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County of San Diego
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JESUS GAXIOLA, an individual,

Plaintiff,

v.

SAN DIEGO TECH BUILDING
SOLUTIONS, INC., a California corporation;
ALBERTO NUNEZ, an individual, and DOES
1 through 50, inclusive,

Defendant.

Case No. 37-2021-00000416-CU-WT-CTL

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

COMES NOW Plaintiff JESUS GAXIOLA ("Plaintiff") and complains against Defendants
SAN DIEGO TECH BUILDING SOLUTIONS, INC., a California corporation, ("SD TECH"),
ALBERTO NUNEZ, an individual, ("NUNEZ") and DOES 1-50 (SD TECH, NUNEZ, and DOES
1-50 are collectively referred to as "Defendants") on the basis of personal knowledge and/or
information and belief, as follows:

SUMMARY

1. This is an employment action brought by Plaintiff against Defendants because
Defendants was wrongfully terminated Plaintiff's employment in violation of public policy, in
retaliation for complaining about and disclosing his working conditions that adversely affected his
health and safety, and the health and safety of his co-workers, in violation of California Labor

1 Code section 232.5, 1102.5, and 6310. Additionally, Defendants violated multiple protections of
2 the California Labor Code, the California Industrial Wage Commission Wage Order(s), and other
3 applicable State and local laws and regulations, relative to wage and hour protections. Plaintiff
4 brings this action against Defendants for economic, non-economic, compensatory and punitive
5 damages, pursuant to Civil Code section 3294, civil and statutory penalties, pre-judgment interest
6 pursuant to Code of Civil Procedure section 3291, costs, and reasonable attorneys' fees under
7 Code of Civil Procedure section 1021.5, and multiple sections of the California Labor Code.

8 2. Additionally, Plaintiff brings this action on behalf of himself, all aggrieved
9 employees, and the State of California under the Private Attorney General Act (PAGA), Cal. Lab.
10 Code §§ 2698 *et seq.*, for multiple and various violations of the California Labor Code's wage
11 and hour protections for employees.

12 **THE PARTIES AND VENUE**

13 3. Plaintiff JESUS GAXIOLA is and was at all times relevant, a resident of San Diego
14 County.

15 4. Defendant SD TECH, is and was at all times relevant, a California Corporation,
16 conducting business in San Diego County.

17 5. Defendant NUNEZ, is and was at all times relevant, a resident of San Diego
18 County.

19 6. Pursuant to California Code of Civil Procedure section 474, the true names and
20 capacities of the Defendants DOES 1 through 50, inclusive, are unknown to Plaintiff who
21 therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and
22 thereon alleges, that each of the Defendants designated herein as a DOE is responsible in some
23 manner for the events and happenings herein referred to and caused injuries and damages
24 proximately thereby to Plaintiff as herein alleged. Any subsequent reference in this Complaint to
25 "SD TECH", "Defendants" or "Defendant" should be understood to include each expressly
26 named Defendants and all "DOE" Defendants. Plaintiff will seek leave of this Court to amend the
27 Complaint to set forth the true names and capacities of the fictitiously named Defendants when
28 their true identities and capacities become known to Plaintiff.

1 7. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, each of the Defendants was the agent, servant and employee of the remaining co-
3 Defendants, and as such was acting within the time, place, purpose, and scope of said employment
4 and agency and each Defendant has ratified, authorized, and approved the acts of his/her/its
5 agents.

6 8. Relationship of defendants: All Defendants compelled, coerced, aided, and/or
7 abetted the discrimination, retaliation, and harassment because Plaintiff disclosed his working
8 conditions, including health and safety complaints, as alleged in this Complaint, which conduct is
9 prohibited under California Labor Code sections 232.5, 1102.5, and 6310, and all Defendants
10 violated wage and hour protections afforded under the California Labor Code, the California
11 Industrial Wage Commission Wage Order(s), and other applicable State and local laws and
12 regulations, as described in further detail below. All Defendants were responsible for the events
13 and damages alleged herein, including on the following bases: (a) Defendants committed the acts
14 alleged; (b) at all relevant times, one or more of the Defendants was the agent or employee, and/or
15 acted under the control or supervision of, one or more of the remaining Defendants and, in doing
16 the acts alleged, acted within the course and scope of such agency and employment and/or is or are
17 otherwise liable for Plaintiff's damages; (c) at all relevant times, there existed a unity of ownership
18 and interest between two or more of the Defendants such that any individuality and separateness
19 between those Defendants has ceased, and defendants are the alter egos of one another.
20 Defendants exercised domination and control over one another to such an extent that any
21 individuality or separateness of Defendants does not, and at all times herein mentioned did not,
22 exist. Adherence to the fiction of the separate existence of Defendants would permit abuse of the
23 corporate privilege and would sanction fraud and promote injustice. All actions of all Defendants
24 were taken by employees, supervisors, executives, officers, and directors during employment with
25 all Defendants, were taken on behalf of all Defendants, and were engaged in, authorized, ratified,
26 and approved of by all other Defendants.

27 9. Venue is proper in this Court because San Diego County is the place of residence
28 of Defendant NUNEZ, because Defendant SD TECH is physically located in, and conducts

1 business in San Diego County, and because San Diego County is the site of Plaintiffs’
2 employment with Defendants, and Defendants’ actions that form the basis of this complaint
3 occurred in or were centered in San Diego County, California.

4 **GENERAL ALLEGATIONS:**

5 **CALIFORNIA’S PUBLIC POLICY, CODIFIED IN LABOR CODE §§ 232.5, 1102.5, AND**
6 **6310, REQUIRES THAT EMPLOYEES MUST BE PERMITTED TO DISCLOSE AND**
7 **REPORT UNSAFE AND UNHEALTHY WORKING CONDITIONS WITHOUT BEING**
8 **TERMINATED IN RETALIATION.**

9 10. California law unambiguously establishes that employees must be permitted to
10 disclose and report unsafe and unhealthy working conditions without fear of retaliation, demotion,
11 or termination for doing so. The resulting benefit of creating safer working conditions for all
12 Californians is a well-established, substantial, and fundamental public interest that inures to the
13 benefit of the public at large. For example, California Labor Code section 232.5 makes it
14 unlawful for any employer to “[d]ischarge, formally discipline, or otherwise discriminate against
15 an employee who discloses information about the employer’s working conditions.”

16 11. Similarly, Labor Code section 1102.5 prohibits any employer from retaliating
17 “against an employee for disclosing information, or because the employer believes that the
18 employee disclosed or *may* disclose information, . . . to a person with authority over the employee
19 or another employee who has the authority to investigate, discover, or correct the violation or
20 noncompliance, . . . if the employee has reasonable cause to believe that the information discloses
21 a violation of state or federal statute, or a violation of or noncompliance with a local, state, or
22 federal rule or regulation, regardless of whether disclosing the information is part of the
23 employee’s job duties.” Cal Lab Code § 1102.5 (emphasis added). When the termination of
24 employment is based on the employer's *mistaken belief* that the employee *might* disclose or *has*
25 disclosed a violation of state regulations to a governmental agency, the result has a tendency to be
26 injurious to the public or against the public good. (See *Diego v. Pilgrim United Church of*
27 *Christ* (2014) 231 Cal.App.4th 913, 923-924.)

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12. In addition to other penalties, an employer that is a corporation is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of Labor Code § 1102.5.

13. Additionally, Labor Code section 6310 provides in relevant part as follows:

(a) No person shall discharge or in any manner discriminate against any employee because the employee has . . . (1) Made any oral or written complaint to . . . their employer . . .

(b) Any employee who is discharged. . . by their employer because the employee has made a bona fide oral or written complaint to . . . their employer . . . of unsafe working conditions, or work practices, in their employment or place of employment, . . . shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

Cal Lab Code § 6310.

These three statutes each independently stand for the fundamental and well-settled public policy that employees must be free to raise safety concerns about their working conditions, and that an employer's retaliation for doing so, or even for believing that an employee *may* do so, is strictly prohibited. This benefits the general public by encouraging safer working conditions for all.

**DEFENDANTS WRONGFULLY TERMINATED PLAINTIFF IN VIOLATION OF
PUBLIC POLICY FOR IDENTIFYING AND DISCLOSING UNSAFE WORKING
CONDITIONS.**

14. Plaintiff worked for Defendants from approximately March 30, 2020 through September 30, 2020. Among other services he performed, Plaintiff and his co-workers were required to clean and perform maintenance on air ducts and air filtration systems in hospitals and health care facilities during the height of the COVID-19 pandemic.

15. Defendants required Plaintiff and other employees to crawl into the air ducts and air filtration systems in hospitals and health care facilities and perform maintenance, and scrub the air ducts with cleaning cloths in their hands. This direct exposure to the hospitals' COVID-19 contaminated air and surfaces in the air ducts put the Defendants employees at significant risk of

1 contracting the deadly virus, which, as of December 31, 2020, has killed over 344,628 people in
2 the US.

3 16. The risks of exposure and infection with COVID-19 were significantly heightened
4 in hospital and health care facilities where patients were being treated for the COVID-19 virus,
5 especially when working in the buildings' forced air ducts and air filtration systems, given the
6 airborne transmissibility of the virus, and the employees' exposure to contaminated air and direct
7 contact with the surface of the air ducts when cleaning.

8 17. The federal Centers for Disease Control and Prevention ("CDC") states that the
9 principal mode by which people are infected with SARS-CoV-2 (the virus that causes COVID-19)
10 is through exposure to respiratory droplets carrying infectious virus. According to the CDC,
11 airborne transmission is infection spread through exposure to those virus-containing respiratory
12 droplets comprised of smaller droplets and particles that can remain suspended in the air over long
13 distances (usually greater than 6 feet) and time (typically hours). As a result, the CDC
14 recommends that individuals working in the health care environment use the most protective
15 respirators and other personal protective equipment available, such as N95 respirators, Powered
16 Air Purifying Respirators (PAPRs), elastomeric respirators, and related equipment, to protect them
17 from exposure and infection with the deadly airborne virus.

18 18. The CDC also advises that SARS-CoV-2 may remain viable for hours to days on
19 surfaces made from a variety of materials and that it may be possible for a person to become
20 infected with COVID-19 by touching a surface or object that has the virus on it and then touching
21 their own mouth, nose, or possibly their eyes. Therefore, the CDC recommends that surfaces that
22 are thought to be contaminated should be cleaned and disinfected, following the CDC
23 recommendations, and that individual should wear protective clothing and gloves to prevent
24 contamination of street clothing and to protect the skin from exposure.

25 19. Prior to relocating in the US, Plaintiff sought and received an education and
26 training as a civil engineer in Mexico, and he worked as the civil engineer for a large construction
27 company there. While employed by Defendants, purely of his own initiative, Plaintiff pursued
28 Cal/OSHA training, and earned the Cal/OSHA 30 Hour Construction Training Certification. The

1 30-hour Cal/OSHA training program is intended to provide workers with a greater depth and
2 variety of training, with an emphasis on hazard identification, avoidance, control, and prevention.

3 20. Defendant SD TECH's owner and CEO, Defendant NUNEZ, initially praised
4 Plaintiff for obtaining the Cal/OSHA certification, stating that it was good, and that Defendants
5 would need that certification to qualify for certain types of jobs. However, Defendant NUNEZ's
6 attitude changed as Plaintiff made suggestions for improving the safety of Defendants' employees,
7 based on his experience and training. Over time, Defendant NUNEZ grew resentful of Plaintiff as
8 he pointed out obvious safety concerns to Defendant NUNEZ and his direct supervisors.

9 21. California employers have many different responsibilities under the California
10 Occupational Safety and Health Act of 1973 and Title 8 of the California Code of Regulations, but
11 most important among those are the requirements that employers must 1) inspect workplace(s) to
12 identify and correct unsafe and hazardous conditions; 2) make sure employees have and use safe
13 tools and equipment and properly maintain this equipment; and 3) provide and pay for personal
14 protective equipment. In violation of the laws and regulations set forth in California Occupational
15 Safety and Health Act of 1973 and Title 8 of the California Code of Regulations, Defendants
16 failed to 1) inspect workplace(s) to identify and correct unsafe and hazardous conditions; 2) make
17 sure Plaintiff and other aggrieved employees had and used safe tools and equipment and properly
18 maintained this equipment; and 3) provide and pay for personal protective equipment.

19 22. Critically, Defendants' employees used only basic cloth masks while working in
20 hospitals and health care facilities—Defendants did not provide N95 respirators, Powered Air
21 Purifying Respirators (PAPRs), elastomeric respirators, and related personal protective equipment,
22 to protect them from exposure and infection with airborne viruses while working in the heightened
23 risk zones. At one point, Plaintiff told his supervisor that he needed a different face mask, because
24 the cloth mask he was using would not protect him against COVID-19 while working in hospitals.
25 His supervisor told him, "Here, you can have mine," and gave him a North 5400 full-face
26 respirator. However, the full-face respirator did not work properly. One of the filters repeatedly
27 fell out, and he was never given any replacement filters. Since the mask did not work properly,
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1 Plaintiff had to use his own cloth face mask. The other employees also only used basic, cloth
2 masks.

3 23. Similarly, despite being in extended and direct contact with the surface of the air
4 ducts and other high risk surface areas in the hospitals and health care facilities, Defendants did
5 not provide any additional protective clothing for its employees--no disposable gloves, coveralls,
6 or shoe coverings that would have kept Defendants' employees safer. The lack of proper safety
7 equipment a hotly debated topic, and Plaintiff repeatedly expressed his safety concerns to his
8 supervisors. Defendants forced their employees to work in a COVID-19 hot-zone with a high risk
9 of exposure and infection, with nothing more than basic cloth masks, which were not adequate
10 protection, and which violated federal and state laws and regulations.

11 24. In the month directly before Defendant NUNEZ terminated his employment,
12 Plaintiff told his supervisors that what they were doing was not safe. He expressed and discussed
13 his safety concerns and the Defendants' employees' heightened exposure to COVID-19 through
14 the hospitals' air duct and air filtration systems, and Defendants' failure to provide adequate
15 personal protective equipment, with his supervisors, on multiple occasions. Plaintiff had reason to
16 believe, based on his Cal/OSHA safety training, and his knowledge of the CDC guidelines,
17 California's and San Diego County's COVID safety rules and regulations, and his work in a high
18 risk zone, that Defendants failures to take reasonable steps to provide a safe working environment
19 violated state or federal statutes, and were in violation of and in non-compliance with local, state,
20 or federal rule or regulations, relating to safety precautions. Plaintiff's supervisors had the
21 authority to investigate, discover, or correct the Defendants violations and noncompliance, but did
22 not do so.

23 25. Shortly after Plaintiff's safety complaints and discussions with his co-workers and
24 supervisors, Defendants NUNEZ and SD TECH wrongfully terminated him in violation of public
25 policy. Defendants acted deliberately, with malice and oppression, in a retaliatory attempt to
26 silence Plaintiff's voice from raising safety concerns about his working conditions. When Plaintiff
27 arrived at work on September 30, 2020, Defendant NUNEZ terminated his employment, handed
28 him his paycheck and told him to go home. When Plaintiff asked why, Defendant NUNEZ stated

1 only, “Yeah, we don’t understand each other.” A short time later, an SD TECH supervisor told
2 Plaintiff that Defendant NUNEZ fired him because Plaintiff had complained of the unsafe working
3 conditions to his supervisors. Defendants also feared that Plaintiff either already had reported the
4 unsafe business practices to a government or law enforcement agency, or was going to report them
5 to a government or law enforcement agency, and terminated him in retaliation.

6 26. Defendants acted with malice and oppression in terminating Plaintiff in retaliation
7 because Plaintiff raised COVID safety concerns and Defendants’ failure to provide sufficient PPE.
8 The proximity of the timing of the termination relative to Plaintiff’s safety complaints gives rise to
9 the presumption of retaliation, and Defendants have no legitimate, business reason for his
10 termination. The supervisor’s damning admission is confirmation. Accordingly, Defendants
11 wrongfully terminated Plaintiff’s employment in violation of public policy and retaliation, as
12 expressly prohibited by Labor Code sections 232.5, 1102.5, and 6310.

13 27. As a direct and proximate result of Defendants’ wrongful termination of Plaintiff,
14 he has not been able to find work, and has suffered lost past wages and benefits, and will continue
15 to suffer the loss of wages and benefits into the foreseeable future. He has also suffered severe
16 emotional distress, including mood swings, anger, shame, fear, and grief, and financial insecurity,
17 all of which have detrimentally affected his ability to sleep, his appetite, his health, and his self-
18 esteem.

19 28. *Economic damages:* As a consequence of Defendants’ conduct, Plaintiff has
20 suffered and will suffer harm, including lost past and future income and employment benefits,
21 damage to his career, and lost wages, overtime, unpaid expenses, and penalties, as well as interest
22 on unpaid wages at the legal rate from and after each payday on which those wages should have
23 been paid, in a sum to be proven at trial.

24 29. *Non-economic damages:* As a consequence of defendants’ conduct, Plaintiff has
25 suffered and will suffer psychological and emotional distress, humiliation, and mental and
26 physical pain and anguish, in a sum to be proven at trial.

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1 30. *Punitive damages:* Defendants’ conduct constitutes oppression, fraud, and/or
2 malice under California Civil Code section 3294, so as to entitle plaintiff to an award of
3 exemplary/punitive damages.

4 31. *Malice:* Defendants’ conduct was committed with malice within the meaning of
5 California Civil Code section 3294, including that (a) defendants acted with intent to cause injury
6 to plaintiff and/or acted with reckless disregard for plaintiff’s injury, including by terminating
7 plaintiff’s employment and/or taking other adverse job action against plaintiff because of
8 Plaintiff’s disclosure of the working conditions that violated health and safety standards and
9 adversely affected Plaintiff’s own health and safety, and/or (b) Defendants’ conduct was
10 despicable and committed in willful and conscious disregard of plaintiff’s rights, health, and
11 safety, including Plaintiff’s right to be free of discrimination, retaliation, and wrongful
12 employment termination as a result of Plaintiff’s disclosure of the working conditions that violated
13 health and safety standards and adversely affected Plaintiff’s own health and safety.

14 32. *Oppression:* In addition, and/or alternatively, Defendants’ conduct was committed
15 with oppression within the meaning of California Civil Code section 3294, including that
16 Defendants’ actions against plaintiff because of Plaintiff’s disclosure of the working conditions
17 that violated health and safety standards and adversely affected Plaintiff’s own health and safety
18 was “despicable” and subjected Plaintiff to cruel and unjust hardship, in knowing disregard of
19 Plaintiff’s rights to a work place free of discrimination, retaliation, and wrongful employment
20 termination.

21 33. *Fraud:* In addition, and/or alternatively, defendants’ conduct, as alleged, was
22 fraudulent within the meaning of California Civil Code section 3294, including that Defendants
23 asserted false (pretextual) grounds for terminating Plaintiff’s employment and/or other adverse job
24 actions, thereby to cause Plaintiff hardship and deprive Plaintiff of legal rights.

25 34. *Attorneys’ fees and litigation costs:* Plaintiff has incurred and continues to incur
26 legal expenses and attorneys’ fees.

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DEFENDANTS FAILED TO PROVIDE ANY PAID SICK LEAVE

35. Since 2015, under California's Healthy Workplaces, Healthy Families Act of 2014, California employers have been required to provide its employees (exempt and non-exempt alike) who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages.

36. Additionally, beginning July 11, 2016, pursuant to the City of San Diego Earned Sick Leave and Minimum Wage Ordinance, San Diego Municipal Code §§ 39.0101, *et seq.*, employees working within the geographical boundaries of the City of San Diego must accrue no less than one (1) hour of earned sick leave for every thirty (30) hours worked within the geographic boundaries of the City. Employer may cap the total accrual of earned sick leave at eighty (80) hours, and may limit an employee's use of earned sick leave to forty (40) hours in a benefit year.

37. San Diego Municipal Code §39.0112 provides a private right of action to any person claiming harm from an employer's violation of the Earned Sick Leave requirements under the San Diego Municipal Code, with no requirement to exhaust administrative remedies.

38. Defendants failed to provide any paid sick leave whatsoever, or any other equivalent paid leave, with the equivalent accrual and permissible uses to Jesus Gaxiola and all other employees that worked for Defendants for more than 30 days. Defendants also failed to provide its employees with written notice on wage statements and/or other separate written statements that listed the requisite information set forth in Labor Code section 246(i). Defendants'

1 ongoing and systematic failure to provide sick leave benefits to its aggrieved employees violates
2 California Labor Code section 246 and San Diego Municipal Code §§ 39.0101, *et seq.*

3 39. For each and every pay period in which there was no written notice of the available
4 paid sick leave or paid time off for Plaintiff or any aggrieved employee, Defendants violated
5 Labor Code § 246 and San Diego Municipal Code §§ 39.0101, *et seq.* For each and every time
6 that Plaintiff or any aggrieved employee called in sick but did not receive paid time off, or wanted
7 to call in sick but did not do so because he or she would not be paid for the necessary sick days,
8 that employee was harmed, and there was a violation of Labor Code § 246 and San Diego
9 Municipal Code §§ 39.0101, *et seq.* Defendants are liable for damages, penalties, attorneys' fees,
10 costs, and interest under Labor Code section 248.5 for these violations of the Healthy Workplaces,
11 Healthy Families Act of 2014 and San Diego Municipal Code §39.0112.

12 40. Plaintiff and other aggrieved employees are therefore entitled to recover penalties,
13 attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(f)-
14 (g).

15 **OFF-THE-CLOCK WORK AND FAILURE TO PAY MINIMUM WAGE**

16 41. Defendants required Plaintiff and other employees to work off-the-clock, for which
17 they were not paid anything. Defendants sometimes required Plaintiff and other employees to
18 start work off the clock, by requiring them to be in place, to prepare their equipment, and to start
19 their cleaning and maintenance tasks before punching in for the start of the workday. Defendants
20 did not permit Plaintiff and other employees to clock in for work until 6:00 PM. As a result,
21 Defendants failed to pay Plaintiff and other employees the required minimum wage for all time
22 worked.

23 42. California Labor Code sections 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1,
24 1197.2, and 1198 require employers to pay employees the minimum wage fixed by the Industrial
25 Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is
26 unlawful. Compensable work time is defined in IWC Wage Orders as "the time during which an
27 employee is subject to the control of an employer, and includes all the time the employee is
28 suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 1

1 1070(2)(G) (defining "Hours Worked"). When an employer fails to pay the minimum wage for all
2 time worked, they are liable for damages, liquidated damages, penalties, attorneys' fees and costs.

3 43. As described above, due to Defendants' company-wide practices of failure to record
4 and compensate its non-exempt employees for all time worked resulted in minimum wage
5 violations.

6 44. For each and every pay period that there Defendants failed to pay employees for all
7 time worked, there were statutory violations of Labor Code sections 1182.12, 1194, 1197, 1197.1,
8 and 1198. Defendants are liable for civil penalties under PAGA for each and every aggrieved
9 employee in each pay period for these violations. Plaintiff and other aggrieved employees are
10 therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
11 Labor Code sections 2699 *et seq.*

12 **FAILURE TO PAY ALL OVERTIME WAGES EARNED**

13 45. California Labor Code section 1194, *et seq.* provides a private right of action and
14 penalties for failure to timely pay overtime wages on the designated dates. Labor Code section
15 1198 states that the employment of an employee for longer hours than those fixed by applicable
16 law is unlawful.

17 46. California Labor Code sections 510 and 1198 and the applicable IWC Wage
18 Order(s) require employers to pay employees working more than eight (8) hours in a day or more
19 than forty (40) hours in a workweek at the rate of time-and-one-half ($1\frac{1}{2}$) times the regular rate of
20 pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
21 workweek. The applicable IWC Wage Order further provides that employers are required to pay
22 employees working more than twelve (12) hours in a day overtime compensation at a rate of two
23 (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for
24 employment paid to, or on behalf of, the employee, including commissions, non-discretionary
25 bonuses and incentive pay.

26 47. Defendants willfully failed to pay all overtime wages owed to Plaintiff and its other
27 non-exempt, aggrieved employees. Defendants required Plaintiff and other aggrieved employees
28 to work six to seven days a week. They were frequently required to work double-shifts (16 hours

1 in a single day). During the relevant time period, Defendants frequently required Plaintiff and
2 other aggrieved employees to work very long hours, more than eight hours in a day or forty hours
3 in a week, but the time was not accurately recorded and overtime was frequently not calculated
4 correctly. Plaintiff and Defendants' aggrieved employees were not paid overtime premiums for
5 all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in
6 a day, and/or in excess of forty (40) hours in a week.

7 48. Defendants maintained a uniform wage practice of paying Plaintiff and the other
8 aggrieved employees without regard to the correct overtime rate or the correct amount of overtime
9 they worked. Defendants' uniform policy and practice was to unlawfully and intentionally deny
10 timely payment of overtime wages due to Plaintiffs and the other aggrieved employees.

11 49. As a direct result of Defendants' unlawful wage practices as alleged herein,
12 Plaintiff and the other aggrieved employees were denied and did not receive the correct overtime
13 compensation for their overtime worked for Defendants. Plaintiff and the other aggrieved
14 employees were paid less by Defendants for overtime worked than they were entitled to,
15 constituting a failure to pay all earned overtime wages.

16 50. Defendants knew or should have known that Plaintiff and the other aggrieved
17 employees were under-compensated for their time worked. Defendants systematically elected
18 either through intentional malfeasance or gross nonfeasance, to not pay employees for their work
19 as a matter of uniform compensation policy, practice, and procedure. Defendants perpetrated this
20 systematic scheme by refusing to pay Plaintiff and the other aggrieved employees the correct
21 wages for their overtime worked.

22 51. In performing the acts and practices herein alleged in violation of California
23 employment laws, and refusing to compensate Plaintiff and the other aggrieved employees the
24 correct minimum wages for their time worked, Defendants acted and continue to act intentionally,
25 oppressively, and maliciously toward Plaintiff and the other aggrieved employees, and with
26 conscious and utter disregard for their legal rights or the consequences to them, and with the
27 despicable intent of depriving them of their property and legal rights, and otherwise causing them
28 injury in order to increase company profits at the expense of the employees.

1 52. Plaintiff therefore requests recovery of all unpaid overtime wages, according to
2 proof, interest, statutory costs, as well as the assessment of any statutory penalties against
3 Defendants, in a sum as provided by the California Labor Code, the applicable California
4 Industrial Welfare Commission Wage Order, and other applicable state and local laws. To the
5 extent overtime wage compensation is determined to be owed to Plaintiff, Defendants' conduct
6 also violates Labor Code sections 201 and/or 202, and therefore these individuals are also entitled
7 to waiting time penalties under California Labor Code section 203, which penalties are sought
8 herein on behalf of Plaintiff. Defendants' conduct as alleged herein was willful, intentional, and in
9 bad faith. Further, Plaintiff is entitled to seek and recovery statutory costs and attorneys' fees.

10 53. For each and every pay period that there Defendants failed to pay employees for all
11 earned overtime and/or double-time compensation, there were statutory violations of Labor Code
12 sections 510 and 1198. Defendants are liable for civil penalties under PAGA for each and every
13 aggrieved employee in each pay period for these violations. Plaintiff and other aggrieved
14 employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon,
15 pursuant to Labor Code sections 2699 *et seq.*

16 **FAILURE TO PROVIDE TIMELY MEAL AND REST BREAKS,**

17 **OR PAY MEAL AND REST BREAK PREMIUM PAY**

18 54. Labor Code section §§ 226.7, 512, and the applicable IWC Wage Order(s) require
19 that California employers assure that employees are provided a thirty minute, uninterrupted, duty-
20 free meal period prior to begin prior to the completion of the fifth hour of work in any day in
21 which employees worked more than six hours in a day. Likewise, the same law requires
22 employers to provide employees a second, uninterrupted meal period to begin before the
23 completion of the tenth hour worked when overtime in excess of ten hours is worked.

24 55. Additionally, Labor Code sections 226.7 and 512, and the applicable California
25 Industrial Welfare Commission Wage Order(s), require that employers provide employees a paid,
26 ten minute rest break for every four hours worked, or major part thereof.

27 56. Defendants frequently did not allow Plaintiff and other aggrieved employees to
28 take timely, or duty-free meal breaks. Plaintiff and other aggrieved employees were sometimes

1 required to work straight through their meal break, and sometimes they were permitted a meal
2 break, but not until well after the end of the fifth hour of work. Other times, they worked longer
3 than 10 hours and were not allowed to take a second meal break. Defendants failed to compensate
4 Plaintiff or the aggrieved employees for these various meal break violations with an extra hour of
5 premium pay for each day a violation occurred. This resulted in underpayment to wages.

6 57. Defendants, on a company-wide basis, failed to timely schedule meal periods even
7 though it is aware and knows that employees are entitled to such meal periods. As a result of this
8 company-wide failure to schedule meal periods and understaffing of its work crews, non-exempt
9 and aggrieved employees were not always permitted and authorized to take uninterrupted 30-
10 minute meal periods during shifts to which they were entitled to receive a meal period. For
11 example, employees regularly worked through meal periods and had meal periods interrupted by
12 Defendants' management or other employees.

13 58. Defendants also systematically, and on a company-wide basis, did not schedule
14 second meal periods and had no policy for permitting non-exempt and aggrieved employees to
15 take uninterrupted second 30-minute meal periods on days that they worked in excess of 10 hours
16 in one day. During the relevant time period, non-exempt employees sometimes worked shifts in
17 excess of ten (10) hours and did not receive an uninterrupted second 30-minute meal period. The
18 aggrieved employees did not sign valid meal break waivers on days that they were entitled to meal
19 periods but were not relieved of all duties.

20 59. Defendants also systematically, and on a company-wide basis, did not schedule
21 timely rest periods and had no policy for permitting Plaintiff and aggrieved employees to take
22 uninterrupted, duty-free, paid, 10-minute rest periods for every four hours of work, or major part
23 thereof. During the relevant time period, on a daily basis, Plaintiff and aggrieved employees
24 worked shifts in excess of four (4) hours and did not receive an uninterrupted 10-minute rest
25 period. Defendants failed to compensate Plaintiff or the aggrieved employees for these various rest
26 break violations with an extra hour of premium pay for each day a violation occurred. This
27 resulted in underpayment to wages.

28

1 60. For each and every pay period that there Defendants failed to permit its aggrieved
2 employees to take a required meal break, and failed to pay an additional hour of premium pay for
3 the missed or late meal break, Defendants violated Labor Code sections 512 and 226.7.
4 Defendants are liable for civil penalties under PAGA for each and every aggrieved employee in
5 each pay period for these violations. Mr. Watson and other aggrieved employees are therefore
6 entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code
7 sections 2699 *et seq.*

8 61. For each and every pay period that there Defendants failed to permit its aggrieved
9 employees to take a required rest break, and failed to pay an additional hour of premium pay for
10 the missed or late rest break, Defendants violated Labor Code sections 512 and 226.7. Defendants
11 are liable for civil penalties under PAGA for each and every aggrieved employee in each pay
12 period for these violations. Mr. Watson and other aggrieved employees are therefore entitled to
13 recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699
14 *et seq.*

15 **WORKING SEVEN DAYS A WEEK: VIOLATIONS OF §§ 551 and 552.**

16 62. Defendants requested that non-exempt, aggrieved employees work overtime as the
17 need arose, to complete all necessary work. This sometimes resulted in Plaintiff and other
18 aggrieved employees working seven days in a row, without any day of rest. §§ 551 and 552
19 require that every employee is entitled to one day's rest in seven, and that no employer shall cause
20 its employees to work more than six days in seven. Defendants disregarded these requirements,
21 and frequently required its employees to work seven or more days in a row, and thereby violated
22 section §§ 551 and 552.

23 63. For each and every pay period that there Defendants required employees to work 7
24 or more days in a row without a day off to rest, Defendants violated Labor Code sections 551 and
25 552. Defendants are liable for civil penalties under PAGA for each and every aggrieved employee
26 in each pay period for these violations. Plaintiff and other aggrieved employees are therefore
27 entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code
28 sections 2699 *et seq.*

WAITING TIME PENALTIES

64. California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Defendants willfully failed to pay Plaintiff and other aggrieved employees who are no longer employed by Defendants all their earned wages, including, but not limited to, overtime wages, commission pay, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ in violation of California Labor Code sections 201, 202, and 203.

65. Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

66. Plaintiff is therefore entitled to recover waiting time penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 203, 256, 1197.1, 1197.2.

67. For each and every pay period that there Defendants failed to timely pay an employee all earned wages upon discharge, Defendants violated Labor Code sections 203, 256, 1197.1, and 1197.2. Defendants are liable for civil penalties under PAGA for each and every aggrieved employee in each pay period for these violations. Plaintiff and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699 *et seq.*

FAILURE TO PROVIDE ACCURATE AND COMPLETE WAGE STATEMENTS

68. California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Defendants have not provided the

1 aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides
2 that if an employer fails to comply with providing an employee with properly itemized wages
3 statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual
4 damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee
5 for each violation in an subsequent pay period, not to exceed \$4,000. Further, Labor Code section
6 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in
7 the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for
8 each violation in a subsequent citation, for which the employer fails to provide the employee a
9 wage statement or fails to keep the required records pursuant to Section 226(a).

10 69. During the relevant time period, Defendants knowingly and intentionally provided
11 Plaintiff and other aggrieved employees with uniform, incomplete and inaccurate wage statements.
12 Defendants issued uniform wage statements to Plaintiff and other aggrieved employees that fail to
13 correctly list: the gross wages earned; net wages earned; and all applicable hourly rates in effect
14 during the pay period, including overtime rates of pay; the name and address of the legal entity
15 that is the employer; and the corresponding number of hours worked at each hourly rate.
16 Specifically, Defendants violated sections 226(a)(1), 226(a)(5), 226(a)(7), 226(a)(8), and
17 226(a)(9). Because Defendants did not calculate Plaintiff's or the aggrieved employees' regular
18 rate of pay correctly for purposes of paying overtime, Defendants did not list the correct amount of
19 gross wages earned by non-exempt, aggrieved employees, including Plaintiff, in compliance with
20 section 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages
21 earned non-exempt, non-party aggrieved employees, including Plaintiff, in violation of section
22 226(a)(5). Defendants also failed to list the name and address of the legal entity that is the
23 employer, in violation of section 226(a)(8). Defendants also failed to list the name of the
24 employee and the only the last four digits of his or her social security number or an employee
25 identification number other than the social security number, in violation of section 226(a)(7).
26 Defendants also failed to correctly list all applicable hourly rates in effect during the pay period,
27 namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of
28 section 226(a)(9).

1 70. Further, because Defendants failed to pay meal and rest period premiums to non-
2 exempt, aggrieved employees, including Plaintiff, and failed to pay all overtime worked, failed to
3 pay for all time worked, and failed to pay the minimum wage, Defendants did not list the correct
4 amount of gross wages earned by non-exempt, aggrieved employees in compliance with section
5 226(a)(1). For the same reason, Defendants failed to list the correct amount of net wages earned by
6 non-exempt, aggrieved employees in violation of section 226(a)(5). In addition, because
7 Defendants deducted time from other aggrieved employees' records for meal periods that were
8 missed or interrupted (and therefore time for which they should have been paid), Defendants did
9 not list the correct amount of gross wages earned by other aggrieved employees in compliance
10 with section 226(a)(1) and did not list the correct amount of net wages earned by other non-party
11 aggrieved employees in violation of section 226(a)(5).

12 71. The wage statement deficiencies also include, among other things, failing to list
13 total hours worked by employees; failing to list the number of piece-rate units earned and any
14 applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions;
15 failing to list the name of the employee and only the last four digits of his or her social security
16 number or an employee identification number other than a social security number; failing to list
17 the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state
18 all hours worked as a result of not recording or stating the hours they worked off-the-clock. In
19 addition, Defendants failed to provide non-exempt, aggrieved employees the option to elect to
20 receive hard copies of their wage statements at any time and/or failed to provide them with the
21 ability to easily access the information and convert the electronic wage statements into hard copies
22 at no expense to them.

23 72. For each and every pay period that there Defendants failed to provide its employees
24 with complete and accurate wage statements, Defendants violated Labor Code sections 226,
25 226.3, 1174.5. Defendants are liable for civil penalties under PAGA for each and every aggrieved
26 employee in each pay period for these violations. Plaintiff and other aggrieved employees are
27 therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
28 Labor Code sections 2699 *et seq.*

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

73. Labor Code § 2802 requires that employers reimburse employees “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

74. Plaintiff and other aggrieved employees often worked at more than one work site in a single work day. Consequently, they were required to travel from work site to work site, in order to perform their job duties. Defendants required Plaintiff and other aggrieved employees to use their own personal vehicles to travel from work site to work site. Plaintiff and other aggrieved employees necessarily incurred costs in the form of gas, oil, maintenance, insurance, and wear and tear on their personal vehicles, as a necessary business expense. Defendants failed to reimburse them for these necessarily incurred business expenses.

75. Defendants required Plaintiff and other aggrieved employees to use their personal cell phones to communicate with their supervisors, other employees, and related SD TECH personnel, through phone calls, text messages, and emails while working at various job sites. Defendants did not provide any stipend, or reimburse Plaintiff or other aggrieved employees for the use of their personal cell phones, which were required as part of their job duties.

76. Defendants did not provide Plaintiff and other aggrieved employees adequate PPE. Plaintiff and other aggrieved employees were required to provide their own PPE in order to perform their job duties. Defendants did not provide any stipend, or reimburse Plaintiff or other aggrieved employees for providing their own PPE.

77. Accordingly, Defendants violated Labor Code § 2802, and Plaintiff is entitled to recover damages, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2802.

78. For each and every pay period in which Defendants failed to reimburse employees for necessary business expenses, Defendants violated Labor Code section 2802. Defendants are liable for civil penalties under PAGA for each and every aggrieved employee in each pay period for these violations. Plaintiff and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699 *et seq.*

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Additional Penalties for Each Wage and Hour Violation

79. California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

80. Defendants, at all relevant times, were employers of or person acting on behalf of an employer(s) who violated Plaintiff's and the other aggrieved employees' rights by violating various sections of the California Labor Code, as set forth herein.

81. Accordingly, Plaintiff seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5 and 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 226(a), 226.7, 246, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198, and other sections cited above.

FIRST CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against SD TECH; DOES 1-50.)

82. Plaintiff incorporates by reference herein each and all of the allegations contained in paragraphs 1 through 82, inclusive, of the Complaint as though set forth herein in full.

83. Defendants employed Plaintiff from approximately March 30, 2020 through September 30, 2020.

1 84. During Plaintiff's employment with Defendants, he discussed with his supervisors
2 on multiple occasions, his concerns that Defendants were not providing him or the other
3 employees adequate personal protective equipment to take reasonable safety precautions, given the
4 heightened risks of contracting the deadly COVID-19 virus while working in the air duct and air
5 filtration systems in hospitals and health care facilities, and that he believed that this was an unsafe
6 practice. Plaintiff requested additional PPE, to create safer working conditions, but did not receive
7 any.

8 85. In retaliation for disclosing his unsafe working conditions and Plaintiff's belief that
9 Defendants were not providing what was required under Cal/OSHA regulations and other
10 applicable law, and under the belief that Plaintiff already had or was going to report his safety
11 concerns to a governmental or law enforcement agency, Defendants wrongfully terminated
12 Plaintiff's employment, in violation of the public policy established by Labor Code section 232.5,
13 1102.5, and 6310.

14 86. As a result of Defendants' wrongful actions, Plaintiff has suffered emotional
15 distress, harm to his ability to practice his profession, harm to his professional reputation, lost past
16 and future wages, and other damages, in amounts to be proven at trial.

17 87. Plaintiff seeks economic, non-economic, civil penalties, and punitive damages, as
18 well as attorneys' fees and costs.

19 **SECOND CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 232.5**

21 **(Against SD TECH; DOES 1-50.)**

22 88. Plaintiff incorporates by reference herein each and all of the allegations contained
23 in paragraphs 1 through 88, inclusive, of the Complaint as though set forth herein in full.

24 89. Defendants employed Plaintiff from approximately March 30, 2020 through
25 September 30, 2020.

26 90. Labor Code section 232.5 provides, in relevant part, "No employer may . .
27 . Discharge, formally discipline, or otherwise discriminate against an employee who discloses
28 information about the employer's working conditions." Cal Lab Code § 232.5(c).

1 91. On or about September 30, 2020, Defendants retaliated against Plaintiff for
2 disclosing his working conditions to his supervisors, and terminated his employment in direct
3 violation of Labor Code section 232.5(c). During Plaintiff's employment with Defendants, he
4 discussed with his supervisors on multiple occasions, his concerns that Defendants were not
5 providing him or the other employees adequate personal protective equipment to take reasonable
6 precautions against contracting COVID-19, given the heightened risks of contracting the deadly
7 COVID-19 virus while working in hospitals and health care facilities, and that he believed that
8 this was an unsafe practice.

9 92. As a result of Defendants' wrongful actions, Plaintiff has suffered emotional
10 distress, harm to his ability to practice his profession, harm to his professional reputation, lost past
11 and future wages and benefits, and other damages, in amounts to be proven at trial.

12 93. Plaintiff seeks economic, non-economic, and punitive damages, as well as
13 attorneys' fees and costs.

14 **THIRD CAUSE OF ACTION**

15 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 1102.5**

16 **(Against All Defendants)**

17 94. Plaintiff incorporates by reference herein each and all of the allegations contained
18 in paragraphs 1 through 94, inclusive, of the Complaint as though set forth herein in full.

19 95. Labor Code section 1102.5 provides, in relevant part, as follows:

20 (b) An employer, or any person acting on behalf of the employer, shall not retaliate
21 against an employee for disclosing information, or because the employer believes
22 that the employee disclosed or may disclose information, to a government or law
23 enforcement agency, to a person with authority over the employee or another
24 employee who has the authority to investigate, discover, or correct the violation or
25 noncompliance, . . . if the employee has reasonable cause to believe that the
26 information discloses a violation of state or federal statute, or a violation of or
27 noncompliance with a local, state, or federal rule or regulation, regardless of
28

1 whether disclosing the information is part of the employee's job duties.

2 * * *

3 (f) In addition to other penalties, an employer that is a corporation . . . is liable for a civil
4 penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

5 96. On or about September 30, 2020, Defendants retaliated against Plaintiff for
6 disclosing his unsafe working conditions to his supervisors, and under the belief that Plaintiff
7 would disclose his unsafe working conditions to a government or law enforcement agency, and
8 wrongfully terminated his employment in direct violation of Labor Code section 1102.5(b).
9 During Plaintiff's employment with Defendants, he discussed with his supervisors on multiple
10 occasions, his concerns that Defendants were not providing him or the other employees adequate
11 personal protective equipment to take reasonable precautions against contracting COVID-19,
12 given the heightened risks of contracting the deadly COVID-19 virus while working in hospitals
13 and health care facilities, and that he believed that this was an unsafe practice.

14 97. As a result of Defendants' wrongful actions, Plaintiff has suffered
15 emotional distress, harm to his ability to practice his profession, harm to his professional
16 reputation, lost past and future wages and benefits, and other damages, in amounts to be
17 proven at trial.

18 98. Plaintiff seeks economic, non-economic, and punitive damages, as well as
19 civil penalties, attorneys' fees, and costs.

20 **FOURTH CAUSE OF ACTION**

21 **VIOLATION OF CALIFORNIA LABOR CODE SECTION 6310**

22 **(Against All Defendants)**

23 99. Plaintiff incorporates by reference herein each and all of the allegations contained
24 in paragraphs 1 through 99, inclusive, of the Complaint as though set forth herein in full.

25 100. Labor Code section 6310 provides, in relevant part, as follows:

26 (a) No person shall discharge or in any manner discriminate against any employee
27 because the employee has done any of the following:
28

1 (1) Made any oral or written complaint to . . . with reference to employee safety or
2 health, their employer.

3 ***

4 (b) Any employee who is discharged. . . because the employee has made a bona
5 fide oral or written complaint to . . . their employer, of unsafe working conditions,
6 or work practices, in their employment or place of employment . . . shall be entitled
7 to reinstatement and reimbursement for lost wages and work benefits caused by the
8 acts of the employer. Any employer who willfully refuses to rehire, promote, or
9 otherwise restore an employee or former employee who has been determined to be
10 eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing
11 authorized by law, is guilty of a misdemeanor. (Cal Lab Code § 6310(b).)

12 101. On or about September 30, 2020, Defendants retaliated against Plaintiff for
13 disclosing his unsafe working conditions to his supervisors, and under the belief that Plaintiff
14 would disclose his unsafe working conditions to a government or law enforcement agency, and
15 wrongfully terminated his employment in direct violation of Labor Code section 6310. During
16 Plaintiff's employment with Defendants, he discussed with his supervisors on multiple occasions,
17 his concerns that Defendants were not providing him or the other employees adequate personal
18 protective equipment to take reasonable precautions against contracting COVID-19, given the
19 heightened risks of contracting the deadly COVID-19 virus while working in hospitals and health
20 care facilities, and that he believed that this was an unsafe practice.

21 102. As a result of Defendants' wrongful actions, Plaintiff has suffered
22 emotional distress, harm to his ability to practice his profession, harm to his professional
23 reputation, lost past and future wages and benefits, and other damages, in amounts to be
24 proven at trial.

25 103. Plaintiff seeks economic, non-economic, and punitive damages, as well as
26 civil penalties, attorneys' fees, and costs.

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FIFTH CAUSE OF ACTION

(Violations of Cal. Labor Code sections 204, 510, 551, 552, 553, 558, 558.1, 1194, 1194.2, 1198, and Violations of the applicable IWC Wage Order(s); Failure to Timely Pay Regular Wages, and Overtime Wages)
(Against All Defendants)

104. Plaintiff incorporate by reference herein each and all of the allegations contained in paragraphs 1 through 104, inclusive, of the Complaint as though set forth herein in full.

105. California Labor Code section 510 requires Defendants to pay overtime wages for any hours of employment actually worked in excess of eight (8) hours a week or forty (40) hours per week.

106. The applicable Industrial Welfare Commission Wage Order(s) require that Defendants to pay Plaintiff overtime wages for any hours of employment actually worked in excess of eight (8) hours a week or forty (40) hours per week.

107. California Labor Code sections 551 and 552 require Defendants to provide at least one day of rest, off of work, to all employees, every seven days.

108. The applicable IWC Wage Order(s) require that Defendants provided Plaintiff, in each calendar month, at least the equivalent of one day off in seven.

109. California Labor Code section 204 requires that Defendants pay Plaintiff in a timely manner for all time worked.

110. California Labor Code section 1194, et seq. provides a private right of action and penalties for failure to timely pay overtime wages on the designated dates. Labor Code section 1198 states that the employment of an employee for longer hours than those fixed by applicable law is unlawful.

111. California Labor Code section 553 provides that requiring employees to work seven days without a day of rest is a misdemeanor offense.

112. Plaintiff and other aggrieved employees regularly worked overtime in excess of eight hours a day and/or forty hours a week. Plaintiff and other aggrieved employees were frequently required to work six to seven days a week. They were frequently required to work

1 double-shifts (16 hours in a single day) and were paid the same rate for all work, regardless of
2 whether they worked more than eight hours in a day or 40 hours in a week.

3 113. Defendants maintained a uniform wage practice of paying Plaintiff and the other
4 aggrieved employees without regard to the correct overtime rate or the correct amount of overtime
5 they worked. Defendants' uniform policy and practice was to unlawfully and intentionally deny
6 timely payment of overtime wages due to Plaintiff and the other aggrieved employees.

7 114. Defendants routinely and regularly required Plaintiff and the other aggrieved
8 employees were to perform additional work without any additional compensation for their time,
9 and so were required to work without receiving any pay for their work.

10 115. As a direct result of Defendants' unlawful wage practices as alleged herein,
11 Plaintiff and the other aggrieved employees were denied and did not receive the correct overtime
12 compensation for their overtime worked for Defendants. Plaintiff and the other aggrieved
13 employees were paid less by Defendants for overtime worked than they were entitled to,
14 constituting a failure to pay all earned overtime wages.

15 116. Defendants knew or should have known that Plaintiff and the other aggrieved
16 employees were under-compensated for their time worked. Defendants systematically elected
17 either through intentional malfeasance or gross nonfeasance, to not pay employees for their work
18 as a matter of uniform compensation policy, practice, and procedure. Defendants perpetrated this
19 systematic scheme by refusing to pay Plaintiff and the other aggrieved employees the correct
20 wages for their overtime worked.

21 117. In performing the acts and practices herein alleged in violation of California
22 employment laws, and refusing to compensate Plaintiff and the other aggrieved employees the
23 correct minimum wages for their time worked, Defendants acted and continue to act intentionally,
24 oppressively, and maliciously toward Plaintiff and the other aggrieved employees, and with
25 conscious and utter disregard for their legal rights or the consequences to them, and with the
26 despicable intent of depriving them of their property and legal rights, and otherwise causing them
27 injury in order to increase company profits at the expense of the employees.

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118. Plaintiff therefore requests recovery of all unpaid overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code, the applicable California Industrial Welfare Commission Wage Order, and other applicable state and local laws. To the extent overtime wage compensation is determined to be owed to Plaintiff(s), Defendants' conduct also violates Labor Code sections 201 and/or 202, and therefore these individuals are also entitled to waiting time penalties under California Labor Code section 203, which penalties are sought herein on behalf of Plaintiff. Defendants' conduct as alleged herein was willful, intentional, and in bad faith. Further, Plaintiff is entitled to seek and recovery statutory costs and attorneys' fees.

SIXTH CAUSE OF ACTION

(Violations of California Labor Code sections 204 et seq., 510, 1194, 1194.2, 1197, 1197.1, et seq., and Violations of the applicable California Industrial Welfare Commission Wage

Order(s); Failure to Timely Pay Minimum Wages)

(Against all Defendants)

119. Plaintiff incorporates by reference herein each and all of the allegations contained in paragraphs 1 through 119, inclusive, of the Complaint as though set forth herein in full.

120. California Labor Code section 1197 requires that Defendants pay Plaintiff at least the applicable minimum wage fixed by the commission or by any applicable state or local law for all time worked.

121. The applicable IWC Wage Order required that Defendants pay Plaintiff at least the applicable minimum wage for all time worked.

122. California Labor Code section 204 requires that Defendants pay Plaintiff in a timely manner for all time worked.

123. Defendants maintained a uniform wage practice of paying Plaintiff and the other aggrieved employees without regard to the correct amount of time they worked. Defendants' uniform policy and practice was to unlawfully and intentionally deny timely payment of wages due to Plaintiff and the other aggrieved employees.

1 124. Defendants routinely and regularly required Plaintiff and the other aggrieved
2 employees were to perform additional work without any additional compensation for their time,
3 and so were required to work without receiving any pay for their work.

4 125. As a direct result of Defendants' unlawful wage practices as alleged herein,
5 Plaintiff and the other aggrieved employees were denied and did not receive the correct minimum
6 wage compensation for their time worked for Defendants. Plaintiff and the other aggrieved
7 employees were paid less by Defendants for time worked than they were entitled to, constituting a
8 failure to pay all earned wages.

9 126. Defendants knew or should have known that Plaintiff and the other aggrieved
10 employees were under-compensated for their time worked. Defendants systematically elected
11 either through intentional malfeasance or gross nonfeasance, to not pay employees for their work
12 as a matter of uniform compensation policy, practice, and procedure. Defendants perpetrated this
13 systematic scheme by refusing to pay Plaintiff and the other aggrieved employees the correct
14 minimum wages for their time worked.

15 127. In performing the acts and practices herein alleged in violation of California
16 employment laws, and refusing to compensate Plaintiff and the other aggrieved employees the
17 correct minimum wages for their time worked, Defendants acted and continue to act intentionally,
18 oppressively, and maliciously toward Plaintiff and the other aggrieved employees, and with
19 conscious and utter disregard for their legal rights or the consequences to them, and with the
20 despicable intent of depriving them of their property and legal rights, and otherwise causing them
21 injury in order to increase company profits at the expense of the employees.

22 128. Plaintiff therefore requests recovery of all unpaid wages, according to proof,
23 interest, statutory costs, as well as liquidated damages pursuant to Labor Code section 1194.2, the
24 assessment of any statutory penalties against Defendants, in a sum as provided by the California
25 Labor Code, the applicable California Industrial Welfare Commission Wage Order, and other
26 applicable state and local laws. To the extent minimum wage compensation is determined to be
27 owed to Plaintiff(s), Defendants' conduct also violates Labor Code sections 201 and/or 202, and
28 therefore these individuals are also entitled to waiting time penalties under California Labor Code

1 section 203, which penalties are sought herein on behalf of Plaintiff. Defendants' conduct as
2 alleged herein was willful, intentional, and in bad faith. Further, Plaintiff is entitled to seek and
3 recovery statutory costs and attorneys' fees.

4 **SEVENTH CAUSE OF ACTION**

5 **(Violations of Cal. Labor Code section 246 *et seq.*/**

6 **San Diego Municipal Code §§ 39.0101, *et seq.***

7 **Failure to Provide Paid Sick Leave)**

8 **(Against all Defendants)**

9 129. Plaintiff incorporates by reference herein each and all of the allegations contained
10 in paragraphs 1 through 129, inclusive, of the Complaint as though set forth herein in full.

11 130. Defendants were required to provide Plaintiff and other aggrieved employees with
12 paid sick leave under Cal. Labor Code § 246 *et seq.*, and San Diego Municipal Code § 39.0101, *et*
13 *seq.*

14 131. Defendants failed to provide Plaintiff and other aggrieved employees with any
15 earned or paid sick leave under Cal. Labor Code § 246 *et seq.*, and/or San Diego Municipal Code
16 § 39.0101, *et seq.*

17 132. Plaintiff was harmed by Defendants failure to provide any paid sick leave as
18 required, because he lost pay when he called in sick, and/or worked while he was sick, because he
19 could not afford to take any unpaid time off of work.

20 133. Plaintiff therefore requests recovery of all unpaid paid, liquidated damages,
21 according to proof, interest, statutory costs, as well as the assessment of any statutory and civil
22 penalties against Defendants, in a sum as provided by the California Labor Code, the applicable
23 California Industrial Welfare Commission Wage Order, San Diego Municipal Code, and other
24 applicable state and local laws.

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EIGHTH CAUSE OF ACTION

(Violations of California Labor Code sections 226.7 and 512; Violations of the applicable California Industrial Welfare Commission Wage Order(s); Failure to Provide Meal Periods)
(Against all Defendants)

134. Plaintiff incorporates by reference herein each and all of the allegations contained in paragraphs 1 through 134, inclusive, of the Complaint as though set forth herein in full.

135. Labor Code sections 226.7 and 512, and the applicable California Industrial Welfare Commission Wage Order(s) require Defendants to assure that Plaintiff and all aggrieved employees are provided a thirty minute, uninterrupted meal period prior to begin prior to the completion of the fifth hour of work in any day in which the employee worked more than six hours in a day. Likewise, the same law required Defendants to provide Plaintiff and all aggrieved employees a second, uninterrupted meal period to begin before the completion of the tenth hour worked when overtime in excess of ten hours is worked.

136. Defendants denied Plaintiff and other aggrieved employees a timely first meal period during days in which they worked more than six hours per day. Likewise, for days in which they worked more than ten hours in a day, Defendants denied Plaintiff and other aggrieved employees the timely second required meal period.

137. Plaintiff and other aggrieved employees were required to work during and/or through their meal periods in violation of the Labor Code. To the extent meal periods were provided, they were not provided in a timely manner, and as required by statute.

138. Defendants had no practices or written policies that were designed or intended to assure that Plaintiffs had notice of and/or were able to take their statutory meal periods.

139. Defendants violated this labor law based upon the failure to provide the requisite meal periods.

140. Defendants owe Plaintiff one hour of wages at Plaintiff's hourly rates of pay for each time he not provided the statutory meal period(s), and related penalties for each and every statutory violation.

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NINTH CAUSE OF ACTION

(Violations of California Labor Code section 226.7 and 512; Violations of the applicable California Industrial Welfare Commission Wage Order(s); Failure to Provide Rest Periods)

(Against all Defendants)

141. Plaintiffs incorporate by reference herein each and all of the allegations contained in paragraphs 1 through 141, inclusive, of the Complaint as though set forth herein in full.

142. Labor Code sections 226.7 and 512, and the applicable California Industrial Welfare Commission Wage Order(s) require that Defendants provide Plaintiff a paid, ten minute rest break for every four hours worked.

143. Plaintiff did not receive all required statutory rest breaks during his employment, as required by California law.

144. Defendants never provided Plaintiff such statutory rest periods, nor informed them that they were entitled to take such rest breaks.

145. Defendants had no practices or written policies that were designed or intended to assure that Plaintiff had notice of and/or were able to take their statutory rest periods.

146. Defendants violated this labor law based upon the failure to provide the requisite rest periods.

147. Defendants owe Plaintiff one hour of wages at Plaintiff's hourly rates of pay for each day in which he was not provided the statutory rest period, and related penalties, attorneys' fees and costs, for each and every statutory violation.

TENTH CAUSE OF ACTION

(Violations of Cal. Labor Code section 226 *et seq.*/Wage Statement Violations)

(Against all Defendants)

148. Plaintiffs incorporate by reference herein each and all of the allegations contained in paragraphs 1 through 148, inclusive, of the Complaint as though set forth herein in full.

149. Labor Code section 226(a) requires an employer to provide an employee a statement of wages with specified information on it with each pay period.

150. Defendants failed to provide such an accurate and complete wage statements, at any time, to Plaintiff.

151. Defendants violated this labor law based upon this failure to provide the requisite accurate and complete statement of wages, as described in detail above.

152. As a result of Defendants' statutory violations of section 226, Defendants owe Plaintiffs penalties as set forth in Labor Code sections 226(e), 226.3 and related penalties for each and every related statutory violation, as well as costs and reasonable attorneys' fees.

ELEVENTH CAUSE OF ACTION

(Failure to Reimburse for Business Expenses in Violation of

Labor Code Sections 2800, 2802 and 2804.)

(Against all Defendants)

153. Plaintiffs incorporate by reference herein each and all of the allegations contained in paragraphs 1 through 153, inclusive, of the Complaint as though set forth herein in full.

154. Labor Code sections 2800 and 2802 provide that an employer must indemnify an employee for losses caused by the employer's want of ordinary care and for all that the employee necessarily expends or loses in direct consequence of the discharge of his or her duties, or of obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

155. Labor Code section 2804 expressly prohibits the waiver of the rights afforded by section 2802.

156. Plaintiffs were required to incur and pay for expenses directly attributable to Defendants' business operations, including vehicle expenses, equipment expenses, cell phone expenses, and other necessary business expenses.

157. Defendants, and each of them are liable for reimbursement of all of Plaintiffs' incursion of business expenses directly attributable to Defendants' business operations, including but not limited to vehicle expenses, equipment expenses, cell phone expenses, other necessary business expenses, and all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by Labor Code section 2802.

158. Defendants, and each of them are subject to related penalties for each and every statutory violation.

TWELFTH CAUSE OF ACTION

(Violation of Bus. & Prof. Code § 17200, et seq.)

(Against all Defendants)

159. Plaintiff incorporates by reference herein each and all of the allegations contained in paragraphs 1 through 159, inclusive, of the Complaint as though set forth herein in full.

160. Defendants, and each of them, are “persons” as that term is defined under California Business and Professions Code section 17021.

161. California Business and Professions Code section 17200, et seq., (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition.

162. By the conduct alleged herein, Defendants, and each of them, have engaged and continue to engage in business practices that violate California law, including but not limited to the applicable Wage Orders, the California Code of Regulations and the California Labor Code, as alleged herein, for which this Court should issue declaratory and other equitable relief pursuant to California Business and Professions Code section 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld and deducted, with all attendant benefits and rights.

163. By the conduct alleged herein, Defendants’ practices were unlawful and unfair in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or substantially injurious to employees, and were without valid justification or utility for which this /

164. Court should issue equitable and injunctive relief pursuant to California Business and Professions Code section 17203.

165. By and through the unlawful and unfair business practices described herein, Defendants obtained valuable property, money and services, from Plaintiffs, including earned minimum wages for all hours worked, wages for all overtime hours worked, and payment of

1 necessary business expenses, and has deprived them of valuable rights and benefits guaranteed by
2 law and contract, all to the detriment of Plaintiffs and to the benefit of Defendants so as to allow
3 Defendants to unfairly compete against competitors who comply with the law.

4 166. All the acts described herein as violations of, among other things, the Industrial
5 Welfare Commission Wage Orders, the California Code of Regulations, the California Labor
6 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
7 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
8 practices in violation of California Business and Professions Code section 17200, et seq.

9 167. Plaintiffs are entitled to, and do seek such relief as may be necessary to restore to
10 them the money and property which Defendants have acquired, or of which Plaintiffs have been
11 deprived, by means of the above described unlawful and unfair business practices, including
12 earned but unpaid wages for all hours worked, all improper deductions restored and
13 reimbursements made.

14 168. Plaintiffs have no plain, speedy and/or adequate remedy at law that will end the
15 unlawful and unfair business practices of Defendants. Further, the practices herein alleged
16 presently continue to occur unabated. As a result of the unlawful and unfair business practices
17 described herein, Plaintiffs have suffered and will continue to suffer irreparable legal and
18 economic harm unless Defendants are restrained from continuing to engage in these unlawful and
19 unfair business practices.

20 **THIRTEENTH CAUSE OF ACTION**

21 **(Labor Code Private Attorneys General Act of 2004 (PAGA), Lab. Code § 2698, et seq.)**

22 **(Against All Defendants, inclusive.)**

23 169. Plaintiff incorporates by reference herein each and all of the allegations contained
24 in paragraphs 1 through 169, inclusive, as though set forth herein in full.

25 170. California Labor Code section 2699 provides the right of recovery of civil penalties
26 for violation of provisions of the California Labor Code through civil action brought by an
27 aggrieved employee, as well as attorneys' fees and costs.

28

171. California Labor Code section 2699.3 sets forth requirements that aggrieved employees must satisfy prior to bringing PAGA claims. Plaintiff has satisfied all statutory prerequisites to bring PAGA claims against Defendants, and each of them. Specifically, on or about January 4, 2021, Plaintiff provided a Notice of PAGA Claims under Labor Code section 2699, *et seq.*, (the “NOTICE”) to the State of California Labor and Workforce Development Agency (“LWDA”), via the State of California Department of Industrial Relations online PAGA website, and Defendants and/or their agents for service of process, as listed with the California Secretary of State, by certified mail. The NOTICE identifies the specific provisions of the California Labor Code alleged to have been violated, and alleges the facts and legal theories to support the alleged violation. A true and correct copy of this NOTICE and the emailed receipt of the same, from the LWDA is attached hereto as Exhibit 1, and incorporated as though fully set forth herein. Additionally, Plaintiff paid the required \$75 filing fee to the LWDA for the NOTICE.

172. Plaintiff received no response or notice of intent to assume jurisdiction over the applicable penalty claims from the LWDA and the LWDA has not provided notice as set forth in California Labor Code section 2699(a)(2)(A).

173. Therefore, Plaintiff has exhausted the required administrative procedures and/or remedies.

174. Pursuant to California Labor Code section 2699.3 Plaintiff may and does commence a civil action for penalties on behalf of himself, the State of California, and Defendants’ aggrieved employees.

175. As set forth in detail above, and incorporated herein by reference, Plaintiff seeks civil penalties, and all attendant attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699 *et seq.*, for Defendants’ violations of the following sections of the Cal. Labor Code:

- §§ 232.5, 1102.5, and 6310: Retaliation for discussing workplace safety concerns, and disclosing working conditions;
- §§ 245 *et seq.*: Failure to provide earned sick leave as required by the Healthy Workplaces, Healthy Families Act of 2014;

- §§ 218, 510, 558, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1197.2, and 1198: Failure to timely pay minimum wage/regular/overtime wages;
- §§ 226.7, 512: Failure to provide timely meal and rest periods;
- §§ 226, 226.3: Failure to provide accurate itemized wage statements;
- §§ 201, 202, 203, 256, 1197.1, 1197.2: failure to pay wages due to employee who has been discharged or quit;
- §§ 551 and 552: Failure to provide at least one day of rest every seven days;
- §2802: Failure to reimburse employees for necessary business expenses;
- and all other violations of the California Labor Code, as set forth above.

PRAYER

WHEREFORE, Plaintiff JESUS GAXIOLA prays for judgment against Defendants SAN DIEGO TECH BUILDING SOLUTIONS, INC., ALBERTO NUNEZ, and DOES 1 through 50, as follows:

1. For general damages in an amount according to proof;
2. For a declaration that Defendants violated the rights of Plaintiff under the California Labor Code and the applicable California Industrial Welfare Commission Wage Order;
3. For an award of damages in the amount equal to the unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
4. For nominal and compensable damages;
5. For incidental and consequential damages;
6. For restitution of all monies due to Plaintiff from the unlawful business practices of Defendants;
7. For all statutory damages, liquidated damages, directly-recoverable penalties, civil penalties, and/or other relief allowed by law;
8. For injunctive relief;
9. For exemplary damages against Defendants and each of them;
10. For pre-judgment and post-judgment interest where allowable;

1 11. For reasonable attorneys' fees where allowed by law in an amount to be proven at
2 trial; and/or

3 12. For costs of suit and such other and further relief as the Court deems just and
4 proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiffs demand a trial by jury on all issues so triable.

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8 KLINEDINST PC

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10 DATED: March 15, 2021

By: 

11 Thomas E. Daugherty
12 Attorneys for Plaintiff JESUS GAXIOLA

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PROOF OF SERVICE

Gaxiola v. San Diego Tech Building Solutions, Inc., et al.
Case No. 37-2021-0000416-CU-WT-CTL

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 501 West Broadway, Suite 600, San Diego, California 92101.

On March 15, 2021, I served true copies of the following document(s) described as **FIRST AMENDED COMPLAINT FOR DAMAGES** on the interested parties in this action as follows:

Annie M. Ellis, Esq. Rick Waltman, Esq. Law Office of Annie M. Ellis, A.P.C. 550 West B Street, Suite 400 San Diego, CA 92101	Office (619) 798-8075 Fax (619) 331-2177 annie.ellis@annieellislaw.com rick.waltman@annieellislaw.com Attorney for Defendants SAN DIEGO TECH BUILDING SOLUTIONS, INC. and ALBERTO NUNEZ
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BY ELECTRONIC SERVICE: Complying with Code of Civil Procedure section 1010.6, my electronic business address is khamilton@klinedinstlaw.com and I caused such document(s) to be electronically served through the One Legal system for the above-entitled case to those parties on the Service List maintained on its website for this case. The file transmission was reported as complete and a copy of the Filing/Service Receipt will be maintained with the original document(s) in our office.

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

Executed on March 15, 2021, at San Diego, California.

/s/ Karla M. Hamilton
Karla M. Hamilton