavior toward these contractors and vendors damaged some of the Company's strong business relationships. He also took out his aggression on female employees. On one occasion, he became irrationally enraged and took out his anger on a female employee by screaming at her inches from her face, then punching a wall, and stepping outside to loudly smash beer bottles in anger. (The woman had actually done what BamBrogan had requested, though he forgot he requested it.) BamBrogan's efforts to use the Sham Complaint to misogynistically discredit the talent and qualifications of an accomplished female professional are consistent with this behavior.

40. On at least five occasions, Lloyd discussed with BamBrogan the need to change his negative and disruptive behavior. BamBrogan specifically acknowledged that he had a problem, that he was often too aggressive, and that he needed to control himself. For example, at a breakfast meeting on March 29, 2016, BamBrogan acknowledged to Lloyd that, despite efforts to improve his behavior, he had a problem and often could not control his temper. Although he was clearly warned that his conduct and performance were unacceptable, BamBrogan continued to act like an uncontrolled, unprofessional egomaniac. This irrational behavior strained BamBrogan's relationship with Shervin, management, and many of Hyperloop One's employees, who greatly feared his spontaneous outbursts. BamBrogan knew that his combustible behavior and his inability to work with management meant his days at the Company were numbered.

41. And he engaged in this disruptive and unprofessional behavior despite the Company making a significant commitment to BamBrogan in connection with its Series B financing of over \$80 million. As part of this financing, the Company granted BamBrogan anti-dilution protection and extended him millions of new stock option grants that increased his equity to approximately 5-6% of the Company. The Company also gave BamBrogan a loan of \$1.2 million to pay for his shares; no one else in the Company ever received such treatment. But clearly this was insufficient for the egomaniacal and greedy BamBrogan.

***Pendergast and Mulholland***

42. Pendergast routinely disrupted the Company's business through his unprofessional misconduct. His performance issues included insubordinate and profane outbursts at management

1 and his direct supervisor Afshin Pishevar, the Company's General Counsel. After just weeks on the  
2 job, and after repeatedly berating and denigrating his supervisor, Pendergast staged his first power  
3 grab at Hyperloop One by demanding to be transferred so that he reported directly to Lloyd, the  
4 Company's CEO. Even though his behavior and demand were highly inappropriate, especially for  
5 someone who had been on the job for mere weeks, the Company tried to accommodate him and make  
6 the employment situation work. Shervin made no effort to intervene on his brother's behalf.

7 43. Pendergast was also abusive and unprofessional toward Hyperloop One's business  
8 partners, subjecting the Company to substantial business risk at this critical phase of its growth. For  
9 instance, in February 2016, Pendergast took the lead in negotiating a potentially significant deal with  
10 one of Hyperloop One's UK partners, in which the Company and its partner would cooperate to  
11 develop and facilitate potential projects throughout the UK. Pendergast's "crass approach" (to use  
12 the word of a principal at the partner) and extreme unprofessionalism in dealing with the partner and  
13 its lawyers put in jeopardy the project and caused significant disruption to closing the deal. Lloyd  
14 was forced to remove Pendergast from the deal negotiations and to personally participate in the  
15 process in order to repair the relationship that Pendergast had nearly destroyed as a result of his toxic  
16 behavior. According to one principal at the partner, Pendergast is "*persona non grata*."

17 44. Pendergast and Mulholland further undermined the Hyperloop One's fundraising  
18 efforts. In or around March 2016, the Company tasked Pendergast and Mulholland with closing the  
19 Company's highly successful Series B fundraising from investors. The Company noticed that  
20 confusion was spreading among its Asian investors, who were informed that they would receive  
21 allocations for the oversubscribed Series B in an uncoordinated and damaging way. Several investors  
22 told the Company that they were being contacted by multiple sources claiming to represent the  
23 Company, and the Company discovered that Pendergast and Mulholland had failed to stop  
24 unauthorized road shows in Asia. Pendergast and Mulholland also frequently arranged meetings with  
25 junior associates at major venture capital firms with whom the Board had senior contacts, despite  
26 being told by Shervin and Lonsdale that these meetings should not happen without senior partners  
27 and the Board's involvement. The Board, unsatisfied with the inefficiencies caused by Pendergast  
28 and Mulholland's poor management, determined that it needed a single advisor to manage its

1 financing efforts in Asia in order to ensure that the Company's message remained consistent through  
2 a single voice, to give Hyperloop One control over that process, and to ensure that the Company  
3 attracted only investors who are committed to the Company's long-term success. Most of the  
4 financing to date for Hyperloop One has been raised by the Board's network and reputation, and the  
5 Board wanted a firm that coordinated closely with the Finance Committee; the Company needed a  
6 group that they knew and trusted. The Company had already been using Fideras to help attract  
7 investors, and the Board believed that expanding Fideras's role to coordinate its financing effort was  
8 necessary in light of Pendergast's and Mulholland's inefficient and sloppy work. Fideras, a boutique  
9 financial advisory firm, was well qualified for this role. At the time of their engagement, the partners  
10 at Fideras had advised several multi-billion dollar technology companies and helped raise hundreds  
11 of millions of dollars in company-approved primary and secondary transactions. Hyperloop One—by  
12 both valuation and round size—was one of the smallest clients to engage Fideras for advisory  
13 services. Jonathan Lonsdale, one of the co-founders of Fideras, has extensive experience advising  
14 technology companies both in the United States and Asia, concerning investment opportunities and  
15 primary and secondary financings. During the course of his career, Mr. Lonsdale has helped  
16 companies raise hundreds of millions of dollars, and serves as an advisor to companies, management  
17 and boards concerning market trends and financing opportunities throughout the world.

18         45. On May 10, 2016, the independent directors of the Board voted to engage Fideras as  
19 its financial representative in order to coordinate the next stage of the Company's global financing  
20 through a consistent voice and message. But Pendergast and Mulholland undermined these efforts,  
21 too. Pendergast and Mulholland contacted investors, investment banks, and personal contacts  
22 without permission or approval of the Board, management, or Fideras, which caused complications in  
23 the Company's financing efforts. For example, Pendergast and Mulholland went behind Fideras's  
24 back and accepted offers of financing from certain investors, unbeknownst to Fideras or anyone else  
25 at the Company. Certain of these investors in turn then spammed other potential investors with the  
26 investment opportunity in Hyperloop One, which harmed Hyperloop's reputation, undermined the  
27 Company's financing efforts, and gave the impression to the investor community that the Company is  
28 disorganized, even though the Company's Board and management had taken the appropriate steps to

1 run a single, organized, and streamlined financing effort through Fideras. A few days before the  
2 Gang of Four sent the Letter to key Board members, Lloyd told Pendergast that the he and the Board  
3 were unhappy with his performance, and Pendergast understood that his days at the Company were  
4 numbered.

5 46. Further, Mulholland had made clear that he wished to be the Company's CFO and  
6 thought he was deserving of the position. Mulholland, however, had very little experience in finance  
7 and international fundraising and quickly showed it. During his annual performance review in  
8 February 2016, Lloyd informed Mulholland that he had taken steps to begin an outside search for an  
9 experienced CFO who had greater experience raising capital globally at the amounts that the  
10 Company required. Given Mulholland's mishandling of the financing efforts in Asia, the removal of  
11 his principal fundraising activities, and the knowledge that he would not advance at the Company,  
12 Mulholland's loyalties soon fell to the wayside, and he too became increasingly negative towards  
13 certain employees.

14 ***Knut Sauer***

15 47. Sauer had his own reasons for joining the Gang of Four. He had aspirations to be  
16 promoted and was often uncooperative and dismissive with others in his department. Sauer also  
17 refused to proceed with making job offers to qualified applicants, indicating that he did not feel he  
18 could ask someone to join the Company he was in the process of disrupting. Furthermore, Lloyd had  
19 several conversations with Sauer about his dismissive and unprofessional demeanor in meetings with  
20 partners and consultants to the Company. Sauer also knew that he had made inappropriate charges on  
21 a Company credit card to pay for European flights for his children, totaling approximately \$3,500,  
22 which he knew to be against the Company's policies. But more than that, Sauer was convinced the  
23 coup would succeed.

24 \* \* \* \* \*

25 48. Thus, in the months leading up to their coup attempt, BamBrogan, Pendergast,  
26 Mulholland, and Sauer each had engaged in serious misconduct and each was looking for a way up or  
27 out. They had every incentive to either try to take control of the Company, or to leave and destroy it  
28 in the process.

1     **C.     The Gang of Four Engages in Illegal and Unethical Conduct**

2             ***The Gang of Four Attempts a Coup***

3             49.     In late May 2016, the Gang of Four began to execute their illegal scheme. They  
4     strategically solicited a hand-picked group of employees and asked them to join their group and sign  
5     on to a letter demanding that Board members give up their shares and that the Board implement  
6     significant changes to the Company’s equity structure, among other things. At least one of these  
7     employees had no idea why they were being called into the room and was given less than one hour to  
8     decide whether to join the group and sign the Letter.

9             50.     At this meeting with the solicited employees, the Gang of Four’s discussions made  
10    clear their true motives; they were prepared to leave the Company and start their own venture—  
11    Hyperloop Two, or “NewCo” as BamBrogan also called it—if the Board did not submit to the  
12    grandiose demands in the Letter. Indeed, the clear intention with the solicited employees was to pick  
13    a team that could effectively blackmail the Company into ceding control to the Gang, or if they were  
14    collectively fired for their disloyal conduct, could form a new venture to compete with Hyperloop  
15    One. For example, Pendergast proclaimed that the Company “will fail without us,” and Mulholland  
16    threatened that “there won’t be a Hyperloop after this.” BamBrogan committed to providing  
17    \$250,000 of his own money to pay for the salaries of employees who were going to leave with them  
18    and form the new venture, and Pendergast stated that he could raise \$1 million within the next 30  
19    days so that their new company could have immediate financing. Pendergast even advised the group  
20    that they could sue the Company for severance if they were terminated, and provided the name of an  
21    attorney (from Keker Van Nest, who now represents the Gang of Four) and the attorney’s email  
22    address so that the group could get discounts if they all used the same attorney.

23            51.     At the time of this meeting, BamBrogan had already taken concrete steps to establish  
24    his planned competing venture. The day before the meeting, on May 25, 2016, BamBrogan  
25    purchased the domain name “hyperlooptoo.com.” In the weeks prior, public records show that  
26    “hyperlooptwo” and “hyperloop2” also were established, presumably also by BamBrogan.

27            52.     The Gang of Four aimed high, even trying to solicit CEO Lloyd to sign the Letter and  
28    join their group. Lloyd summarily rejected their invitation, telling BamBrogan (the titular head of the

1 Gang) that the Gang's plan was toxic and mutinous and that the proper way to address any real  
2 concerns was not a threatening, unreasonable list of demands, but through constructive dialogue with  
3 the Board. Lloyd, with his decades of senior management experience and sound business judgment,  
4 told the erratic and inexperienced BamBrogan that he should not send the Letter. But the plan had  
5 been hatched, and the Letter was the Gang's strategic shot across the bow. Rather than "quietly" and  
6 "diplomatically" approaching the Board with their demands—as claimed in the Sham Complaint —  
7 minutes after Lloyd rebuffed the offer to join the Gang, BamBrogan emailed the Letter to Shervin,  
8 Lonsdale, and Lloyd, giving them 24 hours to respond, the day before a holiday weekend. The Letter  
9 included several extraordinary demands (quoted from the Letter):

- 10 • Shervin will step down as the Executive Chairman but will continue to support the  
11 company as a general Board Member.
- 12 • Brogan [BamBrogan] and Josh [Giegel] will be appointed to the Board of Directors.
- 13 • An Executive Committee will be established on the Board, which will include  
14 BamBrogan, Josh Giegel, and the CEO.
- 15 • Shervin will have no day-to-day or operational role within the company and will not  
16 be authorized to act on its behalf in any way without Executive Committee  
17 approval. He will serve on no Board committees unless approved by the Executive  
18 Committee.
- 19 • The employees collectively will have voting control of the company via an exchange  
20 of their shares for a new Class C common stock which will have a sufficient number  
21 of votes per share to establish voting control. The option plan will be amended so that  
22 all existing and future employee options are exercisable for this super-voting Class C  
23 common stock.
- 24 • An additional 42 million shares of common stock will be placed into a new equity  
25 incentive pool for employees only. We think an elegant way to do this and avoid  
26 shareholder dilution would be for these 42 million shares to come as a gift out of the  
27 50 million founder shares currently held by Shervin and [another primary investor].

28 53. Some of their requests were not unreasonable, such as having the very talented Josh  
Giegel recognized as a co-founder, as Shervin had already independently proposed to Lloyd and  
another Board member in April 2016. These demands are likely why seven others employees joined  
the letter. In discussions, the Company quickly agreed to the reasonable demands and all seven of the  
other employees who joined the Letter have since returned to the Company. But other demands were

1 not a sincere attempt to reform the Company or to negotiate better compensation; they were a ploy to  
2 antagonize the Board and lay the foundation for the Gang of Four either taking over or exiting the  
3 Company to start Hyperloop Two.

4 54. In response to the Letter, the Board promptly sought—above all else—to protect the  
5 Company’s long-term stability and success. The Board therefore acted quickly and in good faith to  
6 attempt to resolve any genuine concerns among its employees, while ensuring that Hyperloop One  
7 remained well-financed. The Board appointed one independent member of the Board, Justin Fishner-  
8 Wolfson, to work with the Gang of Four to determine whether a resolution would be possible.

9 55. The Company’s Board and senior management made every effort to act reasonably  
10 and achieve an amicable resolution. The weekend after their receipt of the Letter—Memorial Day  
11 weekend—Lloyd, Lonsdale, Shervin, and Fishner-Wolfson spent virtually the entire weekend  
12 working on a plan to address the stated concerns.

13 56. On May 31, 2016, Fishner-Wolfson and Lloyd met for seven hours with the eleven  
14 employees who signed the Letter. Fishner-Wolfson communicated to the group that the Board was  
15 willing to address any genuine and reasonable concerns, and agreed that he would work with the rest  
16 of the Board to amend the Company’s employee stock option plan and work with management to  
17 issue new policies to address other concerns raised in the Letter.

18 57. In response to the issues raised in the Letter, and as a result of the extensive  
19 discussions, the Board agreed to adopt meaningful changes at the Company. On June 6, 2016, Lloyd  
20 sent an email to Hyperloop One’s senior team announcing new policies related to hiring decisions,  
21 interns, and use of Company facilities for non-work activities.

22 58. Over the next several weeks, the Board further approved and announced policies that  
23 increased equity for employees and amended a number of employment and other Company policies.  
24 Specifically, the Company announced that it would take the following actions, among others:

- 25 ▪ Expand the employee equity pool from approximately 15% to 20%;
- 26 ▪ Make over 9,000,000 shares available to current employees—increasing employee  
27 ownership of the Company, excluding the CEO and CTO, to about 10% with a  
28 remaining option pool of approximately 10%;

- Amend the employee stock option program to remove buyback language and provide greater protections for employees;
- Create two new Board seats—one for a senior Hyperloop One engineering leader;
- Change the current Board voting structure to share super voting rights among up to five shareholders—rather than two;
- Issue new policies to ensure consistent interviewing and hiring practices; and
- Issue new policies to minimize use of the workplace for non-work functions.

59. After announcing these changes, the Board had met nearly all of the employees' legitimate demands. Its decision to do so was a demonstration of the Board's good faith consideration and response to the stated demands. In the exercise of its business judgment, the Board determined that it was in the best interest of the Company and its shareholders to take each of these actions.

60. The Board also determined, however, that it was not in the best interest of the Company to submit to the Gang of Four's demand that it eject the Company's founding investors and core leadership and replace them with members of the Gang, including the unstable, erratic, and abusive BamBrogan. Indeed, the members of the Gang who sought to fill these positions—particularly BamBrogan—had repeatedly proven to be highly unprofessional and disloyal. The Board could not in good faith agree to allow someone who had recently attempted to disrupt Company financing and otherwise acted erratically to have a seat on the Board. It also refused all demands that Pendergast be allowed to stay at the Company or be named General Counsel, as Lloyd and the Board needed to rely on attorneys they could trust to uphold their fiduciary obligations.



1                   ***The Gang of Four Conspires to Form Hyperloop Two***

2           61.     Despite the Company's attempts to meaningfully respond to the Letter and reach a  
3 resolution, it became increasingly clear that the Gang of Four was interested in and would settle for  
4 nothing less than complete control of the Company. Thus, when the Board declined to accede to all  
5 of the Gang's demands, the Gang of Four continued pressing its alternative plan—to exit the  
6 Company and launch Hyperloop Two.

7           62.     The exit plan—and the related plan to harm the Company—had been in the works for  
8 months. In particular, once he became aware that his performance issues and conduct were a  
9 problem, Pendergast actively worked his contacts and investors in Asia to caution them about  
10 investing in Hyperloop One. For example, in late May 2016, Pendergast reached out to prospective  
11 Asian investors, misled those investors to believe that Hyperloop One would not be able to provide  
12 an adequate return on any future investments, and stated, among other things, that “Our investors are  
13 from Silicon Valley, and they don't know what they are doing with regard to infrastructure projects.  
14 They just don't understand infrastructure projects.” Each of these outrageous efforts violated  
15 Pendergast's fiduciary, contractual, and ethical obligations to the Company.

16          63.     Pendergast preyed on the rest of the Gang members'—particularly BamBrogan's—  
17 vulnerabilities and insecurities in order to encourage them to also leave and form a group to compete  
18 with the Company. His plan worked, and the rest of the Gang united with Pendergast to advance the  
19 scheme. BamBrogan purchased for the Gang at least one—and very likely more—domain names for  
20 their planned competing venture. Moreover, in early-June 2016, BamBrogan contacted two of  
21 Hyperloop One's largest investors in Russia and “warned” these investors about supposed problems  
22 at the Company. BamBrogan told the investors that he would not be making a scheduled marketing  
23 trip to Russia “due to issues covered in the [L]etter.” BamBrogan also said he would reach out to the  
24 Company's lenders and send a letter to other investors. He recommended that one investor decline to  
25 execute a memorandum of understanding to begin work on a significant Hyperloop project that has  
26 the potential to be transformative for the Company. BamBrogan was aware that this investor was  
27 also considering making another significant investment in the Company, and BamBrogan made these  
28 wrongful statements in an effort to lay the foundation both to increase leverage in the attempted coup

1 and with the ill-advised belief that this investor would invest in Hyperloop Two instead. BamBrogan  
2 made these statements while knowing that Shervin was traveling to meet with this investor the  
3 following day. Shervin found out about BamBrogan's improper and false statements directly from  
4 the investor during their meeting. BamBrogan's illicit communication was designed to catch Shervin  
5 off-guard, undermine and embarrass the Company, and jeopardize the investors' continued financial  
6 support of Hyperloop One. These statements harmed the Company's reputation.

7 ***The Gang of Four Departs***

8 64. Immediately following his meeting with the Company's investors in Russia, Shervin  
9 relayed these events to the Board and the Company. The Board and the Company's management  
10 were dismayed by BamBrogan's disloyal, unprofessional, and destructive conduct. It was clear that,  
11 despite the Company's good faith efforts to address employee concerns, the Gang of Four was hell-  
12 bent on pursuing their conspiracy to grab power, enrich themselves, and hurt the Company and its  
13 lead investor.

14 65. On the next day, June 15, 2016, Afshin was angered by BamBrogan's stunts. Afshin  
15 left a rope with a lasso knot on BamBrogan's office chair next to the white cowboy hat that  
16 BamBrogan loved to wear and always kept at his table. Upon seeing the rope, BamBrogan lost his  
17 temper. He declared the rope a "noose," paraded it around the office, and photographed himself with  
18 it. Afshin always maintained that the rope was a lasso for someone acting like a cowboy. When  
19 confronted with it, Afshin admitted that he had done it and that it was a lasso. While the Company  
20 did not perceive Afshin's actions as a physical threat, it did find his behavior unacceptable: given the  
21 ongoing dispute with the Gang of Four, it was not appropriate for Afshin to have undertaken such an  
22 act. It is for this reason—not because anyone believed for a minute that his actions were an actual  
23 threat—that Lloyd terminated Afshin immediately, a decision that Shervin fully supported. Shervin,  
24 still in Russia, was completely unaware what Afshin was intending, and had even texted Afshin  
25 stating: "One comment and guidance. Act completely calm and don't show any emotion. Don't say  
26 anything negative or provide any ammunition for them to use against us, our family or our company.  
27 Thanks."

1           66.     Later that day, the Gang of Four and the seven other employees who signed their  
2 Letter arrived at the Company's headquarters under the auspices of attempting to resolve their  
3 concerns and discuss their current employment status. They brought with them a lawyer, Lance  
4 Etcheverry of Skadden Arps, to assist them in their negotiations. Once again, the Company sought to  
5 accommodate the Gang and its followers, and the Company's Board and management worked hard to  
6 address their concerns in good faith.

7           67.     But, in reality, the Gang of Four had no intention of reaching a resolution, saw no  
8 necessity for it, and preferred the path of leaving the Company. They wished only to incite  
9 employees and create a spectacle. Although—or, more likely, *because*—they knew that tensions were  
10 high, BamBrogan and Pendergast brought their family members, including BamBrogan's pregnant  
11 wife (and his Chihuahua) and Pendergast's wife and two young children, to the Company's  
12 headquarters to observe the events—under the pretense that they were so worried by the lasso rope  
13 incident that they needed to bring their loved ones to the scene of the supposed assault for their  
14 safety.

15          68.     After a long day of negotiating with the Gang, during which Lloyd displayed the  
16 utmost professionalism in trying to reach a resolution, Lloyd finally told the group he was aware that  
17 certain individuals had been making unauthorized contacts with investors and undermining the  
18 Company, particularly David Pendergast. Lloyd made clear, however, that Hyperloop One would  
19 welcome all of the employees except Pendergast back to the Company so that everyone could stay  
20 committed to Hyperloop One's mission. Lloyd said further that if the employees wanted to leave the  
21 Company and move on to other opportunities that had no connection to the Hyperloop, he understood  
22 that and would wish them well. But, he said, if the members of the group left the Company and used  
23 its confidential information in order to form a venture designed to compete with Hyperloop One, the  
24 Company would not stand by idly and would do everything in its power to protect the interest of the  
25 Company, its employees, and its investors. During this talk with the group, Pendergast shrieked, "If  
26 you're going to fire me, do it now! Fire me! Fire me right here and now!" Minutes later, as  
27 Pendergast walked past Lloyd to exit the offices, Lloyd asked to speak with Pendergast in a separate  
28 conference room. Pendergast carried his young daughter into the conference room, and after Lloyd

asked him to leave the child outside the room, Lloyd formally terminated him. In an apparent reference to anticipated severance for Pendergast, who had been disloyal to the Company where he had worked for a mere five months, he screamed, “What’s the [settlement] number? What’s the number? How much are you going to pay me?” Pendergast yelled, “He fired me!” to the others, and screamed to Lloyd—all in front of his young children and wife—“I’ve been advised by counsel for months.” These are not the actions of responsible individuals. On the next day, June 16, 2016, the remaining members of the Gang of Four—BamBrogan, Sauer, and Mulholland—announced their resignations from Hyperloop One.

***The Company Continues to Act in Good Faith to Reach an Amicable Resolution***

69. Even following these events, the Company continued to act in good faith. The Company promptly invited each of the seven employees who had been solicited by the Gang of Four to return to their employment. Each and every one of these valued employees has now returned to the Company and continues to build key technology to bring the Hyperloop to market.

70. Over the weeks following the termination of Pendergast, the Company continued its attempt to resolve the Gang of Four’s departure amicably, and even offered to rehire certain members of the Gang as a demonstration of the Company’s good faith and desire for peace. Hyperloop One also continued to pay BamBrogan’s and Mulholland’s salaries up to the date that they filed their Sham Complaint in the hope that a favorable, mutually agreeable separation could be reached. The Company even paid for a private mediation session among BamBrogan, Pendergast, Mulholland, Sauer, and the Company in an effort to resolve their differences. Even more, the day before the Gang filed the Sham Complaint, BamBrogan lied to Company employees by telling them he was open to a meeting with Shervin to see if they could resolve their differences.

71. It is now apparent that the Gang of Four has never been interested in reaching a fair and reasonable agreement that would benefit the Company and all of its employees. The Company did everything it possibly could to appease the Gang during the six weeks of discussions, but the Gang had no intention of reaching a resolution that provided for anything short of complete control. They were scheming the entire time to develop a competing venture and prepare the Sham Complaint as a preemptive strike, media ploy, and last-ditch effort to damage the Company.

1 **D. The Gang of Four Files the Sham Complaint to Cover Their Egregious Actions and**  
2 **Create a Media Show**

3 On July 12, 2016, the Gang filed a frivolous and baseless lawsuit. The Sham Complaint  
4 serves as further evidence of the Gang's disloyal, illegal, and unethical conduct aimed at harming and  
5 competing with Hyperloop One. The Sham Complaint sets forth trivial, sensationalized allegations  
6 about routine business decisions of the Board. Every one of the core factual allegations in the Sham  
7 Complaint is categorically false, as alleged below and as will be proven in the litigation.

8 72. ***Shervin Is Central to Hyperloop's Success.*** The Sham Complaint falsely and unfairly  
9 portrays Shervin as self-interested and unimportant to the overall mission of Hyperloop One. The  
10 opposite is true. There would be no Hyperloop One without Shervin, who worked tirelessly to  
11 formalize the concept for the Hyperloop and to get the Company off the ground and on its current  
12 path of success starting in January 2013. He was instrumental in taking Elon Musk's Hyperloop idea,  
13 developing it, working up a business plan, hiring personnel, and lining up all early financing. He  
14 further mined his professional network to line up the highest quality advisors and consultants to assist  
15 the Company, including through the groundbreaking Forbes cover story that instantly established the  
16 Company's bona fides. Although he does not have a day-to-day operational role, Shervin continues  
17 to play a pivotal role as Executive Chairman of the Board to attract significant financing and provide  
18 strategic guidance and direction to the Company as it continues on its mission to make the Hyperloop  
19 a reality. Shervin owns 10% of the Company—not 90% as Plaintiffs suggest—and he is fully  
20 committed to continuing to pour his energies into making Hyperloop One a success. Shervin also  
21 committed publicly and at the founding of the Company to invest \$40 million personally in the  
22 Company once he is liquid from initial public offerings from some of his valuable personal  
23 investments at whatever the future fair market value of Hyperloop One is at the time. That is a  
24 commitment that still stands today and has helped lend the Company credibility with respect to its  
25 future prospects.

26 73. ***The Board's Decision To Hire Fideras.*** The Sham Complaint wrongly accuses  
27 Lonsdale of "nepotism" based on Hyperloop One's hiring of Fideras as its financial representative for  
28 investment efforts. In fact, the Company hired Fideras to repair the damage that Pendergast and

1 Mulholland had inflicted upon the Company through their inefficient management of the final stage  
2 of the Company's Series B round of financing. The Board approved of the decision in a unanimous  
3 vote of the independent Board members, with Joe Lonsdale recusing himself from the vote. The  
4 Board chose Fideras because the Board wanted to bring in a group that it could trust to run an  
5 efficient, organized, and transparent financing process—*i.e.*, the opposite of what Pendergast and  
6 Mulholland had done. Fideras has done an exceptional job, to the full satisfaction of the Board.

7       74.     ***The Company's Decision to Hire Afshin.*** The Sham Complaint wrongly accuses  
8 Shervin of "nepotism" based on Hyperloop One's hiring of Afshin as General Counsel. While  
9 Afshin was introduced to the Company through his brother, Shervin, at the time of the hiring, the  
10 Company had a handful of people working in a garage without pay. Afshin was highly qualified with  
11 over 20 years of experience as a lawyer—with some experience in a broad range of legal areas—who  
12 had served in numerous leadership roles, including incorporating technology companies and advising  
13 one major start-up on their launch in the Washington D.C. area. There was nothing wrong with  
14 hiring an extraordinarily qualified family member into a young start-up company. Indeed, that is  
15 done all the time. After tragically losing his son in a plane crash, Afshin gave up his 20-year law  
16 practice and moved across country to join the founding Hyperloop One team in a garage as its third  
17 employee. He made this major change and move as a legacy for his lost son who loved trains.  
18 Afshin helped get the Company off the ground and performed well throughout his employment. The  
19 Gang of Four's claim that hiring Afshin—*whose compensation was increased by BamBrogan at the*  
20 *time of Afshin's hiring, over and above the level suggested by Shervin*—was improper because he was  
21 Shervin's brother is baseless.

22       75.     ***There Was No "Hangman's Noose."*** In a crass attempt to gin up media attention, the  
23 Sham Complaint wrongly accuses Afshin—BamBrogan's onetime housemate—of placing a  
24 "hangman's noose" on BamBrogan's chair, causing BamBrogan to "fear for his physical safety."  
25 These inflammatory allegations are lies. On July 14, a judge concluded there was no ongoing threat  
26 to BamBrogan and summarily dismissed his reckless attempt to obtain a restraining order against  
27 Afshin. Afshin had placed a piece of rope configured in a lasso shape on BamBrogan's chair to  
28 reflect his perceived "cowboy" attitude that BamBrogan had long displayed toward the Company,

1 and most recently through his false and improper “lone ranger” comments to investors, as well as  
2 BamBrogan’s obvious fondness for cowboy attire. When BamBrogan discovered the lasso, he placed  
3 it on a chair and wheeled it around the office in a display of over-dramatization and plea for attention  
4 that had become his hallmark. This was hardly the conduct of a man who supposedly feared for his  
5 life.

6       76.     ***There Was No Pay-To-Play Scheme.*** The Sham Complaint falsely accuses Shervin of  
7 engaging in a “pay-to-play” arrangement to leverage investors to invest in Sherpa venture capital  
8 funds. This allegation is another unsupported lie. The Sham Complaint does not name even a single  
9 investor who was pressured into investing in a Sherpa fund and, in fact, Shervin and Sherpa Capital  
10 introduced the Company to at least fifteen Hyperloop One investors that are not investors in Sherpa  
11 funds, disproving the allegation of a *quid pro quo* arrangement.

12       77.     ***There Were No Improper Site Visits.*** The Sham Complaint falsely accuses Shervin of  
13 hosting parties for friends and acquaintances at the Company’s headquarters during work hours. This  
14 kind of petty allegation—which is completely baseless—demonstrates that the Gang of Four has  
15 nothing serious to complain about. Any visits that Shervin conducted at the office were intended to  
16 showcase Hyperloop One to investors and potential investors. The venture capital firm Shervin co-  
17 founded held one after-hours event for approximately two dozen people. And Shervin and others  
18 hosted another event to support African Americans in venture capital, which was held on a Friday  
19 after hours from 5:30-8:30 p.m. Those are the only two events that Shervin held, and they certainly  
20 were not “parties.” Moreover, tours given by management or Board members were for potential  
21 investors and to market Hyperloop One, and these tours helped yield significant investments for the  
22 Company to ensure that it had the capital to fund the engineering and technological work necessary to  
23 keep Hyperloop One ahead of its competitors.

24       78.     ***There Was No Improper Relationship or Conduct with a Vendor.*** The Sham  
25 Complaint falsely accuses Shervin of hiring the Company’s PR vendor and increasing her salary all  
26 because of his personal relationship with her. This sexist accusation is the Gang of Four’s most  
27 brazen attempt at spinning normal business decisions into a storyline worthy of a bad soap opera. In  
28 the early stages of its formation, Hyperloop One hired Pramana Collective (“Pramana”) as its first PR



1 firm to work on one project for \$15,000 per month—getting Hyperloop One to be featured in a cover  
2 story in Forbes. Pramana is among the most highly respected PR firms in Silicon Valley and  
3 extremely selective about its clients. Lining up a firm of this stature was a major accomplishment for  
4 Shervin and Hyperloop One. The initial pricing was well below Pramana’s standard monthly rate,  
5 and Pramana agreed to this pricing for a limited time in order to assist a fledgling start-up that, at the  
6 time, had very little financing. Pramana appointed one of its principals to work on the Hyperloop  
7 One account.

8 79. Pramana’s work was instrumental in landing Hyperloop One with the groundbreaking  
9 cover story in Forbes in March 2015, which paid enormous dividends to the Company through  
10 increased investor and media attention. It is unprecedented to have a start-up debut its launch on the  
11 cover of Forbes. After this initial project, and after the Company solidified its initial round of  
12 financing and expanded Pramana’s role to assist the Company, the Company agreed to pay  
13 Pramana’s required, normal retainer of \$40,000 per month. The relationship had absolutely nothing  
14 to do with the increase in Pramana’s compensation to its normal rates.

15 80. Shervin’s relationship with the Pramana representative began after Pramana was hired.  
16 The relationship was disclosed to the Company and Pramana. After they were engaged, the Pramana  
17 representative began a process to avoid any appearance of a conflict by adding a co-founder of  
18 Pramana to co-lead the Hyperloop One account and who was then transitioned to solely lead the  
19 account. Pramana continued to run highly effective PR events for Hyperloop One, including the  
20 highly successful event in September 2015 to introduce the Company’s new campus in Los Angeles  
21 and Rob Lloyd as the Company’s new CEO. In the spring of 2016, the new representative of  
22 Pramana indicated that Hyperloop One had scaled and outgrown Pramana’s services and that the  
23 Company might be better served by another PR firm. He offered to introduce the Company to other  
24 candidates, particularly those with governmental and regulatory experience. At the same time, the  
25 Company hired a new Chief Marketing Officer who, with the support of Lloyd, decided to engage a  
26 different PR firm that she believed would better serve the needs of Hyperloop One. Thus, the  
27 salacious personal attacks on Shervin are lies, as no decision to hire, increase the compensation of, or  
28 terminate Pramana was made in any way based on Shervin’s one-time relationship with the Pramana



1 representative. To suggest otherwise is sexist and demeaning to a highly successful female leader in  
2 the PR industry.

3 81. ***The Board Acted Properly by Declining Unreasonable Demands.*** Finally, the Sham  
4 Complaint falsely accuses Hyperloop One’s Board of refusing to listen to employee concerns or  
5 demands. Again, this is utterly false. The Board made real, significant changes in response to  
6 reasonable and legitimate concerns posed by employees, including changing the Company’s equity  
7 plan, Board structure, and policies. But the Board would not consent to the Gang of Four’s  
8 outrageous demands that it scrap the entire equity structure of Hyperloop One by eliminating any  
9 preferred rights of the founding investors, and that it remove the current leadership and hand power to  
10 the erratic BamBrogan.

11 82. The Sham Complaint is merely a preemptive strike and a smokescreen. The Gang of  
12 Four believed that the Company would file claims against them. Indeed, in one of many unstable  
13 emotional outbursts, Pendergast admitted to Hyperloop One’s CEO that he plotted against the  
14 Company while still an employee *for over three months*. And, in a particularly bizarre move, just one  
15 day after filing their Sham Complaint, the Gang’s lawyers sent Hyperloop One a letter in which they  
16 acknowledged that they had discussed with their lawyer “potential future plans,” admitted taking the  
17 Company’s confidential and proprietary information and keeping their Company devices, and  
18 threatened to bring (statutorily prohibited) defamation claims against the Company if it exercises its  
19 right to file legal claims against the Gang.

20 **E. The Gang of Four Launches a Smear Campaign**

21 83. Immediately after filing the Sham Complaint and continuing until today, the Gang of  
22 Four have acted in a concerted effort to defame and smear Hyperloop One—all designed to harm the  
23 Company’s business and reputation (the “Smear Campaign”). For example, the Gang of Four and  
24 their paid agents have fed lies and misinformation about the Company to media outlets and new  
25 sources, manipulating certain sources to erroneously state that Hyperloop One is “collapsing,” being  
26 “knocked off track,” “might implode,” and “run by children.”

27 84. The Gang, through their agents, have told the media plain falsehoods, claiming that  
28 the Company is engaged in a “pattern and practice, layers upon layers of breaches of fiduciary duty,

1 mismanagement, mistreatment of employees.” And even more, they have claimed that the rope  
2 incident was somehow a Company message that “we’re going to retaliate against you and your safety  
3 is at risk.” That is what the Gang has said about Hyperloop One. That is false. That is reckless.  
4 And that is irresponsible.

5 85. The Smear Campaign has unlawfully disrupted the Company’s business and forced it  
6 to expend resources to address and reassure its business investors and partners that Hyperloop One  
7 remains stronger than ever, especially now that it is rid of the Gang. The Company’s engineering  
8 team is running full speed ahead, led by Josh Giegel; all of its employees besides the Gang of Four  
9 have remained loyal; and its investors, employees, and Board stand united to redress the illicit attacks  
10 on the Company and to forge ahead as the Company seeks to develop the world’s first Hyperloop in  
11 record time.

12 **F. The Gang of Four’s Legal and Ethical Obligations to Hyperloop One**

13 86. In their roles as officers and/or employees of Hyperloop One, each member of the  
14 Gang of Four was an agent of Hyperloop One and owed a fiduciary duty and a duty of loyalty to the  
15 Company. Specifically, each member of the Gang had a duty to refrain from (i) competing with the  
16 Company, (ii) acquiring a material benefit from third parties in connection with his duties to the  
17 Company, (iii) using the Company’s property or confidential information for his own purposes, and  
18 (iv) engaging in conduct inimical to the Company’s interests. In short, each member of the Gang of  
19 Four had an obligation to act in the best interest of the Company at all times.

20 87. In addition to these fiduciary obligations, each member of the Gang owed a number of  
21 contractual obligations to the Company. In connection with their employment at Hyperloop One,  
22 each member executed an Employee Confidentiality and Inventions Assignment Agreement with  
23 Hyperloop One (the “Confidentiality Agreement”). Pursuant to the Confidentiality Agreement, each  
24 member of the Gang agreed, among other things, to maintain the confidentiality of Hyperloop One’s  
25 confidential information; not to engage in any activity that is competitive with Hyperloop One,  
26 including the solicitation of other employees; and to return all proprietary information at the  
27 termination of employment.

88. In connection with their employment at Hyperloop One, BamBrogan and Mulholland also executed a Nondisclosure Agreement with Hyperloop (the “Nondisclosure Agreement”). Pendergast executed a substantially similar Mutual Nondisclosure Agreement with Hyperloop One (the “Pendergast Nondisclosure Agreement”). Pursuant to the Nondisclosure Agreement and the Pendergast Nondisclosure Agreement, each member of the Gang of Four further agreed, among other things, to maintain the confidentiality of Hyperloop One’s confidential information and to return all Hyperloop One proprietary information at the termination of employment.

89. Further, in connection with his employment at Hyperloop One, on November 19, 2014, BamBrogan executed a binding Key Employee Agreement with Hyperloop One (the “Key Employee Agreement”). Pursuant to the terms of the Key Employee Agreement, BamBrogan agreed, among other things, not to engage in any activity that is competitive with Hyperloop One and not to disparage, criticize, or make negative statements about the Company to others.

90. Finally, as Assistant General Counsel to Hyperloop One, Pendergast had specific and special fiduciary obligations to the Company. As the Company’s attorney, he was required to act at all times with undivided loyalty to his client, Hyperloop One, and he was obliged to refrain from: taking part in any conduct that may harm or undermine the Company’s best interests; disclosing the Company’s confidential information; or using the Company’s confidential information to its detriment. Pendergast was further required under ethical rules to serve the best interests of the Company, maintain the Company’s confidential information, and to avoid any conflict with his client, Hyperloop One. Among other things, Pendergast was bound by the California State Bar’s Rules of Professional Conduct, including Rule 3-310, which precludes an attorney from engaging in a conflict of interest without informed written consent from his or her client. Pendergast was also bound by the Arizona State Bar’s Rules of Professional Conduct, including Rule 1.7, which similarly precludes attorneys from engaging in a conflict of interest without informed written consent, and Rule 1.8, which precludes attorneys from “us[ing] information relating to representation of a client to the disadvantage of the client unless the client gives informed consent.”

### FIRST CAUSE OF ACTION

## Breach of Non-Solicitation Agreement

91. Hyperloop One incorporates and realleges paragraphs 1 through 90 above as though set forth fully herein.

92. As a condition of their employment with Hyperloop One, and in exchange for valuable consideration thereunder, each member of the Gang of Four agreed to be bound by the terms set forth in the following clause contained within his Confidentiality Agreement (the “Non-Solicitation Agreement”):

**4. Additional Activities.** I agree that . . . (b) for the period of my employment by Company and for one (1) year thereafter, I will not, either directly or indirectly, solicit or attempt to solicit any employee, independent contractor, consultant or customer of Company to terminate his, her or its relationship with Company in order to become an employee, consultant, independent contractor or customer for any person or entity.

93. In violation of his obligations under this agreement, each member of the Gang of Four solicited or aided and abetted the solicitation of key Hyperloop One employees to form a competing venture.

94. As a direct and proximate result of the foregoing breaches, Hyperloop One has suffered damages including, but not limited to, actual, consequential, and/or incidental damages.

95. In addition to recovering its damages stemming from these breaches, Hyperloop One also seeks specific performance under the aforementioned Non-Solicitation Agreement, in the form of preliminary and permanent injunctive relief prohibiting the Gang of Four from continuing to engage in the unlawful solicitation of Hyperloop One employees.

## SECOND CAUSE OF ACTION

## Breach of Non-Compete Agreement

96. Hyperloop One incorporates and realleges paragraphs 1 through 90 above as though set forth fully herein.

97. As a condition of their employment with Hyperloop One, and in exchange for valuable consideration thereunder, each member of the Gang of Four agreed to be bound by the terms set forth in the following clause contained within his Confidentiality Agreement:

**4. Additional Activities.** I agree that (a) during the term of my employment by Company, I will not, without the Company's express written consent, engage

1 in any employment or business activity that is competitive with, or would  
2 otherwise conflict with my employment by, Company . . . .

3 98. BamBrogan additionally agreed to be bound by the following provision set forth in his  
4 Key Employee Agreement (collectively with the above clause, the “Non-Compete Agreement”):

5 **4.2 Conflicting Interests.** Except as permitted by Section 4.3, while  
6 employed by the Company, Executive agrees not to acquire, assume or participate  
7 in, directly or indirectly, any position, investment or interest known by him to be  
8 adverse or antagonistic to the Company, its business or prospects, financial or  
otherwise.

9 99. During his employment with Hyperloop One, each member of the Gang of Four  
10 breached this agreement by personally and/or assisting other members of the Gang to (i) take steps to  
11 build a venture that would compete directly with Hyperloop One; (ii) solicit investors for a competing  
12 venture; (iii) solicit employees from Hyperloop One to work for the competing venture; and (iv)  
13 make false, disparaging, and/or defamatory remarks about Hyperloop One and its Board members to  
14 current and/or potential investors of the Company in order to harm Hyperloop One’s business and  
15 induce these investors to invest in the competing venture.

16 100. As a direct and proximate result of the foregoing breaches, Hyperloop One has  
17 suffered damages including, but not limited to, actual, consequential, and/or incidental damages.

18 101. In addition to recovering its damages stemming from these breaches, Hyperloop One  
19 also seeks specific performance under the aforementioned Non-Compete Agreement, in the form of  
20 preliminary and permanent injunctive relief prohibiting the Gang of Four from continuing to engage  
21 in unlawful competition with Hyperloop One.

## 22 **THIRD CAUSE OF ACTION**

### 23 **Breach of Confidential Information Agreement**

24 102. Hyperloop One incorporates and realleges paragraphs 1 through 90 above as though  
25 set forth fully herein.

26 103. As a condition of his employment with Hyperloop One, and in exchange for valuable  
27 consideration thereunder, each member of the Gang of Four agreed to be bound by the terms set forth  
28 in the following clause contained within his Confidentiality Agreement:

1 **1.1 Nondisclosure; Recognition of Company's Rights.** At all times during my  
2 employment and thereafter, I will hold in confidence and will not disclose, use,  
3 lecture upon, or publish any of Company's Confidential Information (defined  
below) . . . .

4 **1.2 Confidential Information.** The term "**Confidential Information**" will mean  
5 any and all confidential data or information related to Company's business or its  
6 actual or demonstrably anticipated research or development, including without  
7 limitation (a) trade secrets, inventions, ideas, processes, computer source and  
8 object code, data, formulae, programs, other works of authorship, know-how,  
9 improvements, discoveries, developments, designs, and techniques;  
10 (b) information regarding products, plans for research and development, marketing  
and business plans, budgets, financial statements, contracts, prices, suppliers, and  
11 customers; (c) information regarding the skills and compensation of Company's  
employees, contractors, and any other service providers of Company; and (d) the  
12 existence of any business discussions, negotiations, or agreements between  
Company and any third party.

13 \*\*\*

14 Any and all information [I have] or will receive in the course of [my] dealings with  
15 Hyperloop from the inception are intended to be maintained as absolutely  
16 confidential and secret.

17 104. BamBrogan and Mulholland further agreed to be bound by the terms set forth in the  
18 following clause contained within the Nondisclosure Agreement:

19 1. Confidential Information.

20 (a) For purposes of this agreement, the term "Confidential Information" shall  
21 mean the following:

22 Any and all information disclosed to Agent by Hyperloop by the Agent or his/her  
23 agents, officers, employees, contractors or subcontractors as a consequence of or  
24 through the exchange of information between the Parties as described in this  
25 agreement, which information shall include but shall not be limited to financial  
information, business formulas, compilation of information and records, including  
26 information relating to research, development, inventions, name or names of  
customers and potential customers, strategies, plans, events or any and all  
27 information learned in the course of or arising out of dealings with or on behalf of  
Hyperloop. Any and all such information shall be maintained as secret and  
28 confidential unless after notice to Hyperloop, Agent is compelled by legal process  
to make such disclosure. . . .

105. Pendergast further agreed to be bound by the terms set forth in the following clause  
contained within the Pendergast Nondisclosure Agreement (collectively with the above clauses, the  
"Confidential Information Agreement"):

1. Confidential Information.

(a) For purposes of this agreement, the term "Confidential Information" shall mean the following:

Any and all information disclosed to Recipient or its agents, officers, employees, contractors or subcontractors as a consequence of or through the exchange of information between the Parties as described in this agreement, which information shall include but shall not be limited to financial information, business formulas, compilation of information and records, including information relating to research, development, inventions, operations, name or names of customers and potential customers, strategies, plans, events or any and all information learned in the course of or arising out of dealings with or on behalf of the Parties. Any and all such information shall be maintained as secret and confidential unless after notice to Discloser, Recipient is compelled by legal process to make such disclosure. . . .

106. Each member of the Gang of Four has breached these provisions by taking or assisting other members of the Gang of Four to take the Company's confidential information and misusing it.

107. As a direct and proximate result of all of these foregoing breaches by the Gang of Four, Hyperloop One has now suffered damages including, but not limited to, actual, consequential, and/or incidental damages.

108. In addition to recovering its damages stemming from these breaches, Hyperloop One also seeks specific performance under the Confidential Information Agreement, in the form of preliminary and permanent injunctive relief prohibiting the Gang of Four from continuing to engage in the unauthorized post-employment use, dissemination, or retention of Hyperloop One's confidential, proprietary, and/or trade secret information.

**FOURTH CAUSE OF ACTION**

**Breach of Proprietary Information Agreement**

109. Hyperloop One incorporates and realleges paragraphs 1 through 90 above as though set forth fully herein.

110. As a condition of his employment with Hyperloop One, and in exchange for valuable consideration thereunder, each member of the Gang of Four agreed to be bound by the terms set forth in the following clause contained within his Confidentiality Agreement:

**5. Return of Company Property.** Upon termination of my employment or upon Company's request at any other time, I will deliver to Company all of Company's property, equipment, and documents, together with



1 all copies thereof, and any other material containing or disclosing any Inventions,  
2 Third Party Information or Confidential Information of Company and certify in  
3 writing that I have fully complied with the foregoing obligation. I agree that I  
4 will not copy, delete, or alter any information contained upon my Company  
5 computer before I return it to Company. . . .

6 111. BamBrogan and Mulholland further agreed to be bound by the terms set forth in the  
7 following clause contained within the Nondisclosure Agreement:

8 3. Return of Confidential Information. Agent agrees to promptly deliver to  
9 Hyperloop, any financial documents and/or program, disks and/or software  
10 reflecting Confidential Information, and all copies made thereof which the agent  
11 may have made, may have access to, or may receive or possess during the period  
12 of his discussions and/or business relationship. Upon termination of the  
13 discussions and/or business relationship between the Parties, the agent shall  
14 promptly deliver to Hyperloop any and all such information in its possession or  
15 under its control, except as by prior express written permission or agreement has  
16 permitted either Party to retain.

17 112. Pendergast further agreed to be bound by the terms set forth in the following clause  
18 contained within the Pendergast Nondisclosure Agreement (collectively with the above clauses, the  
19 “Proprietary Information Agreement”):

20 3. Return of Confidential Information. Recipient agrees to promptly deliver  
21 to Discloser, any financial documents and/or program, disks and/or software  
22 reflecting Confidential Information, and all copies made thereof which the  
23 Company may have made, may have access to, or may receive or possess during  
24 the period of his discussions and/or business relationship. Upon termination of  
25 the discussions and/or business relationship between the Parties, the Recipient  
26 shall promptly deliver to Discloser any and all such information in its possession  
27 or under its control, except as by prior express written permission or agreement  
28 has permitted either Party to retain.

113. Notwithstanding his agreement to return all proprietary information upon leaving the  
Company, each member of the Gang of Four breached these provisions by retaining and refusing to  
return proprietary Company information or assisting other members of the Gang of Four to retain and  
refuse to return such information after they had left the Company.

114. As a direct and proximate result of all of these foregoing breaches by the Gang of  
Four, Hyperloop One has suffered damages including, but not limited to, actual, consequential,  
and/or incidental damages.



115. In addition to recovering its damages stemming from these breaches, Hyperloop One also seeks specific performance under the Proprietary Information Agreement, in the form of preliminary and permanent injunctive relief prohibiting the Gang of Four from continuing to engage in the unauthorized post-employment use, dissemination, or retention of Hyperloop One's confidential, proprietary, and/or trade secret information.

## FIFTH CAUSE OF ACTION

## Breach of Non-Disparagement Agreement (as to BamBrogan)

116. Hyperloop One incorporates and realleges paragraphs 1 through 90 above as though set forth fully herein.

117. As a condition of his employment with Hyperloop One, and in exchange for valuable consideration thereunder, BamBrogan agreed to be bound by the terms set forth in the following clause contained within his Key Employee Agreement (the “Non-Disparagement Agreement”):

**Publicity; Non-Disparagement.** Neither party will issue, without the consent of the other party, any press release or make any public announcement with respect to this Agreement or the employment relationship between them. Following the Effective Date of this Agreement and regardless of any dispute that may arise in the future, each party agrees that he or it will not disparage, criticize or make statements which are negative, detrimental or injurious to the other any individual, company or client, including within the Company.

118. Notwithstanding the fact that he was legally bound to abide by the terms of the Non-Disparagement Agreement, during his employment with Hyperloop One and since leaving his employment with the Company, BamBrogan has intentionally made myriad false and disparaging comments or statements concerning Hyperloop One to third parties, including (without limitation) to Hyperloop One's current and prospective investors, to the media, and to those employees whom he wrongfully solicited to revolt against the Company.

119. Although Hyperloop One has performed, or substantially complied with, all of its material obligations under BamBrogan's Key Employee Agreement, as set forth above, BamBrogan has repeatedly breached the terms of the Non-Disparagement Agreement.

120. As a direct and proximate result of the foregoing breaches, Hyperloop One has now suffered damages including, but not limited to, actual, consequential, and/or incidental damages.

121. In addition to recovering its damages stemming from these breaches, Hyperloop One also seeks specific performance under the aforementioned Non-Disparagement Agreement, in the form of preliminary and permanent injunctive relief prohibiting BamBrogan from continuing to engage in the unlawful dissemination of disparaging comments about Hyperloop One to any and all third parties.

## SIXTH CAUSE OF ACTION

## Breach of Fiduciary Duty

122. Hyperloop One incorporates and realleges paragraphs 1 through 90 above as though set forth fully herein.

123. As officers and/or employees of Hyperloop One, each member of the Gang of Four was a fiduciary of Hyperloop One.

124. As a fiduciary of Hyperloop One, each member of the Gang of Four held a position of trust and owed Hyperloop One a fiduciary duty.

125. While employed by Hyperloop One, each member of the Gang of Four breached or conspired to breach his fiduciary duties by failing to protect the best interests of Hyperloop One and putting his own interests ahead of the Company's.

126. As described in this cross-complaint, while employed by Hyperloop One, each member of the Gang of Four breached or conspired to breach his fiduciary duties by, among other things, taking and conspiring to take concrete steps to divert Hyperloop One's current and prospective business opportunities to a company that the Gang of Four planned to form; by soliciting or conspiring to solicit key Company employees to leave the Company and join the competing venture; and by making or conspiring to make false and improper statements to investors about the Company and its Board.

127. As a direct and proximate result of the Gang of Four's failure to comport with each of their fiduciary duties to Hyperloop One, Hyperloop One has now suffered damages including, but not limited to, actual, consequential, and/or incidental damages.

## SEVENTH CAUSE OF ACTION

## Breach of Duty of Loyalty

128. Hyperloop One incorporates and realleges paragraphs 1 through 90 above as though set forth fully herein.

129. As officers and/or employees of Hyperloop One, each member of the Gang of Four was an agent of Hyperloop One.

130. As an agent of Hyperloop One, each member of the Gang of Four held a position of trust and owed Hyperloop One a duty of loyalty.

131. While employed by Hyperloop One, each member of the Gang of Four breached his duty of loyalty by failing to protect the best interests of Hyperloop One and putting his own interests ahead of the Company's.

132. As described in this cross-complaint, while employed by Hyperloop One, each member of the Gang of Four breached his duty of loyalty by, among other things, taking and conspiring to take concrete steps to divert Hyperloop One's current and prospective business opportunities to a company that the Gang of Four planned to form; by soliciting or conspiring to solicit key Company employees to leave the Company and join the competing venture; and by making or conspiring to make false and improper statements to investors about the Company and its Board.

133. As a direct and proximate result of the Gang of Four's failure to comport with each of their duties of loyalty to Hyperloop One, Hyperloop One has now suffered damages including, but not limited to, actual, consequential, and/or incidental damages.

## EIGHTH CAUSE OF ACTION

## Breach of the Faithless Servant Doctrine

134. Hyperloop One incorporates and realleges paragraphs 1 through 90 above as though set forth fully herein.

135. As officers and/or employees of Hyperloop One, each member of the Gang of Four was a fiduciary of Hyperloop One.

136. As a fiduciary of Hyperloop One, each member of the Gang of Four held a position of trust and owed Hyperloop One a fiduciary duty.

1           137. As described in this cross-complaint, while employed by Hyperloop One, each  
2 member of the Gang of Four breached his fiduciary duties by, among other things, taking and  
3 conspiring to take concrete steps to divert Hyperloop One’s current and prospective business  
4 opportunities to a company that the Gang of Four planned to form; by soliciting or conspiring to  
5 solicit key Company employees to leave the Company and join the competing venture; and by  
6 making or conspiring to make false and improper statements to investors about the Company and its  
7 Board.

8           138. The Gang of Four’s acts and breaches of their fiduciary duties were inconsistent with  
9 their obligations to Hyperloop One. As a result, each member of the Gang was a faithless servant for  
10 at least three months until his departure from the Company in mid-June 2016.

11           139. The Gang of Four must disgorge their ill-gotten gains, and Hyperloop One is entitled  
12 to recover all sums paid to the Gang of Four as compensation during that time period.

### 13                                   **NINTH CAUSE OF ACTION**

#### 14                                   **Intentional Interference with Contractual Relations**

15           140. Hyperloop One incorporates and realleges paragraphs 1 through 90 above as though  
16 set forth fully herein.

17           141. At all relevant times, Hyperloop One had valid written and/or implied-in-fact  
18 employment contracts with the Hyperloop One employees whom the Gang of Four solicited to form  
19 “Hyperloop Two” or “NewCo.”

20           142. At all relevant times, Hyperloop One had valid written and/or implied-in-fact contracts  
21 with one or more investors, including memoranda of understanding for potential projects.

22           143. The Gang of Four was not a party to any of the valid contracts described above.

23           144. Each member of the Gang of Four had knowledge of the existence of all of these valid  
24 contracts by virtue of his position at Hyperloop One—including, without limitation, his role in  
25 negotiating and executing some or all of these agreements, and his knowledge that Hyperloop One  
26 had the above employment and business relationships.

27           145. Each member of the Gang of Four has intentionally interfered with all of these valid  
28 contracts by (i) wrongfully soliciting or conspiring to wrongfully solicit Hyperloop One employees to

engage in workplace misconduct, leave their employment with Hyperloop One, breach the terms of their employment agreements, and compete with Hyperloop One; (ii) affirmatively misleading or conspiring to affirmatively mislead Hyperloop One's current investors into believing that Hyperloop One would not be able to provide them with an adequate return on their investment going forward; and (iii) affirmatively misleading or conspiring to affirmatively mislead Hyperloop One's current business partners into believing that Hyperloop One would not be able to adequately perform going forward.

146. The Gang of Four's intentional interference with these valid contracts resulted in the disruption of the contractual relationships that Hyperloop One enjoyed with its employees, its current investors, and its business partners. This interference has placed Hyperloop One's projects in jeopardy.

147. As a proximate result of the Gang of Four's intentional interference with these valid contracts, Hyperloop One has now suffered (and will continue to suffer) actual, consequential, and/or incidental damages in an amount to be determined in the course of this proceeding.

#### **TENTH CAUSE OF ACTION**

##### **Violation of California Business and Professions Code § 17200, *et seq.***

148. Hyperloop One incorporates and realleges paragraphs 1 through 90 above as though set forth fully herein.

149. The Gang of Four's aforementioned unlawful conduct—including, but not limited to, their (i) breach of their fiduciary duties; (ii) breach of their duty of loyalty to Hyperloop One; and (iii) tortious interference with Hyperloop One's contractual relations—constitutes unfair competition in violation of California Business and Professions Code § 17200, *et seq.*

150. The Gang of Four engaged in these acts of unfair competition with the intent to injure Hyperloop One's business, and Hyperloop One has in fact suffered (and will continue to suffer) actual, consequential, and/or incidental damages in an amount to be determined in the course of this proceeding.

1           151. Hyperloop One has no adequate remedy at law for the injuries that it has suffered (and  
2 will continue to suffer) as a result of the Gang of Four's unlawful acts. Absent injunctive relief, the  
3 Gang of Four will continue to pursue its campaign of tortious and unlawful conduct.


4                                   **PRAYER FOR RELIEF**

5           WHEREFORE, in light of the foregoing allegations, Hyperloop One hereby requests the  
6 following relief:

- 7                           1.       declaratory relief in the form of an order that Cross-Defendants  
8 breached the Non-Solicitation, Non-Compete, Confidential Information, Proprietary  
9 Information, and Non-Disparagement Agreements and injunctive relief in the form of  
10 an order enjoining Cross-Defendants from further breach of these agreements;  
11                       2.       money damages in excess of \$50,000,000, including, but not limited to,  
12 actual, consequential, and/or incidental damages;  
13                       3.       return of ill-gotten gains and all sums paid to Cross-Defendants under  
14 the faithless servant doctrine;  
15                       4.       punitive damages in the amount of \$200,000,000;  
16                       5.       attorneys' fees and/or costs in the maximum amount permitted and/or  
17 provided for by law or contract; and  
18                       6.       such other and further relief as the Court may deem just and proper.

19  
20 DATED: July 19, 2016

GIBSON, DUNN & CRUTCHER LLP

21  
22  
23 By:   
24 Orin Snyder

25 *Attorneys for Defendant and Cross-Claimant*  
26 *Hyperloop One*

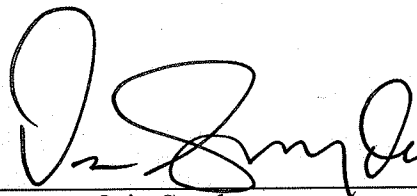
27  
28                                   **DEMAND FOR JURY TRIAL**

Hyperloop One hereby requests a jury trial on any and all causes of action so triable.

DATED: July 19, 2016

GIBSON, DUNN & CRUTCHER LLP

By:



Orin Snyder