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24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

25 **COUNTY OF LOS ANGELES**

26 Case No. BC626780

27 [Assigned to Hon. S. Bruguera]

28 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

FIRST AMENDED 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 Employment 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 First
2 Amended Cross-Complaint against Plaintiffs and Cross-Defendants Brogan BamBrogan, David
3 Pendergast, Knut 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. On July 19, 2016, the Company filed a cross-complaint (“the Cross-Complaint”)
17 against four former Hyperloop One employees—Cross-Defendants Brogan BamBrogan, David
18 Pendergast, William Mulholland, and Knut Sauer, referred to in this First Amended Cross-Complaint
19 as the “Gang of Four” or the “Gang”—who orchestrated a coordinated attempted coup to seize
20 majority control of the Company, and in case that failed, to launch a venture to compete with and
21 destroy the Company. In response to the Cross-Complaint, the Gang flooded the media with lies
22 claiming that their plans to develop “NewCo” or “Hyperloop Two”—as the Gang members called
23 their forthcoming venture—were merely a joke and that they never seriously intended to compete
24 with Hyperloop One. As set forth in this First Amended Cross-Complaint, since that time, Hyperloop
25 One has uncovered additional evidence concerning the Gang’s activities that confirm the Gang’s
26 efforts were no joking matter. The Gang’s efforts to establish a competing venture included secret
27 meetings in BamBrogan’s garage, a list of dozens of Hyperloop One employees whom they would
28 attempt to steal for the new venture, discussions of efforts to raise at least two to three million dollars

1 in capital for the new venture specifically in anticipation of litigation with Hyperloop One, actively
2 purchasing domain names, plotting to steal the Company’s investors and intellectual property,
3 plotting to work around the Company’s patent applications, and a scheme to engage in frivolous
4 litigation to further harm the Company. The Gang’s recent public relations gambit is nothing more
5 than a failed attempt to use their sham lawsuit and smear campaign to spread lies about the Company
6 in the foolish hope that it will put pressure on the Company to settle with the Gang.

7 3. As set forth in the Cross-Complaint, this action arises from an illegal and failed plot
8 by the Gang of Four to take over the Company through a coordinated coup. As will be addressed in
9 detail in the factual allegations below, each of these four employees was on notice for poor
10 performance and had good reason to believe his days at the Company were numbered. In pursuing
11 their failed power grab, the four leaders of the coup engaged in gross misconduct toward the
12 Company and their fellow employees, putting their own greed and personal interests ahead of the
13 Company they were duty-bound to protect. When their ill-conceived plan failed, the Gang of Four
14 set out to raid the Company’s workforce and launch a venture to compete with the Company.
15 BamBrogan went so far as to purchase one or more Internet domain names for the planned competing
16 venture—including “hyperlooptoo.com,” which BamBrogan purchased the day before he and his co-
17 conspirators announced their insurrection. Then, when their coup failed, the Gang of Four filed their
18 sham complaint in this Court (the “Sham Complaint”) filled with lies and half-truths—and which the
19 Company now knows was a premeditated scheme to cause economic and reputational injury to the
20 Company and its core leadership to extract a quick settlement based on smoke and mirrors. The
21 Sham Complaint was not filed to vindicate legitimate legal claims; it was a preemptive strike, crass
22 media ploy, and last-ditch effort to damage the Company the Gang of Four so desperately sought to
23 control or destroy.

24 4. The Gang followed their Sham Complaint with a malicious smear campaign in the
25 media and across the Internet in an effort to spread embarrassing lies about the Company and its key
26 leadership. It has also recently come to light that the very same day the Gang filed the Sham
27 Complaint they created a fake Twitter account as part of this fraudulent and manipulative smear
28 campaign, through which they tweeted and retweeted disparaging statements about the Company and

1 its principals thousands of times. To this day, the Gang continues to reach out to reporters and
2 provide them with categorically false information about the Company and the Gang's efforts to
3 destroy it in the hope of extracting a settlement.

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

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

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

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

20 8. Over the next few days and weeks, the Company’s Board rejected the Gang’s more
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 complete rejection of their unreasonable
25 demands. In reality, these men never were interested in negotiating in good faith with the Company’s
26 Board to help their fellow employees; they were interested in advancing their own individual agenda.
27 For this reason, they tried to execute a plan they had been secretly plotting for months, knowing that
28 their power grab was unlikely to succeed. Indeed, the Company now knows that after sending the

1 Letter to the Board, the Gang organized a secret meeting in BamBrogan’s garage, in which they
2 attempted to lead a mutiny of key Company employees, destroy Hyperloop One’s relationships with
3 its current and prospective investors, “work around” (or infringe) the Company’s patented
4 technology, and launch a competing venture—“NewCo” as they called it.

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

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

27 11. The Gang of Four carefully solicited particular employees to join their scheme
28 because they were secretly plotting to launch a competing venture. These individuals included hand-

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

12 12. In the aftermath of the Letter, Hyperloop One’s executives and Board members spent
13 several weeks attempting to reach an amicable outcome, with the Board agreeing to make
14 considerable changes for the benefit of employees. But the Gang of Four kept adding demands to
15 poison the possibility of a deal. Indeed, it recently came to light that in the midst of the Board’s
16 efforts to work with the Gang, the Gang organized a secret meeting in BamBrogan’s garage with the
17 employees they had recruited to sign the Letter. During this meeting, the Gang strategized how to
18 develop technology that would compete with the Company’s while potentially avoiding the
19 Company’s patents, with BamBrogan writing the names of dozens of key employees whom they
20 would target for solicitation, and even acknowledged that they would have to be “honest” with
21 potential investors in NewCo that the first two to three million dollars in investments would go
22 largely to financing litigation against Hyperloop One. And the Company now knows that before
23 entering its final “negotiation” with the Board, the Gang declared that they would execute this
24 “nuclear option” if the Board provided them with anything short of an additional 42% of the
25 Company’s voting shares—which they believed would guarantee the Gang a majority voting interest
26 in the Company.

27 13. In a perplexing and disturbing act befitting their unprofessionalism, BamBrogan and
28 Pendergast insisted that their family members—including, for Pendergast, his wife and two

1 children—be present at the Company’s headquarters during the heated discussions that ensued
2 between the Gang and the Board. At the climax of these discussions with Rob Lloyd, the Company’s
3 CEO and Board member, Pendergast demanded that the CEO fire him—shrieking, with his children
4 and wife beside him, “If you’re going to fire me, do it now! Fire me! Fire me right here and now!”
5 Lloyd refused to take the bait and later asked Pendergast to join him, in a separate meeting room,
6 along with Company counsel. Pendergast arrived carrying his young daughter and was requested
7 several times not to have his daughter in the room. After being informed that his employment with
8 the Company was terminated, he yelled, “What’s the [settlement] number? How much are you going
9 to pay me?” and warned Lloyd that Pendergast had engaged counsel months earlier for this purpose.
10 BamBrogan, Sauer, and Mulholland resigned the next day. The Gang recently informed the
11 Company, that on their way out, they illegally took with them and copied a number of Company
12 issued devices—including laptops, tablets, and iPhones—and they have refused to return the
13 Company’s data and documents taken from these devices.

14 14. Each of the seven employees who joined the Gang in the hope of making
15 improvements to the Company have since returned and continued their mission of creating the
16 Hyperloop. Today, the Company’s entire senior engineering team remains in place. None of the
17 Gang of Four had any interest in returning to help the Company despite the Company’s good faith
18 efforts and transparency; they were and remain interested only in themselves.

19 15. After their failed power-grab, the Gang of Four knew that it was only a matter of time
20 before the full extent of their bad acts would come to light. Thus, on July 12, 2016, in a preemptive
21 strike, the Gang of Four filed its Sham Complaint, which the Company now knows was a
22 premeditated effort to further harm their former employer’s reputation and minimize their own
23 corrupt actions. Their sensationalized and tabloid-ready allegations are meritless, categorically false,
24 and offensive. For example, the Sham Complaint attempts to dramatize a workplace incident—a
25 rope tied with a lasso knot, not a hangman’s knot, left on the desk where BamBrogan kept his
26 trademark cowboy hat—into a story about a threatening “hangman’s noose” that is tabloid fodder and
27 fiction. BamBrogan went so far as to file a reckless request for a restraining order—part of his
28 publicity stunt aimed to gain leverage in this litigation—and the judge in that case summarily

1 dismissed his request in a hearing that lasted less than one minute. Even though there was no threat
2 of physical harm, leaving the rope was ill-considered and in poor taste, and the Company promptly
3 terminated its former General Counsel, Afshin Pishevar, upon learning he was responsible for the
4 stunt.

5 16. The Sham Complaint is larded up with other false character smears dressed up as
6 factual allegations. For example, it claims that Shervin participated in a *quid pro quo* “pay-to-play”
7 scheme and has placed his own interests above those of the Company. But the Sham Complaint does
8 not present a single fact to support this defamatory lie because it is pure fiction. Indeed, Shervin and
9 his fund, Sherpa Capital, introduced the Company to at least fifteen investors that are not investors in
10 Sherpa funds, disproving the allegation of a *quid pro quo* arrangement. Equally false is its accusation
11 that “nepotism” drove the Board’s retention of Fideras or its dealings with the Company’s former
12 General Counsel. To the contrary, the Board’s decision to coordinate its financing through Fideras, a
13 talented group with ties to the Company and which it trusted, was a direct result of Pendergast’s and
14 Mulholland’s incompetent work in connection with the Company’s prior round of financing. The
15 retention of Fideras was approved by the independent members of the Board, and Joe Lonsdale, the
16 brother of Fideras’s principal, recused himself from the vote. Moreover, the former General Counsel,
17 Shervin’s brother, was involved daily in helping transition Hyperloop One from a few-person
18 company operating from a garage (joining initially without pay), into the extraordinary company it is
19 today.

20 17. Of all of the fictions told in the Sham Complaint, perhaps most offensive is the
21 allegation that the Company hired and set the compensation for one of the most sought-after PR firms
22 in Silicon Valley based simply on a personal relationship with Shervin. Not only do the timing and
23 facts demonstrate that this allegation is false—the increase from an initial discounted \$15,000 rate to
24 the PR firm’s standard \$40,000 monthly rate was due to the expanded scope of the firm’s work and
25 the Company’s ability to pay it, not Shervin’s relationship—but it also misogynistically discredits the
26 talent and qualifications of this accomplished professional and her highly respected firm in a cheap
27 grab at a suggestive headline. The Gang and their lawyers should be ashamed of themselves for
28 shamelessly peddling such misogynistic falsehoods.

1 18. The Gang of Four, through their lawyers and agents, continue to this day to attempt to
2 smear Hyperloop One, by reaching out to the media and others with false and misleading information
3 about the Company and its leadership, while claiming that their own despicable conduct was merely a
4 joke. After filing the Sham Complaint, they even created a fake Twitter account in a stunt to
5 embarrass the Company and create a false sense of online outrage against it. And the Company
6 recently learned that, to this day, members of the Gang of Four continue to attempt to disparage the
7 Company and its leadership to Hyperloop One employees in an effort to solicit them.

8 19. The Company's Board and senior management made every effort to avoid resorting to
9 litigation. But these conspirators have never wanted a reasonable resolution and have never been
10 engaged in good faith discussions with the Company. After the filing of the Sham Complaint, the
11 Company had no choice but to respond to their false and reckless allegations by shining a spotlight on
12 the true story of their disloyalty, incompetence, and illegal conduct.

13 20. The manufactured coup and the Gang's attempts to bury their misconduct have failed,
14 and the Gang of Four must be held responsible for their illegal actions. Accordingly, in this First
15 Amended Cross-Complaint Hyperloop One brings claims for breach of fiduciary duty, breach of the
16 duty of loyalty, breach of the faithless servant doctrine, intentional interference with employment
17 relations, unfair competition, and breach of contract. The allegations here also correct the
18 demonstrably false and malicious attacks on the Company and individual defendants and establish
19 that the Board and management at all times acted in the best interests of the Company, with
20 professionalism, and as honest and loyal fiduciaries. Simply put, the malicious lies and gratuitous
21 personal attacks dumped into the Sham Complaint—and which the Gang continues, to this day, to
22 spread across the media—only further demonstrate the bad faith and bad character of the Gang of
23 Four.

24 **JURISDICTION AND VENUE**

25 21. Jurisdiction is proper in the courts of this State because Cross-Defendants are residents
26 of the State of California. Venue is proper in the County of Los Angeles because Cross-Defendants
27 are residents of Los Angeles County and the transactions, activities, and misconduct giving rise to
28 this action occurred in Los Angeles.

THE PARTIES

1
2 22. Defendant and Cross-Claimant Hyperloop One is a corporation organized and existing
3 under the laws of the State of Delaware, with its principal place of business in Los Angeles,
4 California. Hyperloop One is winning the highly competitive race to bring the Hyperloop to life.

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

1 Board. Shervin was chosen by the U.S. Government as the 99th Outstanding American by Choice in
2 2012, which recognizes the achievements of naturalized Americans. He was an inaugural member of
3 the UN Foundation's Global Entrepreneurs Council, and has served as an entrepreneurial ambassador
4 in U.S. State Department delegations to the Middle East and Russia. Shervin deeply believes in
5 giving back and has served on several non-profit boards, started a scholarship, and volunteered in
6 Africa for organizations like Invisible Children, charity:water, and the UN Global Entrepreneurs
7 Council. Before starting his first company at the age of 23, Shervin co-authored a seminal article in
8 the Journal of the American Medical Association that helped lead to the Istanbul Protocol, the first set
9 of international guidelines for documentation of torture. Shervin invented and patented a new
10 method for lysing Malaria-infected erythrocytes while an undergraduate at UC-Berkeley.

11 24. Defendant Joseph Lonsdale is Vice-Chairman of Hyperloop One. He invested in the
12 Company early and when it was most risky out of a deep belief that Hyperloop technology can
13 revolutionize transportation. Lonsdale is currently founder and managing partner of 8VC, a venture
14 capital firm. He co-founded Formation 8, his previous venture capital firm, where he still helps
15 manage over \$1.5 billion; Formation 8 backs companies such as Oculus, RelateIQ, Color Genomics,
16 Blend, Illumio, Wish, Radius, BuildZoom, MemeBox, Bolt, Plated, ZenReach, and Gusto. Lonsdale
17 has backed over 150 private technology companies during the last decade and is frequently sought
18 out for his advice in the technology start-up community; in 2016, he was named as the youngest
19 member of the Forbes Midas 100 List of top-performing technology investors. He currently serves as
20 Chairman of Addepar, a wealth management technology platform he co-founded, Chairman of
21 OpenGov, a company he co-founded that focuses on making government budget and financial data
22 accessible and enabling municipal collaboration, and on other boards including those of Radius and
23 Wish. Lonsdale is also a founder of Palantir, a \$20-billion data technology company that develops
24 information systems used by government, law enforcement, and financial organizations around the
25 world, and which is widely credited with notable philanthropic activities. Previously, Lonsdale
26 joined Clarium Capital as an early executive, which he helped grow into a fund with \$5 billion in
27 assets under management. Prior to Clarium Capital, Lonsdale worked with the financial arm of
28 PayPal while he was still a student at Stanford, where he received a B.S. in Computer Science.

1 Lonsdale's other philanthropic activities include serving as Chairman of California Common Sense
2 (CACS.org), a non-partisan non-profit dedicated to opening government to the public, developing
3 data-driven policy analysis, and educating citizens about how government works. He is also the
4 Chairman of ONEHOPE Wine and its charity ONEHOPE Foundation, a social enterprise company
5 that donates a portion of its profits to charity. Lonsdale also serves on the board of Strive for
6 College. Lonsdale is a supporter and adviser to Thorn, a non-profit founded by Ashton Kutcher and
7 Demi Moore, which partners with innovative technology companies to prevent child-trafficking and
8 child pornography. Lonsdale often speaks at technology events and conferences around the world.

9 25. Defendant Robert Lloyd is Chief Executive Officer and Board Member of Hyperloop
10 One. Lloyd was recruited to become the Chief Executive of the Company in June 2015, after
11 announcing his retirement after a successful 20-year career at Cisco Systems, Inc., a Fortune 100
12 company. He joined the board of directors of Hyperloop One in July 2015 and began his duties as
13 CEO in September 2015. Prior to joining Cisco in 1998, Lloyd was founder and CEO of a successful
14 Canadian technology start-up. In his most recent position at Cisco, Lloyd was president of
15 development and sales, reporting directly to the CEO, and had direct responsibility for approximately
16 40,000 employees. He is a seasoned executive who is knowledgeable in organizational and talent
17 development, large-scale product launches and events, global partnerships, and enterprise sales, and
18 regularly represented his previous employer at meetings with investors, analysts and the press. He is
19 experienced in executive development, performance management, and appropriate legal practices
20 regarding employee terminations. His previous employer is recognized for its rigorous policies
21 regarding compliance and integrity. As part of his regular duties at Cisco, Lloyd participated in the
22 selection of, and worked directly with, contractors providing communications, PR, event
23 management, and marketing services. Public records indicate that Lloyd's total annual compensation
24 at Cisco Systems for the previous three years averaged approximately \$2,000,000 per annum,
25 excluding the value of annual stock grants. He accepted the position as CEO of Hyperloop One at
26 approximately 10% of that amount, convinced of the long-term potential and likely appreciation of
27 the Company's equity. Furthermore, he personally invested \$2.5 million in the Company's equity on
28 the same terms as other investors through a family trust.

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

15 27. Plaintiff and Cross-Defendant Brogan BamBrogan is an individual who has been a
16 resident of Los Angeles County in the State of California at all relevant times. BamBrogan was hired
17 to help lead Hyperloop One, initially served as interim CEO and Chief Technology Officer (“CTO”),
18 and then served only as CTO from Lloyd’s arrival until his resignation in June 2016. BamBrogan’s
19 former name was Kevin Brogan.

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

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

1 One was an important validation of the Company’s future prospects—and the commitment still
2 stands. Shervin also recruited highly influential and well-respected board members from the
3 technology, regulatory, and political spheres, which gave Hyperloop One instant credibility and a
4 rock-solid foundation for executing a transformative strategy. He also lined up the most respected
5 advisors and consultants to assist Hyperloop One—often at below-market rates that Shervin
6 negotiated to help the Company get off the ground. Shervin worked with a leading PR firm to land
7 the highly successful March 2015 Forbes cover story on the successful launch of Hyperloop One—a
8 transformative event that put the Company on the map for many investors and observers. Though he
9 did not have a day-to-day operational role at the Company, Hyperloop One would not exist today
10 without Shervin’s efforts.

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

21 36. Hyperloop One has now raised over \$100 million, including from leading private
22 equity companies around the world that recognize the Company’s massive potential and hope to
23 bring Hyperloop technology to various markets. The Company raised most of this financing from
24 other investors identified by the Company’s lead investors. Hyperloop One also continues to attract
25 and recruit an industry leading workforce, including a world-class team of engineers.

26 37. Since its inception, Hyperloop One has made unparalleled technological
27 advancements. The Company currently has dozens of pending patent applications relating to
28 Hyperloop technology. On May 11, 2016, in a demonstration of its success and leading position in

1 the development of the Hyperloop, Hyperloop One ran the first-ever live Hyperloop demonstration at
2 its facility in North Las Vegas. Watched by more than 1.6 million viewers on YouTube.com, and
3 with media impressions of over 40 billion around the world, the demonstration proved remarkably
4 successful. Hyperloop One’s groundbreaking no-contact electric engine seamlessly propelled a sled
5 to 116 miles per hour in just 1.1 seconds, proving to the world that the Hyperloop is possible. The
6 following month, Hyperloop One contracted to begin developing a plan to build the world’s first
7 Hyperloop network in Moscow and released its first pre-feasibility study in northern Europe. Many
8 other Hyperloop networks around the world are in the development stage.

9 **B. The Gang of Four Clamors for Control**

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

19 ***Brogan BamBrogan***

20 39. The Company now knows that BamBrogan has a history of instability, misbehavior,
21 unprofessionalism, sexism, and ego. Before working for Hyperloop One, BamBrogan worked in a
22 position that the Company was led to believe prepared BamBrogan for a leading role at Hyperloop
23 One. When he was being considered for a job at Hyperloop One, however, BamBrogan hid from the
24 Company that he had failed at the last project at his previous company before leaving, aggrandized
25 his role at his previous employer, and hid the fact that he was considered a slightly below average
26 engineer. Had BamBrogan told the truth about his past behavior and troublesome employment
27 history, the Company never would have hired BamBrogan.

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

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

16 42. Despite his titular role as Chief Technology Officer, BamBrogan was not Hyperloop
17 One's top engineering leader. That has always been Josh Giegel, since the day he joined the
18 Company. Over the past year, BamBrogan's role was externally focused, rather than engaging with
19 and developing the Company's technology. He was rarely in the office. When he was at the office,
20 BamBrogan was well known for screaming at and berating employees and co-workers, often using
21 obscenities. He began engaging in brazen sexism. BamBrogan repeatedly antagonized female
22 partners, vendors, and employees. He repeatedly refused to work with women who led the world-
23 renowned messaging company that ran Hyperloop One's marketing efforts for its successful open-air
24 demonstration. And, after their very successful demonstration, the communications consultant
25 commented that working with BamBrogan was one of the most difficult assignments she had ever
26 experienced. BamBrogan's abusive behavior toward these contractors and vendors damaged some of
27 the Company's strong business relationships. He also took out his aggression on female employees.
28 On one occasion, he became irrationally enraged and took out his anger on a female employee by

1 screaming at her inches from her face, then punching a wall, and stepping outside to loudly smash
2 beer bottles in anger. (The woman had actually done what BamBrogan had requested, though he
3 forgot he requested it.) BamBrogan's efforts to use the Sham Complaint to misogynistically discredit
4 the talent and qualifications of an accomplished female professional are consistent with this behavior.

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

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

22 ***Pendergast and Mulholland***

23 45. Pendergast routinely disrupted the Company's business through his unprofessional
24 misconduct. His performance issues included insubordinate and profane outbursts at management
25 and his direct supervisor, Afshin Pischevar, the Company's General Counsel. After just weeks on the
26 job, and after repeatedly berating and denigrating his supervisor, Pendergast staged his first power
27 grab at Hyperloop One by demanding to be transferred so that he reported directly to Lloyd, the
28 Company's CEO. Even though his behavior and demand were highly inappropriate, especially for

1 someone who had been on the job for mere weeks, the Company tried to accommodate Pendergast
2 and make the employment situation work. Shervin made no effort to intervene on his brother's
3 behalf.

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

14 47. Pendergast and Mulholland further undermined Hyperloop One's fundraising efforts.
15 In or around March 2016, the Company tasked Pendergast and Mulholland with closing the
16 Company's highly successful Series B fundraising from investors. The Company noticed that
17 confusion was spreading among its Asian investors, who were informed that they would receive
18 allocations for the oversubscribed Series B in an uncoordinated and damaging way. Several investors
19 told the Company that they were being contacted by multiple sources claiming to represent the
20 Company, and the Company discovered that Pendergast and Mulholland had failed to stop
21 unauthorized road shows in Asia. This caused significant harm to the Company, which appeared
22 disorganized and unprofessional to some potential investors. Pendergast and Mulholland also
23 frequently arranged meetings with junior associates at major venture capital firms with whom the
24 Board had senior contacts, despite being told by Shervin and Lonsdale that these meetings should not
25 happen without senior partners and the Board's involvement.

26 48. The Board, unsatisfied with the inefficiencies caused by Pendergast and Mulholland's
27 poor management, determined that it needed a single advisor to manage its financing efforts in Asia
28 in order to ensure that the Company's message remained consistent through a single voice, to give

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

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

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

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

13 ***Knut Sauer***

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

23 * * * * *

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

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

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

3 53. 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 54. It has now come to light that at this meeting, members of the Gang made clear that
10 they were prepared to execute “the nuclear option,” through which they intended to hold the
11 Company hostage so that the Board would hand over to the Gang majority voting interest in
12 Hyperloop One, and if unsuccessful, the Gang would leave, start their own venture, and harm
13 Hyperloop One. This plan was no joke. Indeed, the clear intention with the solicited employees was
14 to pick a team that could effectively blackmail the Company into ceding control to the Gang, or if
15 they were collectively fired for their disloyal conduct, could form a new venture to compete with
16 Hyperloop One. For example, Pendergast proclaimed that the Company “will fail without us,” and
17 Mulholland threatened that “there won’t be a Hyperloop after this.” Pendergast stated that he could
18 raise \$1 million within the next 30 days so that their new company could have immediate financing.
19 Indeed, the Company recently learned that Pendergast even told Fideras that he could raise millions
20 on his own in Asia on short notice. BamBrogan committed to providing \$250,000 of his own money
21 to pay for the salaries of employees who were going to leave with them and form the new venture.
22 And Pendergast advised the group that they could sue the Company for severance if they were
23 terminated, and provided the name of an attorney (from Kecker & Van Nest LLP, who until recently
24 represented the Gang of Four, but appears to have recently terminated that relationship) and the
25 attorney’s email address so that the group could get discounts if they all used the same attorney.

26 55. At the time of this meeting, BamBrogan had already taken concrete steps to establish
27 his planned competing venture. The day before the meeting, on May 25, 2016, BamBrogan
28

1 purchased the domain name “hyperlooptoo.com.” In the weeks prior, public records show that
2 “hyperlooptwo” and “hyperloop2” also were established, presumably also by BamBrogan.

3 56. It also recently came to light that as early as May 2016, Sauer wrongfully told
4 qualified applicants to Hyperloop One that they could not be hired until an “issue” at the Company
5 was sorted out—the clear implication being that Sauer intended to leave and compete against
6 Hyperloop One and did not wish to provide the Company with talented and qualified employees on
7 his way out the door.

8 57. The Gang of Four aimed high, even trying to solicit CEO Lloyd to sign the Letter and
9 join their group. Lloyd summarily rejected their invitation, telling BamBrogan (the titular head of the
10 Gang) that the Gang’s plan was toxic and mutinous and that the proper way to address any real
11 concerns was not through a threatening, unreasonable list of demands, but through constructive
12 dialogue with the Board. Lloyd, with his decades of senior management experience and sound
13 business judgment, told the erratic and inexperienced BamBrogan that he should not send the Letter.
14 But the plan had been hatched, and the Letter was the Gang’s strategic shot across the bow. Rather
15 than “quietly” and “diplomatically” approaching the Board with their demands—as claimed in the
16 Sham Complaint —minutes after Lloyd rebuffed the offer to join the Gang, BamBrogan emailed the
17 Letter to Shervin, Lonsdale, and Lloyd, giving them 24 hours to respond, the day before a holiday
18 weekend. The Letter included several extraordinary demands (quoted from the Letter below):

- 19 • Shervin will step down as the Executive Chairman but will continue to support the
20 company as a general Board Member.
- 21 • Brogan [BamBrogan] and Josh [Giegel] will be appointed to the Board of Directors.
- 22 • An Executive Committee will be established on the Board, which will include
23 BamBrogan, Josh Giegel, and the CEO.
- 24 • Shervin will have no day-to-day or operational role within the company and will not
25 be authorized to act on its behalf in any way without Executive Committee
26 approval. He will serve on no Board committees unless approved by the Executive
27 Committee.
- 28 • The employees collectively will have voting control of the company via an exchange
of their shares for a new Class C common stock which will have a sufficient number
of votes per share to establish voting control. The option plan will be amended so that
all existing and future employee options are exercisable for this super-voting Class C

1 common stock.

- 2
- 3 • An additional 42 million shares of common stock will be placed into a new equity
4 incentive pool for employees only. We think an elegant way to do this and avoid
5 shareholder dilution would be for these 42 million shares to come as a gift out of the
6 50 million founder shares currently held by Shervin and [another primary investor].

7 58. Some of their requests were not unreasonable, such as having the very talented Josh
8 Giegel recognized as a co-founder, as Shervin had already independently proposed to Lloyd and
9 another Board member in April 2016. These demands are likely why seven others employees joined
10 the letter. In discussions, the Company quickly agreed to the reasonable demands and all seven of the
11 other employees who joined the Letter have since returned to the Company. But other demands were
12 not a sincere attempt to reform the Company or to negotiate better compensation; they were a ploy to
13 antagonize the Board and lay the foundation for the Gang of Four either taking over or exiting the
14 Company to start Hyperloop Two.

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

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

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

62. In response to the issues raised in the Letter, and as a result of the extensive
discussions, the Board agreed to adopt meaningful changes at the Company. On June 6, 2016, Lloyd

1 sent an email to Hyperloop One’s senior team announcing new policies related to hiring decisions,
2 interns, and use of Company facilities for non-work activities.

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

- 6 ▪ Expand the employee equity pool from approximately 15% to 20%;
- 7 ▪ Make over 9,000,000 shares available to current employees—increasing employee
8 ownership of the Company, excluding the CEO and CTO, to about 10% with a
9 remaining option pool of approximately 10%;
- 10 ▪ Amend the employee stock option program to remove buyback language and provide
11 greater protections for employees;
- 12 ▪ Create two new Board seats—one for a senior Hyperloop One engineering leader;
- 13 ▪ Change the current Board voting structure to share super voting rights among up to
14 five shareholders—rather than two;
- 15 ▪ Issue new policies to ensure consistent interviewing and hiring practices; and
- 16 ▪ Issue new policies to minimize use of the workplace for non-work functions.

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

22 65. The Board also determined, however, that it was not in the best interest of the
23 Company to submit to the Gang of Four’s demand that it eject the Company’s founding investors and
24 core leadership and replace them with members of the Gang, including the unstable, erratic, and
25 abusive BamBrogan. Indeed, the members of the Gang who sought to fill these positions—
26 particularly BamBrogan—had repeatedly proven to be highly unprofessional and disloyal. The
27 Board could not in good faith agree to allow someone who had recently attempted to disrupt
28 Company financing and otherwise acted erratically to have a seat on the Board. It also refused all

1 demands that Pendergast be allowed to stay at the Company or be named General Counsel, as Lloyd
2 and the Board needed to rely on attorneys they could trust to uphold their fiduciary obligations.

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

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

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

18 68. Pendergast preyed on the rest of the Gang members'—particularly BamBrogan's—
19 vulnerabilities and insecurities in order to encourage them to also leave and form a group to compete
20 with the Company. His plan worked, and the rest of the Gang united with Pendergast to advance the
21 scheme.

22 69. The Company recently learned that the Gang plotted a secret meeting with its recruits
23 in BamBrogan's garage. At this meeting—which took place on June 5, 2016—the Gang made clear
24 that NewCo was not just “talk” *but an actual plan that the Gang intended to execute if it could not*
25 *acquire voting control of the Company.* As the Company now knows, at this meeting the Gang
26 strategized how to interfere with the Company's patented technology in order to compete directly
27 against the Company. The Gang also wrote the names of dozens of key employees they intended to
28 poach on a white board, and even acknowledged that they would have to be honest with any investors

1 in NewCo that much of the new venture’s cash would go toward financing frivolous litigation with
2 Hyperloop One. Prior to the meeting, BamBrogan even purchased for the Gang at least one—and
3 very likely more—domain names for their planned competing venture. In other words, the Gang had
4 a carefully planned objective to raid Hyperloop One, steal its technology and employees, and
5 compete directly against the Company.

6 70. Moreover, Shervin, Lloyd, and BamBrogan were scheduled to travel to Russia as part
7 of a marketing effort in early June 2016. At the last minute, BamBrogan cancelled his travel plans
8 and contacted two of Hyperloop One’s largest investors in Russia to “warn” them about supposed
9 problems at the Company. BamBrogan told the investors that he would not be making the scheduled
10 marketing trip to Russia “due to issues covered in the [L]etter.” BamBrogan also said he would reach
11 out to the Company’s lenders and send a letter to other investors. He recommended that one investor
12 decline to execute a memorandum of understanding to begin work on a significant Hyperloop project
13 that has the potential to be transformative for the Company. BamBrogan was aware that this investor
14 was also considering making another significant investment in the Company, and BamBrogan made
15 these wrongful statements in an effort to lay the foundation both to increase leverage in the attempted
16 coup and with the ill-advised belief that this investor would invest in Hyperloop Two instead.
17 BamBrogan made these statements while knowing that Shervin was traveling to meet with this
18 investor the following day. Shervin found out about BamBrogan’s improper and false statements
19 directly from the investor during their meeting. BamBrogan’s illicit communication was designed to
20 catch Shervin off-guard, undermine and embarrass the Company, and jeopardize the investors’
21 continued financial support of Hyperloop One. These statements harmed the Company’s reputation.

1 ***The Gang of Four Departs***

2 71. Immediately following his meeting with the Company’s investors in Russia, Shervin
3 relayed these events to the Board and the Company. The Board and the Company’s management
4 were dismayed by BamBrogan’s disloyal, unprofessional, and destructive conduct. It was clear that,
5 despite the Company’s good faith efforts to address employee concerns, the Gang of Four was hell-
6 bent on pursuing their conspiracy to grab power, enrich themselves, and hurt the Company and its
7 lead investor.

8 72. Believing that both Lloyd and Shervin would be in Russia, the Gang made specific
9 plans to hold a meeting—possibly to be held offsite—with all of the Company’s employees the next
10 day, June 15, 2016, in an effort to turn all of the Company’s employees against the Company’s
11 leadership and enable the Gang to exercise control of the Company. These plans were thwarted,
12 however, when Lloyd was informed of BamBrogan’s efforts to disrupt the Company’s relationships
13 with its leading investors in Russia and changed his travel plans so that he would be available to
14 address any issues at the Company’s headquarters.

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

1 74. 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 75. But, in reality, the Gang of Four had no intention of reaching a resolution. Indeed, it
8 recently came to the Company’s attention that the very same morning, Mulholland displayed a series
9 of slides concerning the Company’s equity voting structure. During this presentation, he explained
10 that the Gang needed an additional 42% of the Company’s voting power in order to control 50.01%
11 of the Company—i.e., to give the Gang complete control over the Company. The Gang declared that
12 it would settle for nothing less. This act of insurgency, led by an employee who had already been
13 told he would not be promoted to the position he desired, was no joke and occurred during a normal
14 work day at the Company’s headquarters, in a Company conference room.

15 76. These events make clear that the Gang’s goal was nothing less than convincing the
16 Board to force the Company’s initial and lead investors to hand over their voting rights and equity
17 position in the Company for nothing, and based on nothing more than the Gang’s complaint that that
18 is how it should be. As the events played out over the next several days, the Gang members—two of
19 whom had been at the Company for much less than one year—refused to accede for anything less
20 than total control of the Company, and ultimately did everything in their power to destroy the
21 Company when it became clear that their demands were unrealistic.

22 77. When the Gang arrived at the Company’s headquarters on June 15th, they intended to
23 incite employees and create a spectacle. Although—or, more likely, *because*—they knew that
24 tensions were high, BamBrogan and Pendergast brought their family members, including
25 BamBrogan’s pregnant wife (and his Chihuahua) and Pendergast’s wife and two young children, to
26 the Company’s headquarters to observe the events—under the pretense that they were so worried by
27 the lasso rope incident that they needed to bring their loved ones to the scene of the supposed assault
28

1 for their safety. In reality, they were not concerned for their safety. The Gang members were
2 immature and unprofessional, and they sought only to create a false sense of drama.

3 78. After a long day of negotiating with the Gang, during which Lloyd displayed the
4 utmost professionalism in trying to reach a resolution, Lloyd finally told the group he was aware that
5 certain individuals had been making unauthorized contacts with investors and undermining the
6 Company, particularly David Pendergast. Lloyd made clear, however, that Hyperloop One would
7 welcome all of the employees except Pendergast back to the Company so that everyone could stay
8 committed to Hyperloop One's mission. Lloyd said further that if the employees wanted to leave the
9 Company and move on to other opportunities that had no connection to the Hyperloop, he understood
10 that and would wish them well. But, he said, if the members of the group left the Company and used
11 its confidential information in order to form a venture designed to compete with Hyperloop One, the
12 Company would not stand by idly and would do everything in its power to protect the interest of the
13 Company, its employees, and its investors. During this talk with the group, Pendergast shrieked, "If
14 you're going to fire me, do it now! Fire me! Fire me right here and now!" Minutes later, as
15 Pendergast walked past Lloyd to exit the offices, Lloyd asked to speak with Pendergast in a separate
16 conference room. Pendergast carried his young daughter into the conference room, and after Lloyd
17 asked him to leave the child outside the room, Lloyd formally terminated him. In an apparent
18 reference to anticipated severance for Pendergast, who had been disloyal to the Company where he
19 had worked for a mere five months, he screamed, "What's the [settlement] number? What's the
20 number? How much are you going to pay me?" Pendergast yelled, "He fired me!" to the others, and
21 screamed to Lloyd—all in front of his young children and wife—"I've been advised by counsel for
22 months." These are not the actions of responsible individuals. On the next day, June 16, 2016, the
23 remaining members of the Gang of Four—BamBrogan, Sauer, and Mulholland—announced their
24 resignations from Hyperloop One.

25 79. On their way out, the Gang took with them several Company issued devices—
26 including laptops, tablets, and iPhones—that contain sensitive Company data, documents, and
27 information. On July 13, 2016, the Gang also informed the Company, via counsel, that they and their
28 attorneys have taken the additional illegal step of copying the contents of these devices. On July 28,

1 2016, the Company requested that the Gang return each of these devices and copies in accordance
2 with the Gang's contractual obligations and California law. In plain violation of their contractual
3 obligations to the Company, on August 29, 2016, the Gang informed the Company, via counsel, that
4 they will return the Company's devices but refuse to return the entire contents of those devices,
5 including the Company's proprietary and confidential information.

6 80. To this day, members of the Gang of Four continue to solicit Hyperloop One's
7 employees. Indeed, the Company recently learned that in mid-August, 2016, Mulholland reached out
8 to at least two current or former Company employees via LinkedIn.

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

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

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

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

1 84. Today Hyperloop One’s engineering team is running full speed ahead, led by Josh
2 Giegel. Nevertheless, the Gang’s scheme unlawfully disrupted the Company’s business by diverting
3 the attention of key employees, and it forced the Company to expend wasted resources to bring its
4 projects and staff back up to full speed and to assure current and prospective employees that
5 Hyperloop One remains stronger than ever.

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

8 85. On July 12, 2016, the Gang filed a frivolous and baseless lawsuit. It has now come to
9 light that the Sham Complaint was a premeditated step in the Gang’s disloyal, illegal, and unethical
10 conduct and is aimed specifically at harming and competing with Hyperloop One. The Sham
11 Complaint sets forth trivial, sensationalized allegations about routine business decisions of the Board.
12 Every one of the core factual allegations in the Sham Complaint is categorically false, as alleged
13 below and as will be proven in the litigation.

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

1 investments at whatever the future fair market value of Hyperloop One is at the time. That is a
2 commitment that still stands today and has helped lend the Company credibility with respect to its
3 future prospects.

4 87. ***The Board's Decision to Hire Fideras.*** The Sham Complaint wrongly accuses
5 Lonsdale of “nepotism” based on Hyperloop One’s hiring of Fideras as its financial representative for
6 investment efforts. In fact, the Company hired Fideras to repair the damage that Pendergast and
7 Mulholland had inflicted upon the Company through their inefficient management of the final stage
8 of the Company’s Series B round of financing. The Board approved of the decision in a unanimous
9 vote of the independent Board members, with Joe Lonsdale recusing himself from the vote. The
10 Board chose Fideras because the Board wanted to bring in a group that it could trust to run an
11 efficient, organized, and transparent financing process—*i.e.*, the opposite of what Pendergast and
12 Mulholland had done. Fideras has done an exceptional job, to the full satisfaction of the Board.

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

1 89. ***There Was No “Hangman’s Noose.”*** In a crass attempt to gin up media attention, the
2 Sham Complaint wrongly accuses Afshin—BamBrogan’s onetime housemate—of placing a
3 “hangman’s noose” on BamBrogan’s chair, causing BamBrogan to “fear for his physical safety.”
4 These inflammatory allegations are lies. On July 14, a judge concluded there was no ongoing threat
5 to BamBrogan and summarily dismissed his reckless attempt to obtain a restraining order against
6 Afshin. Afshin had placed a piece of rope configured in a lasso shape on BamBrogan’s chair to
7 reflect his perceived “cowboy” attitude that BamBrogan had long displayed toward the Company,
8 and most recently through his false and improper “lone ranger” comments to investors, as well as
9 BamBrogan’s obvious fondness for cowboy attire. When BamBrogan discovered the lasso, he placed
10 it on a chair and wheeled it around the office in a display of over-dramatization and plea for attention
11 that had become his hallmark. This was hardly the conduct of a man who supposedly feared for his
12 life.

13 90. ***There Was No Pay-to-Play Scheme.*** The Sham Complaint falsely accuses Shervin of
14 engaging in a “pay-to-play” arrangement to leverage investors to invest in Sherpa venture capital
15 funds. This allegation is another unsupported lie. The Sham Complaint does not name even a single
16 investor who was pressured into investing in a Sherpa fund and, in fact, Shervin and Sherpa Capital
17 introduced the Company to at least fifteen Hyperloop One investors that are not investors in Sherpa
18 funds, disproving the allegation of a *quid pro quo* arrangement. The supposed *quid pro quo*
19 arrangement is a pure fiction.

20 91. ***There Were No Improper Site Visits.*** The Sham Complaint falsely accuses Shervin of
21 hosting parties for friends and acquaintances at the Company’s headquarters during work hours. This
22 kind of petty allegation—which is completely baseless—demonstrates that the Gang of Four has
23 nothing serious to complain about. Any visits that Shervin conducted at the office were intended to
24 showcase Hyperloop One to investors and potential investors. The venture capital firm Shervin co-
25 founded held one after-hours event for approximately two dozen people. And Shervin and others
26 hosted another event to support African-Americans in venture capital, which was held on a Friday
27 after hours from 5:30-8:30 p.m. Those are the only two events that Shervin held, and they certainly
28 were not “parties.” Moreover, tours given by management or Board members were for potential

1 investors and to market Hyperloop One, and these tours helped yield significant investments for the
2 Company to ensure that it had the capital to fund the engineering and technological work necessary to
3 keep Hyperloop One ahead of its competitors.

4 92. ***There Was No Improper Relationship or Conduct with a Vendor.*** The Sham
5 Complaint falsely accuses Shervin of hiring the Company's PR vendor and increasing her salary all
6 because of his personal relationship with her. This sexist accusation is the Gang of Four's most
7 brazen attempt at spinning normal business decisions into a storyline worthy of a bad soap opera. In
8 the early stages of its formation, Hyperloop One hired Pramana Collective ("Pramana") as its first PR
9 firm to work on one project for \$15,000 per month—getting Hyperloop One to be featured in a cover
10 story in Forbes. Pramana is among the most highly respected PR firms in Silicon Valley and
11 extremely selective about its clients. Lining up a firm of this stature was a major accomplishment for
12 Shervin and Hyperloop One. The initial pricing was well below Pramana's standard monthly rate,
13 and Pramana agreed to this pricing for a limited time in order to assist a fledgling start-up that, at the
14 time, had very little financing. Pramana appointed one of its principals to work on the Hyperloop
15 One account.

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

23 94. Shervin's relationship with the Pramana representative began after Pramana was hired.
24 The relationship was disclosed to the Company and Pramana. After they were engaged, the Pramana
25 representative began a process to avoid any appearance of a conflict by adding a co-founder of
26 Pramana to co-lead the Hyperloop One account and who was then transitioned to solely lead the
27 account. Pramana continued to run highly effective PR events for Hyperloop One, including the
28 highly successful event in September 2015 to introduce the Company's new campus in Los Angeles

1 and Rob Lloyd as the Company's new CEO. In the spring of 2016, the new representative of
2 Pramana indicated that Hyperloop One had scaled and outgrown Pramana's services and that the
3 Company might be better served by another PR firm. He offered to introduce the Company to other
4 candidates, particularly those with governmental and regulatory experience. At the same time, the
5 Company hired a new Chief Marketing Officer who, with the support of Lloyd, decided to engage a
6 different PR firm that she believed would better serve the needs of Hyperloop One. Thus, the
7 salacious personal attacks on Shervin are lies, as no decision to hire, increase the compensation of, or
8 terminate Pramana was made in any way based on Shervin's one-time relationship with the Pramana
9 representative. To suggest otherwise is sexist and demeaning to a highly successful female leader in
10 the PR industry.

11 95. ***The Board Acted Properly by Declining Unreasonable Demands.*** Finally, the Sham
12 Complaint falsely accuses Hyperloop One's Board of refusing to listen to employee concerns or
13 demands. Again, this is utterly false. The Board made real, significant changes in response to
14 reasonable and legitimate concerns posed by employees, including changing the Company's equity
15 plan, Board structure, and policies. But the Board would not consent to the Gang of Four's
16 outrageous demands that it scrap the entire equity structure of Hyperloop One by eliminating any
17 preferred rights of the founding investors, and that it remove the current leadership and hand power to
18 the erratic BamBrogan.

19 96. The Sham Complaint is merely a preemptive strike and a smokescreen. The Gang of
20 Four believed that the Company would file claims against them. Indeed, in one of many unstable
21 emotional outbursts, Pendergast admitted to Hyperloop One's CEO that he plotted against the
22 Company while still an employee *for over three months*. And, in a particularly bizarre move, just one
23 day after filing their Sham Complaint, the Gang's lawyers sent Hyperloop One a letter in which they
24 acknowledged that they had discussed with their lawyer "potential future plans," admitted taking the
25 Company's confidential and proprietary information and keeping their Company devices, and
26 threatened to bring (statutorily prohibited) defamation claims against the Company if it exercises its
27 right to file legal claims against the Gang. The Gang also acknowledged to Company employees that
28 the initial financing the Gang would raise for its competing venture would have to be used to pay for

1 the inevitable litigation in which the Company would hold the Gang responsible for their illegal and
2 unethical conduct.

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

4 97. Immediately after filing the Sham Complaint and continuing until today, the Gang of
5 Four have acted in a concerted effort to defame and smear Hyperloop One—all designed to harm the
6 Company’s business and reputation (the “Smear Campaign”). For example, the Gang of Four and
7 their paid agents have fed lies and misinformation about the Company to media outlets and news
8 sources, manipulating certain sources to erroneously state that Hyperloop One is “collapsing,” being
9 “knocked off track,” “might implode,” and “run by children.” The Gang continues their smear
10 campaign to this day—reaching out with lies about the Company and the Gang’s plot to destroy it—
11 in an ill-conceived effort to put pressure on the Company to settle.

12 98. The Gang, through their agents, have told the media plain falsehoods, claiming that
13 the Company is engaged in a “pattern and practice, layers upon layers of breaches of fiduciary duty,
14 mismanagement, mistreatment of employees.” And even more, they have claimed that the rope
15 incident was somehow a Company message that “we’re going to retaliate against you and your safety
16 is at risk.” That is what the Gang has said about Hyperloop One. That is false. That is reckless.
17 And that is irresponsible.

18 99. The Company also recently learned that in an attempt to further embarrass Shervin and
19 the Company and create a false sense of outrage against them, the Gang even created a fake account
20 on Twitter.com under the name “real Shervin.” From this fake account, on July 12, 2016, the Gang
21 tweeted a hyperlink to an article regarding the Sham Complaint and stated “You should be ashamed
22 of yourself @shervin.” The Gang’s fake Twitter account does not have a single follower. The Gang
23 has, nevertheless, caused its post to be retweeted *exactly* 5,000 times by similarly fake accounts,
24 many of which are otherwise pornographic in nature. These are the true colors of the Gang that
25 sought to overthrow the Company: peddlers of demonstrable falsehoods through fake pornographic
26 Twitter accounts.

27 100. More recently, the Gang has spread lies throughout the media that their coordinated
28 efforts to recruit dozens of Hyperloop One employees, raise over a million dollars in capital, purchase

1 domain names, steal Hyperloop One’s intellectual property, and use it all to form “NewCo” or
2 “Hyperloop Two” were merely a joke.

3 101. The Smear Campaign has unlawfully disrupted the Company’s business. Even though
4 the Company remains on track, the Gang’s lies and misconduct raised questions from existing
5 investors and partners, which delayed and disrupted advanced financing activities that were in
6 progress, causing unnecessary costs and disruptions to the Company’s business. The Gang’s
7 intentional misconduct and attempt to harm the Company forced the Company to expend millions of
8 dollars to reassure its existing and prospective investors and partners, to correct for the false
9 allegations that had been made by the Gang, and to demonstrate to them that Hyperloop One remains
10 stronger than ever. The disruption and costs associated with reassuring investors and potential
11 investors was a direct result of the Gang’s harmful and intentional actions directed at the Company.

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

13 102. 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.

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

1 104. In connection with their employment at Hyperloop One, BamBrogan and Mulholland
2 also executed a Nondisclosure Agreement with Hyperloop (the “Nondisclosure Agreement”).
3 Pendergast executed a substantially similar Mutual Nondisclosure Agreement with Hyperloop One
4 (the “Pendergast Nondisclosure Agreement”). Pursuant to the Nondisclosure Agreement and the
5 Pendergast Nondisclosure Agreement, each member of the Gang of Four further agreed, among other
6 things, to maintain the confidentiality of Hyperloop One’s confidential information and to return and
7 not copy all Hyperloop One proprietary information and Company issued devices at the termination
8 of employment.

9 105. Further, in connection with his employment at Hyperloop One, on November 19,
10 2014, BamBrogan executed a binding Key Employee Agreement with Hyperloop One (the “Key
11 Employee Agreement”). Pursuant to the terms of the Key Employee Agreement, BamBrogan agreed,
12 among other things, not to engage in any activity that is competitive with Hyperloop One and not to
13 disparage, criticize, or make negative statements about the Company to others.

14 106. In connection with his work for Hyperloop One, on February 1, 2016, Sauer executed
15 a binding Consulting Agreement with Hyperloop One (the “Consulting Agreement”). Pursuant to the
16 terms of the Consulting Agreement, Sauer agreed, among other things, not to engage in any activity
17 that is competitive with Hyperloop One, not to solicit or induce any employee of Hyperloop One to
18 breach its relationship with the Company, and to return all Company property upon the termination of
19 his relationship with Hyperloop One.

20 107. Finally, as Assistant General Counsel to Hyperloop One, Pendergast had specific and
21 special fiduciary obligations to the Company. As the Company’s attorney, he was required to act at
22 all times with undivided loyalty to his client, Hyperloop One, and he was obliged to refrain from:
23 taking part in any conduct that may harm or undermine the Company’s best interests; disclosing the
24 Company’s confidential information; or using the Company’s confidential information to its
25 detriment. Pendergast was further required under ethical rules to serve the best interests of the
26 Company, maintain the Company’s confidential information, and to avoid any conflict with his
27 client, Hyperloop One. Among other things, Pendergast was bound by the California State Bar’s
28 Rules of Professional Conduct, including Rule 3-310, which precludes an attorney from engaging in a

1 conflict of interest without informed written consent from his or her client. Pendergast was also
2 bound by the Arizona State Bar's Rules of Professional Conduct, including Rule 1.7, which similarly
3 precludes attorneys from engaging in a conflict of interest without informed written consent, and
4 Rule 1.8, which precludes attorneys from "us[ing] information relating to representation of a client to
5 the disadvantage of the client unless the client gives informed consent."

6 108. While Hyperloop One is stronger than ever, continues to make unparalleled
7 technological advancements, and is poised to develop the first Hyperloop network in short order, the
8 Gang's intentional efforts to harm the Company in direct violation of their contractual and fiduciary
9 obligations disrupted the Company's ongoing projects and business and cost the Company millions
10 of dollars to reassure its current and prospective investors, employees, and business partners, bring its
11 ongoing projects back up to speed, and secure advanced financing that the Gang's unlawful conduct
12 delayed.

13 109. The Company's engineering team is running full speed ahead, led by Josh Giegel; its
14 employees besides the Gang of Four have remained loyal; and its investors, employees, and Board
15 stand united to redress the illicit attacks on the Company and to forge ahead as the Company seeks to
16 develop the world's first Hyperloop in record time.

17 **FIRST CAUSE OF ACTION**

18 **Breach of Non-Solicitation Agreement**

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

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

25 **4. Additional Activities.** I agree that . . . (b) for the period of my
26 employment by Company and for one (1) year thereafter, I will not, either directly
27 or indirectly, solicit or attempt to solicit any employee, independent contractor,
28 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.

1 112. Sauer additionally agreed to be bound by the following provision set forth in his
2 Contracting Agreement (collectively with the above clause, the “Non-Solicitation Agreement”):

3 **5.3 Noninterference with Business.** During the term of this Agreement and
4 for a period of one (1) year immediately following termination of this Agreement
5 by either Party, Consultant agrees not to solicit or induce any employee or
6 independent contractor to terminate or breach an employment, contractual, or other
7 relationship with Company.

8 113. In violation of his obligations under this agreement, each member of the Gang of Four
9 solicited or aided and abetted the solicitation of key Hyperloop One employees to form a competing
10 venture and, to this day, continues to solicit or aid and abet the solicitation of current and former
11 Hyperloop One employees.

12 114. Without limitation, and as set forth above, Pendergast successfully encouraged the
13 other three members of the Gang to leave and form a venture to compete with the Company. The
14 Gang, acting in concert, also actively solicited numerous key Hyperloop One employees to join their
15 scheme. In so doing, the Gang went so far as to recruit Lloyd—the Company’s CEO.

16 115. Members of the Gang solicited other employees and other members of the Gang of
17 Four to leave the Company in order to join a competing venture. The Gang further made active
18 efforts to solicit dozens of additional Hyperloop One employees to compete against the Company,
19 each of whose names were listed on a white board at a pivotal meeting in BamBrogan’s garage.

20 116. Each member of the Gang of Four continues to solicit or aid and abet the solicitation
21 of Hyperloop One employees. These efforts include, without limitation, Mulholland’s contacting at
22 least two current or former Hyperloop One employees via LinkedIn in August 2016 in an effort to
23 convince them to leave Hyperloop One and/or compete against it.

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

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

1 **SECOND CAUSE OF ACTION**

2 **Breach of Non-Compete Agreement**

3 119. Hyperloop One incorporates and realleges paragraphs 1 through 118 above as though
4 set forth fully herein.

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

8 **4. Additional Activities.** I agree that (a) during the term of my employment
9 by Company, I will not, without the Company’s express written consent, engage
10 in any employment or business activity that is competitive with, or would
11 otherwise conflict with my employment by, Company

12 121. BamBrogan additionally agreed to be bound by the following provision set forth in his
13 Key Employee Agreement:

14 **4.2 Conflicting Interests.** Except as permitted by Section 4.3, while
15 employed by the Company, Executive agrees not to acquire, assume or participate
16 in, directly or indirectly, any position, investment or interest known by him to be
17 adverse or antagonistic to the Company, its business or prospects, financial or
18 otherwise.

19 122. Sauer additionally agreed to be bound by the following provision set forth in his
20 Contracting Agreement (collectively with the above clauses, the “Non-Compete Agreement”):

21 **4.3 No Conflict of Interest.** Consultant agrees during the term of this
22 Agreement not to accept work or enter into a contract or accept an obligation,
23 inconsistent or incompatible with Consultant’s obligations under this Agreement
24 or the scope of services rendered for Company. Consultant warrants that to the
25 best of its knowledge, there is no other existing contract or duty on Consultant’s
26 part inconsistent with this Agreement. Consultant agrees not to disclose to
27 Company, or bring onto Company’s premises, or induce Company to use any
28 confidential information that belongs to anyone other than Company or
Consultant.

123. During his employment with Hyperloop One, each member of the Gang of Four
breached this agreement by personally and/or assisting other members of the Gang to (i) take steps to
build a venture that would compete directly with Hyperloop One; (ii) solicit investors for a competing
venture; (iii) solicit employees from Hyperloop One to work for the competing venture; and (iv)

1 make false, disparaging, and/or defamatory remarks about Hyperloop One and its Board members to
2 current and/or potential investors of the Company in order to harm Hyperloop One’s business and
3 induce these investors to invest in the competing venture. Each member of the Gang of Four
4 continues to engage in active efforts to compete against Hyperloop One.

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

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

11 **THIRD CAUSE OF ACTION**

12 **Breach of Confidential Information Agreement**

13 126. Hyperloop One incorporates and realleges paragraphs 1 through 125 above as though
14 set forth fully herein.

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

18 **1.1 Nondisclosure; Recognition of Company’s Rights.** At all times during my
19 employment and thereafter, I will hold in confidence and will not disclose, use,
20 lecture upon, or publish any of Company’s Confidential Information (defined
below)

21 **1.2 Confidential Information.** The term “*Confidential Information*” will mean
22 any and all confidential data or information related to Company’s business or its
23 actual or demonstrably anticipated research or development, including without
24 limitation (a) trade secrets, inventions, ideas, processes, computer source and
25 object code, data, formulae, programs, other works of authorship, know-how,
26 improvements, discoveries, developments, designs, and techniques;
27 (b) information regarding products, plans for research and development, marketing
and business plans, budgets, financial statements, contracts, prices, suppliers, and
28 customers; (c) information regarding the skills and compensation of Company’s
employees, contractors, and any other service providers of Company; and (d) the
existence of any business discussions, negotiations, or agreements between
Company and any third party.

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

3 128. BamBrogan and Mulholland further agreed to be bound by the terms set forth in the
4 following clause contained within the Nondisclosure Agreement:

5 1. Confidential Information.

6 (a) For purposes of this agreement, the term “Confidential Information” shall
7 mean the following:

8 Any and all information disclosed to Agent by Hyperloop by the Agent or his/her
9 agents, officers, employees, contractors or subcontractors as a consequence of or
10 through the exchange of information between the Parties as described in this
11 agreement, which information shall include but shall not be limited to financial
12 information, business formulas, compilation of information and records, including
13 information relating to research, development, inventions, name or names of
14 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
Hyperloop. Any and all such information shall be maintained as secret and
confidential unless after notice to Hyperloop, Agent is compelled by legal process
to make such disclosure. . . .

15 129. Pendergast further agreed to be bound by the terms set forth in the following clause
16 contained within the Pendergast Nondisclosure Agreement (collectively with the above clauses, the
17 “Confidential Information Agreement”):

18 1. Confidential Information.

19 (a) For purposes of this agreement, the term “Confidential Information” shall
20 mean the following:

21 Any and all information disclosed to Recipient or its agents, officers, employees,
22 contractors or subcontractors as a consequence of or through the exchange of
23 information between the Parties as described in this agreement, which information
24 shall include but shall not be limited to financial information, business formulas,
25 compilation of information and records, including information relating to research,
26 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. . . .

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

1 131. Without limitation, and on information and belief, each member of the Gang of Four
2 has taken and continues to take active efforts to—or has assisted and continues to assist other
3 members of the Gang of Four to—use and disclose confidential information related to the Company’s
4 finances, investors, and potential investors to solicit investors for a competing venture and to the
5 detriment of Hyperloop One.

6 132. As set forth in this Cross-Complaint, each member of the Gang of Four has further
7 taken and continues to take active efforts to—or has assisted and continues to assist other members of
8 the Gang of Four to—use and disclose information related to the Company’s research, development,
9 and inventions—including, without limitation, inventions to which the Company holds patents or
10 pending patents—for the benefit of a competing venture and to the detriment of Hyperloop One. The
11 Gang specifically identified the Company’s patents that the Gang believed it could “work around” in
12 order to harm the Company and advance the Gang’s mission of competing with the Company.

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

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

21 **FOURTH CAUSE OF ACTION**

22 **Breach of Proprietary Information Agreement**

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

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

1 **5. Return of Company Property.** Upon termination of my
2 employment or upon Company's request at any other time, I will deliver to
3 Company all of Company's property, equipment, and documents, together with
4 all copies thereof, and any other material containing or disclosing any Inventions,
5 Third Party Information or Confidential Information of Company and certify in
6 writing that I have fully complied with the foregoing obligation. I agree that I
7 will not copy, delete, or alter any information contained upon my Company
8 computer before I return it to Company. . . .

9 137. BamBrogan and Mulholland further agreed to be bound by the terms set forth in the
10 following clause contained within the Nondisclosure Agreement:

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

20 138. Pendergast further agreed to be bound by the terms set forth in the following clause
21 contained within the Pendergast Nondisclosure Agreement:

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

 139. Sauer further agreed to be bound by the terms set forth in the following clause
contained within his Consulting Agreement (collectively with the above clauses, the "Proprietary
Information Agreement"):

5.4 Return of Company Property. Upon termination or expiration of the
Agreement or earlier as requested by Company, Consultant will deliver to
Company any and all drawings, notes, memoranda, specifications, devices,
formulas, and documents, together with all copies thereof, and any other material
containing or disclosing any Work Product, Third Party Information, or
Proprietary Information of Company.

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

5 141. Upon his departure from the Company, BamBrogan, without limitation, retained a
6 Company issued iPad and Apple laptop.

7 142. Upon his departure from the Company, Mulholland, without limitation, retained a
8 Company issued tablet, PC laptop, and iPhone.

9 143. Upon his departure from the Company, Sauer, without limitation, retained a Company
10 issued iPad, Apple laptop, and iPhone.

11 144. On July 13, 2016, the Gang of Four informed the Company that it had copied and
12 retained copies of these Company issued devices in plain violation of the Proprietary Information
13 Agreement.

14 145. On July 28, 2016, the Company expressly requested that, in accordance with the
15 Proprietary Information Agreement, the Gang return: (i) all Company issued devices that are in the
16 Gang's possession, control, or custody or that are being held by counsel on their behalf; (ii) all
17 peripheral data storage devices including USB drives and external hard drives, that contain Company
18 documents, data, or information, that are in the Gang's possession, control, or custody or that are
19 being held by counsel on their behalf; and (iii) any copies of Company issued devices or Company
20 documents, data, or information that are in the Gang's possession, control, or custody or that are
21 being held by counsel on their behalf. The Gang has failed to comply with this request. On
22 August 29, 2016, the Gang informed the Company, via counsel, that it will return the Company's
23 devices but refuses to return the entire contents of those devices, including the Company's
24 proprietary and confidential information. In other words, each member of the Gang who improperly
25 took and retained the Company's devices when walking out the door now admits that he is refusing to
26 return the Company's data, in plain violation of his contractual obligations to the Company.

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

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

FIFTH CAUSE OF ACTION

Breach of Non-Disparagement Agreement (as to BamBrogan)

11 148. Hyperloop One incorporates and realleges paragraphs 1 through 147 above as though
12 set forth fully herein.

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

16 **Publicity; Non-Disparagement.** Neither party will issue, without the consent of
17 the other party, any press release or make any public announcement with respect
18 to this Agreement or the employment relationship between them. Following the
19 Effective Date of this Agreement and regardless of any dispute that may arise in
20 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.

21 150. Notwithstanding the fact that he was legally bound to abide by the terms of the Non-
22 Disparagement Agreement, during his employment with Hyperloop One and since leaving his
23 employment with the Company, BamBrogan—working in concert with the other members of the
24 Gang of Four—has intentionally made and continues to make myriad false and disparaging
25 comments or statements concerning Hyperloop One to third parties, including (without limitation) to
26 Hyperloop One’s current and prospective investors, to the media, and to those employees whom he
27 wrongfully solicited to revolt against the Company.

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

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

6 166. As described in this cross-complaint, while employed by Hyperloop One, each
7 member of the Gang of Four breached his duty of loyalty by, among other things, making
8 unreasonable demands on the Board designed to benefit the Gang personally; taking and conspiring
9 to take concrete steps to divert Hyperloop One's current and prospective business opportunities to a
10 company that the Gang of Four planned to form; soliciting or conspiring to solicit key Company
11 employees to leave the Company and join the competing venture with the intention of competing
12 against the Company and hindering the Company's future success; actively raising and conspiring to
13 raise monies to form a competing venture; conspiring to damage the Company through a frivolous
14 lawsuit; and by making or conspiring to make false and improper statements to investors about the
15 Company and its Board.

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

19 **EIGHTH CAUSE OF ACTION**

20 **Breach of the Faithless Servant Doctrine**

21 168. Hyperloop One incorporates and realleges paragraphs 1 through 167 above as though
22 set forth fully herein.

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

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

27 171. As described in this cross-complaint, while employed by Hyperloop One, each
28 member of the Gang of Four breached his fiduciary duties by, among other things, making

1 unreasonable demands on the Board designed to benefit the Gang personally; taking and conspiring
2 to take concrete steps to divert Hyperloop One’s current and prospective business opportunities to a
3 company that the Gang of Four planned to form; soliciting or conspiring to solicit key Company
4 employees to leave the Company and join the competing venture with the intention of competing
5 against the Company and hindering the Company’s future success; actively raising and conspiring to
6 raise monies to form a competing venture; conspiring to damage the Company through a frivolous
7 lawsuit; and by making or conspiring to make false and improper statements to investors about the
8 Company and its Board.

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

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

14 **NINTH CAUSE OF ACTION**

15 Intentional Interference with Employment Relations

16 174. Hyperloop One incorporates and realleges paragraphs 1 through 173 above as though
17 set forth fully herein.

18 175. At all relevant times, Hyperloop One had valid and ongoing employment relationships
19 with the Hyperloop One employees whom the Gang of Four solicited to breach their agreements with
20 the Company and to form “Hyperloop Two” or “NewCo.”

21 176. Each member of the Gang of Four had knowledge of the existence of all of these
22 employment relationships by virtue of his position at Hyperloop One—including, without limitation,
23 his role supervising or working in conjunction with some or all of these employees.

24 177. Each member of the Gang of Four intentionally interfered with these ongoing
25 employment relationships by wrongfully soliciting or conspiring to wrongfully solicit Hyperloop One
26 employees to engage in workplace misconduct, leave their employment with Hyperloop One, breach
27 the terms of their employment agreements, and compete with Hyperloop One as part of a coordinated
28 effort to harm Hyperloop One’s business operations.

1 178. Without limitation, and as set forth above, Pendergast intentionally interfered with the
2 Company's employment relationships with the other three members of the Gang by successfully
3 encouraging them to violate their employment agreements, leave Hyperloop One, and form a venture
4 to compete with the Company. The Gang, acting in concert, also intentionally interfered with the
5 Company's employment relationships with numerous key Hyperloop One employees by soliciting
6 them to join their scheme and to leave the Company.

7 179. The Gang further intentionally interfered with the Company's employment
8 relationships with key Hyperloop One employees by soliciting them to leave their employment with
9 the Company. The Gang further solicited dozens of additional Hyperloop One employees to compete
10 against the Company, each of whose names were listed on a white board at a pivotal meeting in
11 BamBrogan's garage.

12 180. In mid-August 2016, members of the Gang made additional efforts to intentionally
13 interfere with the Company's employment relationships, including, without limitation, by
14 Mulholland's contacting at least two employees via LinkedIn in an effort to convince them to leave
15 Hyperloop One and/or compete against it.

16 181. The Gang of Four's intentional interference with these employment relationships
17 resulted in the disruption of the relationships that Hyperloop One enjoyed with its employees.
18 Among other harm to be proven at trial, this interference disrupted Hyperloop One's projects and
19 daily operations and forced the Company to expend wasted resources to bring its projects and staff
20 back up to full speed and assure current and prospective employees that Hyperloop One remains on
21 track.

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

1 **TENTH CAUSE OF ACTION**

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

3 183. Hyperloop One incorporates and realleges paragraphs 1 through 182 above as though
4 set forth fully herein.

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

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

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

16 **PRAYER FOR RELIEF**

17 WHEREFORE, in light of the foregoing allegations, Hyperloop One hereby requests the
18 following relief:

- 19 1. declaratory relief in the form of an order that Cross-Defendants
20 breached the Non-Solicitation, Non-Compete, Confidential Information, Proprietary
21 Information, and Non-Disparagement Agreements and injunctive relief in the form of
22 an order enjoining Cross-Defendants from further breach of these agreements;
- 23 2. money damages in excess of \$50,000,000, including, but not limited to,
24 actual, consequential, and/or incidental damages;
- 25 3. return of ill-gotten gains and all sums paid to Cross-Defendants under
26 the faithless servant doctrine;
- 27 4. punitive damages in the amount of \$200,000,000;
- 28 5. attorneys’ fees and/or costs in the maximum amount permitted and/or

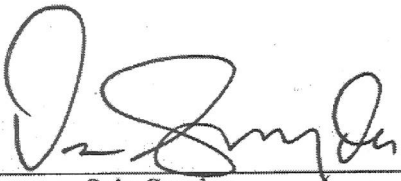
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provided for by law or contract; and

6. such other and further relief as the Court may deem just and proper.

DATED: August 31, 2016

GIBSON, DUNN & CRUTCHER LLP

By: 
Orin Snyder

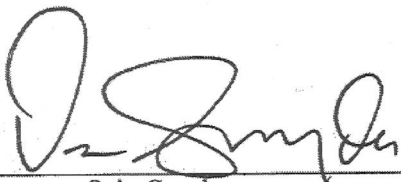
*Attorneys for Defendant and Cross-Claimant
Hyperloop One*

DEMAND FOR JURY TRIAL

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

DATED: August 31, 2016

GIBSON, DUNN & CRUTCHER LLP

By: 
Orin Snyder