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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN DIEGO**

14 SHENG DU, an individual; YUN-HUA  
15 CHIANG, an individual,

16 Plaintiffs,

17 v.

18 THE CITY OF SAN DIEGO, a public entity;  
KTA CONSTRUCTION, a corporation;  
19 HARRIS & ASSOCIATES, INC., a  
corporation; and DOES 1 through 50,  
20 inclusive,

21 Defendants.

CASE NO.: 37-2018-00010639-CU-PO-CTL  
[Assigned for All Purposes To: Hon. Ronald L.  
Styn, Dept. C-74]

**THIRD AMENDED COMPLAINT FOR  
DAMAGES**

1. **DANGEROUS CONDITION  
OF PUBLIC PROPERTY**

2. **NEGLIGENCE**

3. **LOSS OF CONSORTIUM**

**DEMAND FOR JURY TRIAL**

Action Filed: March 2, 2018  
Trial Date: June 21, 2019

24 COME NOW, Plaintiffs, SHENG DU, an individual, and YUN-HUA CHIANG, an  
25 individual, for Causes of Action against Defendants, CITY OF SAN DIEGO, a public entity, KTA  
26 CONSTRUCTION, a corporation; HARRIS & ASSOCIATES, INC., a corporation; and DOES 1  
27 through 50, Inclusive, and each of them, and, pursuant to leave of Court, hereby file this Third  
28 Amended Complaint as follows:

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**10/15/2018** at 05:49:00 PM  
Clerk of the Superior Court  
By Tamara Parra, Deputy Clerk

1 **GENERAL ALLEGATIONS**

2 1. The claims set forth herein arise from the permanent and severe injuries sustained  
3 by Plaintiff SHENG DU on December 8, 2017, including C2/3 quadriplegia, after the bicycle he  
4 was riding collided with an uncovered trench on the southbound 11500 block of Sorrento Valley  
5 Road in the City of San Diego (hereinafter "SUBJECT INCIDENT").

6 2. At all times herein relevant, Plaintiff SHENG DU was and is a resident of San  
7 Diego County, State of California.

8 3. At all times herein relevant, Plaintiff YUN-HUA CHIANG was and is a resident of  
9 San Diego County, State of California.

10 4. Defendant CITY OF SAN DIEGO is, and at all times herein mentioned was, a  
11 public entity duly organized and existing under and by virtue of the laws of the State of California  
12 and authorized to do, and is doing, business in the State of California with its principal place of  
13 business in the City of San Diego, County of San Diego, State of California.

14 5. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
15 in this complaint, that Defendant KTA CONSTRUCTION, INC. (hereinafter "KTA") is and at all  
16 relevant times was a California corporation in good standing authorized to do business in  
17 California with its principal place of business at 821 Tavern Rd, Alpine, California 91901.

18 6. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
19 in this complaint, that Defendant HARRIS & ASSOCIATES, INC. (hereinafter "H & A") is and at  
20 all relevant times was a California corporation in good standing authorized to do business in  
21 California with its principal place of business at 1401 Willow Pass Road, Suite 500, Concord,  
22 California 94520.

23 7. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
24 herein, Defendants CITY OF SAN DIEGO, KTA, H & A and DOES 1 through 50, inclusive, and  
25 each of them, owned, occupied, leased, used, regulated, controlled, managed, maintained,  
26 operated, supervised, repaired and possessed the portion of the public roadway at the 11400 block  
27 of Sorrento Valley Road in the City and County of San Diego, including approximately 15 feet  
28 south of SCL driveway to 11436 Sorrento Valley Road, where the construction project that was

1 being undertaken on that road was being performed and where the incident occurred ("hereinafter  
2 "SUBJECT ROADWAY").

3 8. The true names and capacities, whether individual, plural, corporate, partnership,  
4 associate, or otherwise, of DOES 1 through 50, inclusive, are unknown to Plaintiffs who therefore  
5 sue said Defendants by such fictitious names. The full extent of the facts linking such fictitiously  
6 sued Defendants is unknown to Plaintiffs. Plaintiffs are informed and believe, and thereon allege,  
7 that each of the Defendants designated herein as a DOE was, and is, negligent, or in some other  
8 actionable manner, responsible for the events and happenings hereinafter referred to, and thereby  
9 negligently, or in some other actionable manner, legally and proximately caused the hereinafter  
10 described injuries and damages to Plaintiffs. Plaintiffs will hereafter seek leave of the Court to  
11 amend this Complaint to show the Defendants' true names and capacities after the same have been  
12 ascertained.

13 9. Plaintiffs are informed and believe, and thereon allege, that at all times relevant and  
14 mentioned herein Defendants, including DOES 1 through 50, inclusive, and each of them, were  
15 the agents, servants, employees and/or joint venturers of their co-Defendants, and each of them,  
16 was acting within the course, scope and authority of said agency, employment and/or venture, and  
17 that each and every Defendant, as aforesaid, when acting as a principal, was negligent in the  
18 selection and hiring, retention, training and supervision of each and every other Defendant as an  
19 agent, employee and/or joint venturer.

20 10. In compliance with Government Code §910, on or about January 13, 2018,  
21 Plaintiffs SHENG DU and YUN-HUA CHIANG timely presented claims with the CITY OF SAN  
22 DIEGO for the injuries, disabilities, losses, and damages suffered and incurred by them by reason  
23 of the SUBJECT INCIDENT described in this Complaint. On or about February 5, 2018,  
24 Defendant CITY OF SAN DIEGO served written rejections in regard to the respective claims by  
25 U.S. Mail. Therefore, this action has been filed within the time allowed by Gov. Code, § 945.6.

26 **FACTUAL ALLEGATIONS**

27 11. At all relevant times, the SUBJECT RODWAY, the southbound 11500 block of  
28 Sorrento Valley Road in the City of San Diego, was a roadway consisting of two southbound and

1 two northbound traffic lanes separated by a two-way left turn lane in the center with bicycle lanes  
2 on both sides of the roadway. At all relevant times, ongoing construction work was being  
3 performed on the SUBJECT ROADWAY, including the area of Sorrento Valley Road where this  
4 incident occurred, by KTA, H & A, and DOES 1 through 50, under contract with the CITY OF  
5 SAN DIEGO.

6 12. On December 8, 2017, at approximately 8:45 a.m., Plaintiff SHENG DU was riding  
7 his bicycle in the southbound bicycle lane of the SUBJECT ROADWAY, when suddenly he was  
8 confronted with an uncovered, open trench, measuring about two feet wide and about one foot  
9 deep, which extended from the curb to the southbound number one or two lane. By the time  
10 Plaintiff SHENG DU was able to see the trench, there was no way he could maneuver around or  
11 avoid the trench due to its size, positioning, lack of warnings and traffic control, as well as the  
12 surrounding environment. Instead, Plaintiff's front bicycle tire struck the trench, causing his  
13 bicycle to flip forward. As a consequence, Plaintiff SHENG DU was ejected, and his head  
14 impacted a mound of dirt and rock debris that was piled just adjacent to the ditch, which had come  
15 from excavation. Plaintiff SHENG DU was rendered unconscious by the impact and came to rest  
16 in the southbound number two lane adjacent to the pile of dirt and rocks. As a result of the  
17 collision, Plaintiff SHENG DU suffered severe and permanent injuries, including quadriplegia.

18 13. Plaintiff YUN-HUA CHIANG is the wife of Plaintiff SHENG DU, and has  
19 suffered loss of consortium and has been forced to provide services to help care for her husband's  
20 constant, around-the-clock care needs.

21 **FIRST CAUSE OF ACTION**

22 **DANGEROUS CONDITION OF PUBLIC PROPERTY**

23 **(Against Defendant CITY OF SAN DIEGO)**

24 14. Plaintiffs re-allege and incorporate herein by reference each and every allegation  
25 and statement contained in the prior paragraphs.

26 15. On information and belief, Defendant CITY OF SAN DIEGO, including its  
27 employees and agents, and each of them, owned, regulated, controlled, managed, maintained,  
28 operated, supervised, repaired and possessed the portion of the SUBJECT ROADWAY where the

1 construction project that was being undertaken on that road was being performed and where the  
2 incident occurred.

3 16. Plaintiffs are informed and believe, and thereon allege, that Defendant CITY OF  
4 SAN DIEGO built, drafted, engineered, designed, inspected, regulated, modified, directed,  
5 supervised, planned, contracted, maintained and controlled the construction project on the  
6 SUBJECT ROADWAY where the SUBJECT INCIDENT occurred and were the principal(s),  
7 master(s), employer(s), partner(s) and joint venturer(s) for same and all those involved with the  
8 construction project, including but not limited to Defendants KTA and H & A.

9 17. Plaintiffs are informed and believe and, upon this information and belief, allege  
10 that Defendant CITY OF SAN DIEGO, acting by and through their authorized agencies, agents,  
11 servants, and employees, was charged with the responsibility of designing, constructing,  
12 operating, signing, maintaining, repairing and regulating the SUBJECT ROADWAY, including,  
13 but not limited to, installing and maintaining barriers, guardrails, plates, shoulders, shoulder  
14 barriers, signs, traffic controls, striping, or other delineation and/or warning at or near the site  
15 where the SUBJECT INCIDENT occurred.

16 18. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
17 relevant, including the time of the SUBJECT INCIDENT, pursuant to Government Code §§ 835  
18 et. seq., the conduct of Defendant CITY OF SAN DIEGO, including its employees and agents,  
19 caused a dangerous condition to exist on the SUBJECT ROADWAY that created a substantial risk  
20 of injury, including the type of injuries Plaintiff SHENG DU sustained in the SUBJECT  
21 INCIDENT, when such property or adjacent property was used with due care in a manner in  
22 which it is and was reasonably foreseeable that it would be and was used, including but not limited  
23 to, the following respects:

24 a) The SUBJECT ROADWAY itself was dangerous and defectively planned,  
25 designed, drafted, engineered, constructed and positioned, and was either not approved in  
26 accordance with standard procedures, regulations, and statutes or could not reasonably have been  
27 approved by any appropriate and responsible governmental entity or any delegates and agents  
28 thereof;

1           b)       The construction work being performed on the SUBJECT ROADWAY was  
2 dangerous and defectively planned, designed, drafted, engineered, constructed and positioned, and  
3 was either not approved in accordance with standard procedures, regulations and statutes or could  
4 not reasonably have been approved by any appropriate and responsible governmental entity or any  
5 delegates and agents thereof, or such procedures, regulations, and statutes were planned but not  
6 followed;

7           c)       The SUBJECT ROADWAY lacked an appropriate, necessary, properly  
8 designed, assembled, well-constructed, and adequately maintained transit way, bicycle lane, metal  
9 covers, signage, cones, flagmen, and other safety devices and features to prevent, or to reduce the  
10 risk of injuries to motorists and bicyclists, including Plaintiff SHENG DU;

11          d)       The SUBJECT ROADWAY contained inadequate safety features  
12 positioned at or near the location of the SUBJECT INCIDENT in such a manner as to be  
13 dangerous in their design, construction, assembly, maintenance, placement, and installation;

14          e)       The SUBJECT ROADWAY also was made even more dangerous and  
15 defective by the fact that construction work being performed on the SUBJECT ROADWAY was  
16 itself dangerous and defectively planned, designed, drafted, engineered, constructed and  
17 positioned, and was either not approved in accordance with standard procedure, regulations and  
18 statutes, or could not reasonably have been approved by any appropriate and responsible  
19 governmental entity or any delegates and agents thereof, or such procedures, regulations and  
20 statutes were planned but not followed;

21          f)       The SUBJECT ROADWAY was improperly maintained, inspected,  
22 surfaced, striped, contoured, regulated, monitored, signaled and controlled by CITY OF SAN  
23 DIEGO and its employees, thereby interfering with the safety of bicyclists on said SUBJECT  
24 ROADWAY; and

25          g)       Defendant CITY OF SAN DIEGO, by and through its employees, agents  
26 and representatives, had actual or constructive knowledge of the dangerous conditions existing on  
27 the SUBJECT ROADWAY, as alleged, prior to the SUBJECT INCIDENT.

28          19.       Defendant CITY OF SAN DIEGO negligently and carelessly designed, warned,

1 failed to warn, constructed, created, maintained, repaired, owned, operated, controlled, signed, and  
2 regulated the SUBJECT ROADWAY where the SUBJECT INCIDENT occurred, creating a  
3 dangerous condition by:

4 a) failing to reasonably develop, adopt, and implement reasonable safety  
5 protocols related to the planning and preparation of construction work along the SUBJECT  
6 ROADWAY prior to the SUBJECT INCIDENT;

7 b) failing to hire qualified personnel responsible for relevant aspects of the  
8 construction project along the SUBJECT ROADWAY, at or near the time of the SUBJECT  
9 INCIDENT;

10 c) failing to reasonably develop, adopt, and implement reasonable safety  
11 protocols related to the performance of construction projects along the SUBJECT ROADWAY, at  
12 or near the time of the SUBJECT INCIDENT;

13 d) failing to provide and/or maintain the SUBJECT ROADWAY in an  
14 adequate and safe condition by failing to cover the open trench with metal plates or adequate  
15 covers and/or appropriate barricades, thus eliminating the dangerous condition;

16 e) failing to adequately warn of the dangerous and unsafe conditions of the  
17 open trench described above, which contributed to this incident by failing to follow or implement  
18 provisions in the construction plans for signage/safety precautions;

19 f) failing to warn of, and/or prevent and/or correct a dangerous condition by  
20 failing to erect adequate warning signs to protect the public and to prevent injury to motorists and  
21 bicyclists, including Plaintiff SHENG DU; and

22 g) improperly and defectively maintaining, managing, inspecting, installing,  
23 repairing, modifying, reviewing and evaluating the open trench, if in fact it was maintained,  
24 managed, inspected, reviewed and evaluated. To the extent such functions were not performed,  
25 they should have been, and to the extent they were performed, they were done improperly,  
26 negligently, and violated applicable engineering standards and regulations pertaining to similarly  
27 situated roadways.

28 20. Defendant CITY OF SAN DIEGO failed to reasonably develop, adopt, and

1 implement reasonable safety protocols related to the planning and preparation of construction  
2 work along the SUBJECT ROADWAY prior to the SUBJECT INCIDENT, including but not  
3 limited to:

4 a) An adequate safety plan for construction and excavation of trenches along  
5 the SUBJECT ROADWAY;

6 b) An adequate design, drafting, and engineering of the construction work to  
7 be performed along the SUBJECT ROADWAY;

8 c) The provision of tools, signs, cones, lighting, personnel, or other features  
9 necessary for performance of appropriate safety protocols; and

10 d) The negligent permitting of construction work along the SUBJECT  
11 ROADWAY.

12 21. Defendant CITY OF SAN DIEGO failed to hire qualified personnel responsible for  
13 relevant aspects of the construction project along the SUBJECT ROADWAY, at or near the time  
14 of the SUBJECT INCIDENT, including but not limited to:

15 a) Personnel to divert vehicle and bicycle traffic away from dangerous  
16 conditions created on the SUBJECT ROADWAY;

17 b) Personnel to manage "safety" on the SUBJECT ROADWAY prior to and  
18 during the performance of construction projects;

19 c) Personnel to review, critique, edit, and approve plans and preparations for  
20 construction projects and safety procedures to be followed in the course of such performance; and

21 d) Personnel to actually perform the construction and excavation of relevant  
22 segments of the SUBJECT ROADWAY in a reasonable, safe, and efficient manner.

23 22. Defendant CITY OF SAN DIEGO failed to reasonably develop, adopt, and  
24 implement reasonable safety protocols related to the performance of construction projects along  
25 the SUBJECT ROADWAY, at or near the time of the SUBJECT INCIDENT, including but not  
26 limited to:

27 a) Compliance with state and federal regulations, ordinances, and statutes;

28 b) Covering open trenches created in the course of construction work;

- 1 c) Erecting, positioning, and maintaining proper signage and other warning
- 2 devices;
- 3 d) Stationing personnel along the SUBJECT ROADWAY to warn and divert
- 4 oncoming vehicles near construction work;
- 5 e) Reasonable management, placement, removal, stationing, and dumping of
- 6 excavated dirt mounds; and
- 7 f) Barricading oncoming traffic from dangerous conditions along the
- 8 SUBJECT ROADWAY created in the course of construction work.

9 23. Defendant CITY OF SAN DIEGO further negligently, wrongfully, tortiously and  
10 unlawfully created and/or caused dangerous conditions to exist on the SUBJECT ROADWAY in  
11 the following respects:

12 a) To the extent that the construction project that was being undertaken on the  
13 SUBJECT ROAD required approval from Defendant CITY OF SAN DIEGO, including its  
14 employees and agents, to dig out the subject trench, the construction plans either had provisions  
15 for signage/safety precautions that were not followed or the construction plans were prepared by  
16 Defendant CITY OF SAN DIEGO without such signage and safety precautions.

17 b) To the extent the design of the construction being performed on the  
18 SUBJECT ROADWAY, including the open trench, was approved, said approval was  
19 unreasonable and constituted a manifest abuse of discretion, or was otherwise negligent by failing  
20 to address the applicable construction standards and conditions then existing or reasonably  
21 contemplated to exist in the future, once said design was implemented. Specifically, the open  
22 trench should have been covered by metal plates or adequate covers, and appropriate barricades  
23 and warning signs should have been erected to protect the public and to prevent injury to motorists  
24 and bicyclists, including Plaintiff SHENG DU; and

25 c) The open trench was improperly and defectively maintained, managed,  
26 inspected, installed, repaired, modified, reviewed and evaluated, if in fact it was maintained,  
27 managed, inspected, reviewed and evaluated. To the extent such functions were not performed,  
28 they should have been, and to the extent they were performed, they were done improperly,

1 negligently, and violated applicable engineering standards and regulations pertaining to similarly  
2 situated roadways.

3         24. Pursuant to Government Code, § 815.6, Defendant CITY OF SAN DIEGO failed to  
4 carry out its mandatory duties imposed by ordinance, statute, or regulation, related to construction  
5 work carried out on city streets and designed to protect against the risk of a particular kind of  
6 injury, including the injury suffered by Plaintiff SHENG DU at the time of the SUBJECT  
7 INCIDENT.

8         25. Plaintiffs further allege, that Defendant CITY OF SAN DIEGO and its employees,  
9 agents, servants and independent contractors, also face liability for the plaintiffs' damages  
10 pursuant to Government Code §§ 815.2, 815.4 and 820(a) et seq., for negligently, carelessly,  
11 and/or recklessly owning, designing, maintaining, allowing, permitting, regulating, controlling,  
12 servicing, inspecting, repairing, modifying, altering, monitoring, improving, constructing, warning  
13 or failing to warn, and/or supervising in regards to the SUBJECT ROADWAY, and adjacent  
14 property, and said negligent, careless and reckless acts or failures to act created said dangerous  
15 and defective condition(s) of said property which legally caused the SUBJECT INCIDENT and  
16 the injuries and damages of Plaintiffs as herein alleged.

17         26. Employees, agents, representatives and contractors of Defendant CITY OF SAN  
18 DIEGO, and each of them, negligently, wrongfully, tortiously and unlawfully created and/or  
19 caused dangerous conditions in regards to the SUBJECT ROADWAY within the scope of their  
20 employment (Govt. Code 835(a)). Defendant CITY OF SAN DIEGO had actual or constructive  
21 notice of the dangerous conditions described herein of the SUBJECT ROADWAY, a sufficient  
22 time prior to the injury and/or death to have taken measures to protect against the dangerous  
23 conditions. (Govt. Code 835(b)).

24         27. All of the work carried out by KTA and H & A, as well as the other contractors for  
25 construction work (and related work), created a peculiar risk and constituted work that created  
26 non-delegable duties in Defendant CITY OF SAN DIEGO. Defendant CITY OF SAN DIEGO, by  
27 and through its employees, agents, servants, and independent contractors, proximately caused the  
28 injuries and damages of the plaintiffs by negligently, wantonly, recklessly, tortiously, wrongfully,

1 unreasonably and unlawfully:

2 a) Planning, designing, constructing, owning, possessing, controlling,  
3 operating, maintaining, servicing, inspecting, repairing and monitoring the SUBJECT  
4 ROADWAY and signage on the adjacent property, including, but not limited to, the geometric  
5 design, including horizontal and vertical alignment, alternative routes, roadside areas, including  
6 shoulders, traffic controls, warning devices, median safety systems, topography and physical  
7 features of the SUBJECT ROADWAY.

8 b) Supervising, controlling, contracting, inspecting, repairing, maintaining,  
9 monitoring, warning, or failing to warn, and working on or at the SUBJECT ROADWAY with  
10 regard to design configurations, geometries, sight distances, roadside areas, traffic control devices,  
11 warning devices, median barrier systems, barricades, runaway ramps, guard rails, the topography,  
12 physical features, and fixtures on and adjacent to the SUBJECT ROADWAY which created a  
13 dangerous condition which was not reasonably apparent to prudent motorists and bicyclists,  
14 including Plaintiff SHENG DU.

15 c) Failing to guard, warn, and protect motorists of hazards which were  
16 unforeseeable, or not reasonably apparent to prudent pedestrians, bicyclists and/or motorists,  
17 which THE CITY OF SAN DIEGO knew about, or in the exercise of reasonable diligence, should  
18 have known about on the SUBJECT ROADWAY;

19 d) Designing, constructing, owning, supervising, controlling, testing,  
20 entrusting, permitting, managing, maintaining, servicing, repairing, inspecting and operating with  
21 regard to the SUBJECT ROADWAY so as to cause, permit, and allow dangerous, defective and  
22 unsafe conditions at the accident site to exist as herein above described;

23 e) Failing to construct, install and maintain appropriate signage, guard rails,  
24 roadside alternative routes, wider lanes, center median safety devices, barriers, signals, road  
25 markers, lights and striping, which would have reduced the likelihood of the SUBJECT  
26 INCIDENT; and

27 f) Failing to adequately supervise, monitor, review, control, instruct, and/or  
28 direct its drivers and/or independent contractors used for construction work on the SUBJECT

1 ROADWAY at the time of the SUBJECT INCIDENT.

2 28. There was negligence in the ownership, control, construction, maintenance,  
3 inspection, placement, supervision, repairs, design, modifications of and to the open trench and  
4 construction area on the SUBJECT ROADWAY, including creating a dangerous and hazardous  
5 condition and allowing it to persist. There was further negligence in failure to properly supervise,  
6 educate, train, monitor and test workers including employees and independent contractors who  
7 were responsible for doing the acts and tasks noted above, including but not limited to repairing  
8 and trenching the SUBJECT ROADWAY.

9 29. Defendant CITY OF SAN DIEGO failed to take reasonable or adequate measures  
10 to protect motorists and bicyclists, including Plaintiff SHENG DU, resulting in serious injuries to  
11 Plaintiff SHENG DU, which was at all times foreseeable to the defendant.

12 30. Defendant CITY OF SAN DIEGO had actual and/or constructive notice of the  
13 defective and substantially dangerous conditions a sufficient time prior to Plaintiffs' injuries to  
14 have taken measures to protect against these dangerous conditions. The actual notice existed  
15 because CITY OF SAN DIEGO, including its employees and agents, had actual knowledge of the  
16 existence of these conditions and knew, or should have known, of their dangerous character since  
17 the CITY OF SAN DIEGO, including its employees and agents, owned, constructed, maintained  
18 and created these conditions. Constructive notice existed because these conditions had existed for  
19 such a period of time and were of such an obvious nature that Defendant CITY OF SAN DIEGO,  
20 in the exercise of due care, should have discovered these conditions and their dangerous character.  
21 The existence of these conditions and their dangerous character would have been discovered by an  
22 inspection system that was reasonably adequate to inform the CITY OF SAN DIEGO whether the  
23 property was safe for the use or uses for which the CITY OF SAN DIEGO used or intended others  
24 to use the public property and for uses that the CITY OF SAN DIEGO actually knew others were  
25 making of the public property including, but not limited to, visual inspections of the roadway in  
26 use and examination of traffic safety data readily available to these defendants. During the course  
27 of any such reasonably adequate inspection, the defendants would have discovered these  
28 conditions, and their dangerous character, as described above.

1           31.     In light of the notice to Defendant CITY OF SAN DIEGO, and their agents and  
2 employees, its failure to adequately sign, remedy, guard, or otherwise warn of the dangerous  
3 condition of the road, its failure to post adequate signs or other warning devices to guard or warn  
4 against the dangerous condition of the roadway, and its failure to provide adequate signs or  
5 remedial measures, caused a trap to exist for people approaching and proceeding on the SUBJECT  
6 ROADWAY, where the SUBJECT INCIDENT occurred, which resulted in Plaintiff SHENG DU's  
7 permanent and severe injuries and the plaintiffs' damages.

8           32.     The SUBJECT INCIDENT and Plaintiff SHENG DU's permanent and severe  
9 injuries and the plaintiffs' damages were a legal result of both the dangerous conditions described  
10 in this Complaint, and the failure of Defendant CITY OF SAN DIEGO to have adequate warnings  
11 concerning these conditions.

12           33.     As a legal result of the dangerous conditions created by Defendant CITY OF SAN  
13 DIEGO, Plaintiff SHENG DU was hurt and injured in his health, strength, and activity, sustaining  
14 quadriplegia, and other permanent and severe injuries, all of which have caused and will continue  
15 to cause him great mental, physical, and nervous pain and suffering. Plaintiff is informed and  
16 believes and thereon alleges that such injuries will result in permanent disability to him. As a  
17 result of such injuries, the plaintiffs have suffered general damages in an amount to be proven at  
18 the time of the trial of this action.

19           34.     As a legal, direct and proximate result of the aforementioned conduct of Defendant  
20 CITY OF SAN DIEGO, Plaintiff SHENG DU was prevented from attending his usual or potential  
21 occupation, and Plaintiff is further informed and believes, and thereon alleges, that he may be  
22 prevented from attending his occupation in the future, and thereby will also sustain a loss of  
23 earning capacity and loss of opportunity, in addition to lost earnings, past, present and future  
24 according to proof, pursuant to California Code of Civil Procedure §425.10.

25           35.     As a legal, direct and proximate result of the aforementioned conduct of Defendant  
26 CITY OF SAN DIEGO, Plaintiff SHENG DU was compelled to and did employ the services of  
27 hospitals, physicians, surgeons, nurses and the like, to care for and treat him, and did incur  
28 hospital, medical, professional and incidental expenses, and Plaintiff is informed and believes, and

1 thereon alleges, that by reason of his injuries, will necessarily incur additional like expenses for  
2 the rest of his life, the exact amount of which expenses will be stated according to proof, pursuant  
3 to California Code of Civil Procedure §425.10.

4 36. As a further legal, direct and proximate result of the aforementioned conduct of  
5 Defendant CITY OF SAN DIEGO, Plaintiff YUN-HUA CHIANG has suffered general damages  
6 in an amount to be proven at the time of the trial of this action.

7 **SECOND CAUSE OF ACTION**

8 **NEGLIGENCE**

9 **(Against Defendants KTA CONSTRUCTION, HARRIS & ASSOCIATES, INC.**

10 **and DOES 1 through 50)**

11 37. Plaintiffs re-allege and incorporate herein by reference each and every allegation  
12 and statement contained in the prior paragraphs.

13 38. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
14 herein, Defendants KTA, H & A, and DOES 1 through 50, inclusive, and each of them, owed a  
15 duty of care to all reasonably foreseeable people, including Plaintiffs SHENG DU and YUN-HUA  
16 CHIANG, to own, control, manage, and maintain the SUBJECT ROADWAY, and the adjacent  
17 property, including the construction zone, in a reasonable manner.

18 39. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
19 herein, Defendants KTA, H & A, and DOES 1 through 50, inclusive, and each of them,  
20 negligently owned, controlled, managed, and maintained the SUBJECT ROADWAY, so as to  
21 legally and proximately cause Plaintiff to sustain severe and permanent injury, including  
22 quadriplegia, while using the SUBJECT ROADWAY in a reasonable and legal manner and with  
23 due caution.

24 40. Plaintiffs are informed and believe, and thereon allege, that Defendants KTA, H &  
25 A, and DOES 1 through 50, inclusive, and each of them, built, drafted, engineered, designed,  
26 inspected, regulated, modified, directed, supervised, planned, contracted, maintained and  
27 controlled the construction project on the SUBJECT ROADWAY where the SUBJECT  
28 INCIDENT occurred and were the principal(s), master(s), employer(s), partner(s) and joint

1 venturer(s) for same and all those involved with the construction project, including but not limited  
2 to Defendant CITY OF SAN DIEGO.

3 41. Plaintiffs are informed and believe and, upon this information and belief, allege  
4 that Defendants KTA, H & A, and DOES 1 through 50, inclusive, and each of them, pursuant to  
5 their contracts with the CITY OF SAN DIEGO, were charged with the responsibility of designing,  
6 constructing, operating, signing, maintaining, repairing and regulating the SUBJECT  
7 ROADWAY, including, but not limited to, installing and maintaining barriers, guardrails, plates,  
8 shoulders, shoulder barriers, signs, traffic controls, striping, or other delineation and/or warning at  
9 or near the site where the SUBJECT INCIDENT occurred.

10 42. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
11 relevant, including the time of the SUBJECT INCIDENT, Defendants KTA, H & A, and DOES 1  
12 through 50, inclusive, and each of them, were negligent in their conduct and their negligence  
13 created a substantial risk of injury, including the type of injuries Plaintiff SHENG DU sustained in  
14 the SUBJECT INCIDENT, including but not limited to, the following respects:

15 a) The construction work being performed on the SUBJECT ROADWAY was  
16 dangerous and defectively planned, designed, drafted, engineered, constructed and positioned, and  
17 was either not approved in accordance with standard procedures, regulations and statutes or could  
18 not reasonably have been approved by any appropriate and responsible governmental entity or any  
19 delegates and agents thereof, or such procedures, regulations, and statutes were planned but not  
20 followed;

21 b) The SUBJECT ROADWAY lacked an appropriate, necessary, properly  
22 designed, assembled, well-constructed, and adequately maintained transit way, bicycle lane, metal  
23 covers, signage, cones, flagmen, and other safety devices and features to prevent, or to reduce the  
24 risk of injuries to motorists and bicyclists, including Plaintiff SHENG DU;

25 c) The SUBJECT ROADWAY contained inadequate safety features  
26 positioned at or near the location of the SUBJECT INCIDENT in such a manner as to be  
27 dangerous in their design, construction, assembly, maintenance, placement, and installation;

28 d) The SUBJECT ROADWAY also was made even more dangerous and

1 defective by the fact that construction work being performed on the SUBJECT ROADWAY was  
2 itself dangerous and defectively planned, designed, drafted, engineered, constructed and  
3 positioned, and was either not approved in accordance with standard procedure, regulations and  
4 statutes, or could not reasonably have been approved by any appropriate and responsible  
5 governmental entity or any delegates and agents thereof, or such procedures, regulations and  
6 statutes were planned but not followed;

7 e) The SUBJECT ROADWAY was improperly maintained, inspected,  
8 surfaced, striped, contoured, regulated, monitored, signaled and controlled by the defendants,  
9 thereby interfering with the safety of bicyclists on said SUBJECT ROADWAY; and

10 f) Defendants had actual or constructive knowledge of the dangerous  
11 conditions existing on the SUBJECT ROADWAY, as alleged, prior to the SUBJECT INCIDENT.

12 43. Defendants KTA, H & A, and DOES 1 through 50, and each of them, negligently  
13 and carelessly designed, warned, failed to warn, constructed, created, maintained, repaired, owned,  
14 operated, controlled, signed, and regulated the SUBJECT ROADWAY where the SUBJECT  
15 INCIDENT occurred, creating a dangerous condition by:

16 a) failing to have a Traffic Control Plan prepared by a registered traffic  
17 engineer, as required by the contract between Defendant CITY OF SAN DIEGO and the other  
18 defendants, including Defendants KTA and H & A;

19 b) failing to have a Traffic Control Plan on the subject premises as required;

20 c) failing to follow a proper Traffic Control Plan with respect to adequate  
21 warning signs relating to bicycles in accordance with California law;

22 d) failing to have a Traffic Control Plan that contained adequate and sufficient  
23 safeguards regarding open trenches;

24 e) failing to have employees at the site of the SUBJECT ROADWAY at the  
25 time the SUBJECT INCIDENT occurred ensuring that pedestrians, motorists and bicyclists,  
26 including Plaintiff, did not fall into the open trench, as they were scheduled and required to do;

27 f) failing to adhere to the standards for temporary traffic control;

28 g) failing to reasonably develop, adopt, and implement reasonable safety

1 protocols related to the planning and preparation of construction work along the SUBJECT  
2 ROADWAY prior to the SUBJECT INCIDENT;

3 h) failing to hire qualified personnel responsible for relevant aspects of the  
4 construction project along the SUBJECT ROADWAY, at or near the time of the SUBJECT  
5 INCIDENT;

6 i) failing to reasonably develop, adopt, and implement reasonable safety  
7 protocols related to the performance of construction projects along the SUBJECT ROADWAY, at  
8 or near the time of the SUBJECT INCIDENT;

9 j) failing to provide and/or maintain the SUBJECT ROADWAY in an  
10 adequate and safe condition by failing to cover the open trench with metal plates or adequate  
11 covers and/or appropriate barricades, thus eliminating the dangerous condition;

12 k) failing to adequately warn of the dangerous and unsafe conditions of the  
13 open trench described above, which contributed to this incident by failing to follow or implement  
14 provisions in the construction plans for signage/safety precautions;

15 l) failing to warn of, and/or prevent and/or correct a dangerous condition by  
16 failing to erect adequate warning signs to protect the public and to prevent injury to motorists and  
17 bicyclists, including Plaintiff SHENG DU;

18 m) improperly and defectively maintaining, managing, inspecting, installing,  
19 repairing, modifying, reviewing and evaluating the open trench, if in fact it was maintained,  
20 managed, inspected, reviewed and evaluated. To the extent such functions were not performed,  
21 they should have been, and to the extent they were performed, they were done improperly,  
22 negligently, and violated applicable engineering standards and regulations pertaining to similarly  
23 situated roadways;

24 44. Defendants KTA, H & A, and DOES 1 through 50, and each of them, failed to  
25 reasonably develop, adopt, and implement reasonable safety protocols related to the planning and  
26 preparation of construction work along the SUBJECT ROADWAY prior to the SUBJECT  
27 INCIDENT, including but not limited to:

28 a) An adequate safety plan for construction and excavation of trenches along

1 the SUBJECT ROADWAY;

2           b) An adequate design, drafting, and engineering of the construction work to  
3 be performed along the SUBJECT ROADWAY;

4           c) The provision of tools, signs, cones, lighting, personnel, or other features  
5 necessary for performance of appropriate safety protocols; and

6           d) The negligent permitting of construction work along the SUBJECT  
7 ROADWAY.

8           45. Defendants KTA, H & A, and DOES 1 through 50, and each of them, failed to hire  
9 qualified personnel responsible for relevant aspects of the construction project along the  
10 SUBJECT ROADWAY, at or near the time of the SUBJECT INCIDENT, including but not  
11 limited to:

12           e) Personnel to divert vehicle and bicycle traffic away from dangerous  
13 conditions created on the SUBJECT ROADWAY;

14           f) Personnel to manage "safety" on the SUBJECT ROADWAY prior to and  
15 during the performance of construction projects;

16           g) Personnel to review, critique, edit, and approve plans and preparations for  
17 construction projects and safety procedures to be followed in the course of such performance; and

18           h) Personnel to actually perform the construction and excavation of relevant  
19 segments of the SUBJECT ROADWAY in a reasonable, safe, and efficient manner.

20           46. Defendants KTA, H & A, and DOES 1 through 50, and each of them, failed to  
21 reasonably develop, adopt, and implement reasonable safety protocols related to the performance  
22 of construction projects along the SUBJECT ROADWAY, at or near the time of the SUBJECT  
23 INCIDENT, including but not limited to:

24           a) Compliance with state and federal regulations, ordinances, and statutes;

25           b) Covering open trenches created in the course of construction work;

26           c) Erecting, positioning, and maintaining proper signage and other warning  
27 devices;

28           d) Stationing personnel along the SUBJECT ROADWAY to warn and divert

1 oncoming vehicles near construction work;

2 e) Reasonable management, placement, removal, stationing, and dumping of  
3 excavated dirt mounds; and

4 f) Barricading oncoming traffic from dangerous conditions along the  
5 SUBJECT ROADWAY created in the course of construction work.

6 47. Defendants KTA, H & A, and DOES 1 through 50, and each of them, were further  
7 negligent in the following respects:

8 a) To the extent that the construction project that was being undertaken on the  
9 SUBJECT ROAD required approval from Defendants CITY OF SAN DIEGO, KTA, H & A, and  
10 DOES 1 through 50, and each of them, to dig out the subject trench, the construction plans either  
11 had provisions for signage/safety precautions that were not followed or the construction plans  
12 were prepared by Defendant CITY OF SAN DIEGO without such signage and safety precautions.

13 b) To the extent the design of the construction being performed on the  
14 SUBJECT ROADWAY, including the open trench, was approved, said approval was  
15 unreasonable and constituted a manifest abuse of discretion, or was otherwise negligent by failing  
16 to address the applicable construction standards and conditions then existing or reasonably  
17 contemplated to exist in the future, once said design was implemented. Specifically, the open  
18 trench should have been covered by metal plates or adequate covers, and appropriate barricades  
19 and warning signs should have been erected to protect the public and to prevent injury to motorists  
20 and bicyclists, including Plaintiff SHENG DU; and

21 c) The open trench was improperly and defectively maintained, managed,  
22 inspected, installed, repaired, modified, reviewed and evaluated, if in fact it was maintained,  
23 managed, inspected, reviewed and evaluated. To the extent such functions were not performed,  
24 they should have been, and to the extent they were performed, they were done improperly,  
25 negligently, and violated applicable engineering standards and regulations pertaining to similarly  
26 situated roadways.

27 48. Plaintiffs are informed and believe, and thereon allege, that the negligence by  
28 Defendants KTA, H & A, and DOES 1 through 50, inclusive, and each of them, in regards to the

1 ownership, control, management and maintenance of the SUBJECT ROADWAY and the adjacent  
2 property, including the construction zone where the SUBJECT INCIDENT occurred, legally  
3 caused Plaintiff SHENG DU to suffer serious and permanent injuries.

4 49. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
5 herein, Defendants KTA, H & A and DOES 1 through 50, inclusive, and each of them, were  
6 negligent and reckless with regard to the hiring and/or retention of their employees and knew or  
7 should have known that their employees were unfit for the specific tasks to be performed during  
8 the course of their employment. In fact, Defendant KTA's work performance was so subpar that  
9 within four months of the SUBJECT INCIDENT, Defendant KTA was slated to be fired from the  
10 construction project altogether by the CITY OF SAN DIEGO due to KTA's substandard work.

11 50. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
12 herein, Defendants KTA, H & A and DOES 1 through 50, inclusive, and each of them, were  
13 negligent and reckless by failing to provide any or sufficient training or supervision to their  
14 employees after hiring them, and continued to retain said employees as agents and/or employees  
15 for job performance. As discussed above, Defendant KTA was slated to be fired from the  
16 construction project within four months of the SUBJECT INCIDENT due to substandard work. To  
17 make matters worse, Defendant H & A was called on by Defendant CITY OF SAN DIEGO to  
18 remedy the many deficiencies attributed to KTA; however, Defendant H & A's attempts were a  
19 complete failure. Rather than sending an experienced employee to correct the deficiencies,  
20 Defendant H & A sent a brand new employee who lacked the requisite skill and experience to  
21 remedy the problems, and those efforts only served to exacerbate the problems.

22 51. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
23 relevant, Defendants KTA, H & A and DOES 1 through 50, inclusive, and each of them, owed a  
24 duty of care to the public, including Plaintiff, including the duty to act reasonably in the hiring,  
25 retention, training and supervision of their agents, employees, servants, and/or independent  
26 contractors, which they assigned to perform work on the SUBJECT ROADWAY.

27 52. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
28 relevant, Defendants KTA, H & A and DOES 1 through 50, inclusive, and each of them, owed a

1 duty of care to the public, including Plaintiff, including the duty to act reasonably in the hiring,  
2 retention, training and supervision of their agents, employees, servants, and/or independent  
3 contractors, which they assigned to perform work on the SUBJECT ROADWAY.

4 53. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
5 herein, Defendants KTA, H & A and DOES 1 through 50, inclusive, and each of them, failed to  
6 act reasonably, and were negligent and reckless in the hiring, retention, training, and supervision  
7 of their agents, employees, servants and/or independent contractors.

8 54. Plaintiffs are informed and believe, and thereon allege, that the aforementioned  
9 negligent and reckless hiring, retention, training, and supervision by Defendants KTA, H & A and  
10 DOES 1 through 50, inclusive, and each of them, directly, legally and proximately caused the  
11 SUBJECT INCIDENT, thereby legally and proximately causing severe and permanent injuries to  
12 Plaintiff.

13 55. As a legal, direct and proximate result of the aforementioned conduct of  
14 Defendants KTA, H & A, and DOES 1 through 50, inclusive, and each of them, Plaintiff SHENG  
15 DU was injured and hurt in his health, strength and activity, sustaining serious injuries to his body,  
16 and shock and injury to his nervous system and person, all of which said injuries have caused and  
17 continue to cause Plaintiff great physical and mental pain and suffering. Plaintiffs are further  
18 informed and believe, and thereon allege, that said injuries will result in some or all permanent  
19 disability to Plaintiff SHENG DU, all to his general damage in an amount which will be stated  
20 according to proof, pursuant to California Code of Civil Procedure §425.10.

21 56. As a legal, direct and proximate result of the aforementioned conduct of  
22 Defendants KTA, H & A, and DOES 1 through 50, inclusive, and each of them, Plaintiff SHENG  
23 DU was prevented from attending his usual or potential occupation and/or Plaintiff is informed  
24 and believes, and thereon alleges, that he may be prevented from attending his occupation in the  
25 future, and thereby will also sustain a loss of earning capacity and loss of opportunity, in addition  
26 to lost earnings, past, present and future according to proof, pursuant to California Code of Civil  
27 Procedure §425.10.

28 57. As a legal, direct and proximate result of the aforementioned conduct of

1 Defendants KTA, H & A, and DOES 1 through 50, inclusive, and each of them, Plaintiff SHENG  
 2 DU was compelled to and did employ the services of hospitals, physicians, surgeons, nurses and  
 3 the like, to care for and treat him, and did incur hospital, medical, professional and incidental  
 4 expenses, and Plaintiff is informed and believes, and thereon alleges, that by reason of his injuries,  
 5 will necessarily incur additional like expenses for an indefinite period of time in the future, the  
 6 exact amount of which expenses will be stated according to proof, pursuant to California Code of  
 7 Civil Procedure §425.10.

8 58. As a further legal, direct and proximate result of the aforementioned conduct of  
 9 Defendants KTA, H & A, and DOES 1 through 50, inclusive, and each of them, Plaintiff YUN-  
 10 HUA CHIANG has suffered general damages in an amount to be proven at the time of the trial of  
 11 this action.

12 **Punitive Damages Claims Against Defendant H & A**

13 59. Defendants H & A and DOES 1 through 50, inclusive, acted with "malice" in that  
 14 Defendant H & A engaged in conduct either constituting (1) willful and wanton misconduct, or (2)  
 15 despicable conduct in conscious disregard of the safety of Plaintiff SHENG DU and the public,  
 16 thereby entitling Plaintiff SHENG DU to an award of punitive damages pursuant to California  
 17 Civil Code §3294.

18 60. Specifically, Defendant H & A, through its officers, directors and/or managing  
 19 agents, including Lara Jennings, Director of Program and Construction Management; Rockland  
 20 Anderson; and Anton Handel, authorized, directed, conducted, or ratified each of the following  
 21 acts and engaged in the such willful and wonton misconduct and/or despicable conduct. Such  
 22 conduct included, but is not limited to, the following:

23 a) Long before December 8, 2017, Defendant H & A knew of the importance  
 24 of having a Traffic Control Plan prepared by a registered traffic engineer and reviewed, modified,  
 25 and/or in place before any construction work occurred to ensure the safe movement of traffic,  
 26 including bicyclists such as Plaintiff SHENG DU, through construction work zones, and that the  
 27 lack of such a proper Plan would constitute a conscious disregard for the safety of any motorist,  
 28 bicyclist, or pedestrian within or approaching the construction work zones. Defendant H & A had

1 sufficient time and power before December 8, 2017 to make changes and take corrective and  
2 curative measures by getting a proper Traffic Control Plan in place, but failed to do so;

3           b) As the entity providing management, supervisory, and inspection services to  
4 the City for multiple construction projects, Defendant H & A knew or should have known that  
5 there were bicyclists such as Plaintiff SHENG DU who regularly traveled in the area of the subject  
6 construction zone and who were accustomed to using the bicycle lane in place. Per the Task Order  
7 Authorization for Professional Services, dated June 6, 2017, which was signed by H & A's officer,  
8 director and/or managing agent, Joe Webber, Defendant H & A had a duty to provide safety and  
9 security at the job site, including specifically a duty to have "traffic control set up to protect the  
10 public and visitors from hazards." Defendant H & A had six months to plan for, control, and  
11 manage the safety of such bicyclists, but failed to do in conscious disregard for the safety of such  
12 bicyclists and the public, including Plaintiff SHENG DU.

13           c) Long before December 8, 2017, Defendant H & A knew of the dangers that  
14 having a wide open trench would pose to bicyclists approaching the subject construction zone in  
15 the morning while facing the glare from the sun and without appropriate warnings, flagmen,  
16 and/or protection devices in place. Defendant H & A had sufficient time and power before  
17 December 7, 2017 to make changes and take corrective and curative measures by planning ahead  
18 for such bicyclists and open trenches, but failed to do so, in conscious disregard for the safety of  
19 such bicyclists and the public, including Plaintiff SHENG DU;

20           d) Defendant H & A also knew or should have known that leaving a wide open  
21 trench abandoned and unattended without any protection and/or protective devices and without  
22 insufficient warnings would pose a particularly hazardous and dangerous condition to bicyclists  
23 and the public. On December 8, 2017, Defendant H & A had sufficient time and power to make  
24 changes and take corrective and curative measures before the time of the incident, but failed to do  
25 so in conscious disregard for the safety of bicyclists and the public, including Plaintiff SHENG  
26 DU;

27           e) Long before December 8, 2017, Defendant H & A knew the importance of  
28 having a manager, supervisor, and/or inspector in place at the construction site in order to ensure

1 that wide open trenches were not left abandoned or unattended and that sufficient traffic control  
 2 devices, warnings, and/or protection and protective devices were in place for the safety of  
 3 bicyclists and the public. The "Scope of Services" portion of the contract between the City and  
 4 Defendant H& A expressly provided that Defendant H & A was required to and had  
 5 "responsibility to monitor and enforce safety and promote a safe overall environment for all  
 6 worker and visitors" and to check "job site security and measures taken to protect the public from  
 7 hazards." Defendant H & A had sufficient time and power before December 7, 2017 to get a  
 8 manager, supervisor, and/or inspector in place when Rockland Anderson had jury duty, but failed  
 9 to do so in violation of its contractual duties and in conscious disregard for the safety of such  
 10 bicyclists and the public, including Plaintiff SHENG DU;

11 f) Defendant H & A knowingly, intentionally, and with a conscious and  
 12 reckless disregard for the safety of others performed dangerous work without a site plan, i.e., the  
 13 job safety blue print, despite the high probability of injury or death that would result without such  
 14 a site plan;

15 g) Defendant H & A knowingly, intentionally, and with a conscious and  
 16 reckless disregard for the safety of others failed to follow California law and industry standards  
 17 designed and intended to protect the public, including Plaintiff SHENG DU;

18 h) Defendant H & A knowingly, intentionally and with a conscious and  
 19 reckless disregard for the safety of others, engaged in a dangerous pattern of conduct of failing to  
 20 have an adequate number of personnel present on scene at all times while a trench was left  
 21 uncovered, as they were required to do, and instead, left the subject trench uncovered and  
 22 unattended and failed to advise, supervise, and/or train KTA employees of the safety requirements  
 23 relating to the open trench, as was required by its contract and California law. Because Defendant  
 24 H & A's management had knowledge of the scope of its duties under the contract, as it was signed  
 25 by the officers, directors and/or managing agents of Defendant H & A, including Rockland  
 26 Anderson, Defendant H & A is liable for its punitive conduct;

27 i) Having prior knowledge of the dangers and risks of serious injury or death  
 28 that such misconduct would and did create to members of the public, and despite such knowledge,

1 Defendant H & A continued to engage in such misconduct that knowingly or recklessly created  
2 said substantial risk and high probability of injury or death to members of the public, and was  
3 oppressive, despicable, highly reprehensible, and done in the conscious disregard for the rights and  
4 safety of the public, including Plaintiff SHENG DU.

5 61. The corporate policymaking leading to this misconduct occurred on all levels and  
6 these acts and omissions are not unique to the instant case; they were instead part of a continual  
7 pattern and practice with respect to the conduct of Defendant H & A of inadequate supervision and  
8 guidance regarding safety procedures and protocols. This pattern of failing to instruct, train, and/or  
9 manage its employees working on the job sites regarding safety protocols set forth in the Traffic  
10 Control Plan, and the failure to have supervisors present to make sure that the safety precautions  
11 mandated by the governing Traffic Control Plan are implemented, was at all times well known to  
12 Defendant H & A and DOES 1 through 50, including Defendant H & A's managing agents,  
13 including but not limited to Lara Jennings, Rockland Anderson, and Anton Handel. The pattern  
14 began long before Plaintiff SHENG DU sustained severe and permanent injuries. Despite  
15 Defendant H & A's knowledge of these dangerous conditions and practices, they did not take  
16 appropriate and adequate steps to prevent and correct them. These acts and omissions by  
17 Defendant H & A constituted a despicable pattern and practice of conscious disregard of rights  
18 and safety of the public by said defendant, which included, among other conduct, failure to  
19 provide enough staff, and failure to adequately train and supervise its staff, relating to issues of  
20 ensuring all trenches are properly covered, as well as erecting proper barriers and warnings signs  
21 and/or additional safeguards, as set forth herein.

#### 22 **Punitive Damages Claims Against Defendant KTA**

23 62. The conduct of Defendant KTA, which resulted in severe and permanent injury to  
24 Plaintiff SHENG DU, was done with malice, fraud, and oppression, as defined by Civ. Code, §  
25 3294, and in willful and conscious disregard of the rights and safety of Plaintiff SHENG DU and  
26 others. Defendants KTA and DOES 1 through 50, inclusive, acted with "malice" in that Defendant  
27 KTA engaged in conduct either constituting (1) willful and wanton misconduct, or (2) despicable  
28 conduct in conscious disregard of the safety of Plaintiff SHENG DU and the public, thereby

1 entitling Plaintiff SHENG DU to an award of punitive damages pursuant to California Civil Code  
 2 §3294. Such conduct included, but is not limited to, the following:

3 a) Long before December 8, 2017, Defendant KTA knew or should have  
 4 known that a wide open trench left abandoned, unattended, and unprotected would pose an  
 5 unreasonable risk of danger to bicyclists approaching it while facing glare from the morning sun  
 6 and without sufficient warnings, traffic devices, and/or protective devices. Despite this knowledge,  
 7 Defendant KTA failed to have any properly trained flagmen or workers attending and/or  
 8 protecting the wide open trench at the time of the subject incident. Prior to and on December 8,  
 9 2017, KTA had sufficient time and power before December 8, 2017 to make changes and take  
 10 corrective and curative measures by preparing for the project, getting an appropriate number of  
 11 properly trained personnel at the site, instructing them on the importance of warning and  
 12 protecting bicyclists and the public from the dangers posed by a wide open trench, and placing  
 13 requisite traffic and protective devices at the site, but failed to do so;

14 b) Defendant KTA knowingly, intentionally and with a conscious and reckless  
 15 disregard for the safety of others, failed to ensure that pedestrians, motorists and bicyclists,  
 16 including Plaintiff SHENG DU, did not fall into the open trench at the site of the SUBJECT  
 17 ROADWAY, as they were required to do at the time the SUBJECT INCIDENT occurred;

18 c) Defendant KTA knowingly, intentional and with a conscience and reckless  
 19 disregard for the safety of the public, left a wide open trench abandoned and unprotected, in  
 20 violation of California law and industry standards;

21 d) Defendant KTA knowingly, intentionally and with a conscious and reckless  
 22 disregard for the safety of others, engaged in a pattern of unconscionable unsafe practices by  
 23 failing to have requisite tailgate meetings in which to advise, instruct and/or train KTA employees  
 24 of the safety requirements relating to open trenches in construction zones to the public. As a result,  
 25 Defendant KTA's employees were woefully untrained and unprepared to protect motorists,  
 26 bicyclists and pedestrians, as required by California law and industry standards.

27 63. Defendants KTA and DOES 1 through 50, inclusive, and each of them, had prior  
 28 knowledge of the dangers and risks of serious injury or death that such misconduct would and did

1 create to members of the public, including Plaintiff SHENG DU. Despite such knowledge,  
2 Defendant KTA continued to engage in such misconduct. Said misconduct by Defendant KTA, in  
3 knowingly or recklessly creating said substantial risk and high probability of injury or death to  
4 members of the public, was oppressive, despicable, highly reprehensible and done in the conscious  
5 disregard for the rights and safety of the public, including Plaintiff SHENG DU.

6 64. The above-mentioned acts and omissions were authorized and/or ratified by  
7 managerial employees of Defendant KTA and DOES 1 through 50, inclusive, and each of them,  
8 and were carried out with the consent of their officers, directors, and/or managing agents,  
9 including but not limited to Mike Henderson, president of KTA, and Jose Ascensio, managing  
10 agent/supervisor for KTA.

11 65. Defendant KTA (specifically including Mike Henderson and Jose Ascensio) had  
12 intentionally and deliberately adopted unsafe practices, including the practice of allocating  
13 insufficient funds from its revenue for the hiring or training of staff to supervise its employees and  
14 ensure that all required safeguards and safety precautions were followed at construction sites on  
15 which KTA was performing work, including the subject job site. This pattern of conduct made it  
16 impossible for Defendant KTA to have qualified and/or competent staff available to supervise  
17 KTA's employees and to ensure that the provisions of a properly prepared traffic control plan were  
18 being adhered to and/or implemented. Further, this cost-saving scheme resulted in KTA's  
19 employees not being properly instructed as to which barriers, covers, and/or warning signs to  
20 place, or the location in which said safeguards were to be placed. These failures were motivated by  
21 Defendant KTA's policy and practice of hiring fewer staff members than required to provide  
22 needed supervision and/or instruction to its employees in order to increase their profits from  
23 operation of Defendant KTA's construction business.

24 66. Defendant KTA knew that its failure to hire sufficient numbers of adequately  
25 trained persons and/or to properly instruct its employees regarding safeguards and warnings, as  
26 alleged above, posed the high probability that in the event that someone, whether a motorist;  
27 bicyclist; or otherwise, was travelling down the SUBJECT ROADWAY towards the open trench  
28 in the morning hours while facing the morning sun, said individual would have insufficient

1 warning of, and no safety barrier or cover protecting them from, the open trench until it was too  
2 late and that serious injury and/or death would result. Despite this knowledge Defendant KTA  
3 continued with their practices as set forth above.

4 67. Because the acts and/or omissions of Defendants KTA, H & A and DOES 1  
5 through 50, inclusive, and each of them were committed in a malicious, despicable, highly  
6 reprehensible, and/or unlawful manner, as fully set forth above, causing injury and damage to  
7 Plaintiff SHENG DU and done with a conscious disregard of the rights and safety of Plaintiff  
8 SHENG DU, punitive damages are warranted against Defendants KTA, H & A and DOES 1  
9 through 50, inclusive, and each of them, in an amount appropriate to punish or set an example of  
10 Defendants, and each of them in an amount appropriate to punish or set an example pursuant to  
11 California Code of Civil Procedure §3294.

12 **THIRD CAUSE OF ACTION**

13 **LOSS OF CONSORTIUM**

14 **(Plaintiff YUN-HUA CHIANG Against All Defendants)**

15 68. Plaintiffs re-allege and incorporate herein by reference each and every allegation  
16 and statement contained in the prior paragraphs.

17 69. On December 8, 2017, and at all times mentioned in this complaint, Plaintiff  
18 SHENG DU and Plaintiff YUN-HUA CHIANG were legally married and were husband and wife.

19 70. At all times relevant herein, Defendants CITY OF SAN DIEGO, KTA, H & A, and  
20 DOES 1 through 50, inclusive, and each of them, owed a duty of reasonable care to Plaintiff  
21 YUN-HUA CHIANG, including at the time of the SUBJECT INCIDENT.

22 71. On December 8, 2017, Plaintiff YUN-HUA CHIANG was injured when the  
23 defendants' negligent, wrongful, tortious, and unlawful conduct caused her spouse, Plaintiff  
24 SHENG DU, to suffer severe and permanent injuries.

25 72. As a direct and proximate result of the defendants' negligent, wrongful, tortious,  
26 and unlawful conduct, as aforesaid, plaintiff's spouse suffered permanent spinal cord injuries  
27 which caused him to become completely paralyzed from the neck down.

28 73. Before suffering these injuries, plaintiff's spouse was able to and did perform all

1 the duties of a husband and did perform all these duties, including assisting in maintaining the  
2 home, and providing love, companionship, affection, society, sexual relations, moral support, and  
3 solace to Plaintiff YUN-HUA CHIANG. As a result of the injuries he sustained in the SUBJECT  
4 INCIDENT, Plaintiff SHENG DU cannot independently perform activities of daily living, much  
5 less perform all the duties of a husband, including assisting in maintaining the home, and  
6 providing love, companionship, affection, society, sexual relations, moral support, and solace to  
7 Plaintiff YUN-HUA CHIANG. Specifically, as a direct and proximate result of the injuries,  
8 Plaintiff SHENG DU has been unable to perform the duties of a husband in that he can no longer  
9 assist with housework, have sexual intercourse, father a child, participate in family, recreational,  
10 or social activities with Plaintiff YUN-HUA CHIANG, or contribute to the household income.  
11 Due to the nature of the injuries sustained by Plaintiff SHENG DU and the severe physical and  
12 psychological strains they cause him, Plaintiff SHENG DU is no longer able to provide Plaintiff  
13 YUN-HUA CHIANG with love, companionship, affection, society, moral support, and solace.  
14 Because of these injuries, Plaintiff SHENG DU will be unable to perform these duties in the  
15 future. Plaintiff YUN-HUA CHIANG is therefore deprived and will be permanently deprived of  
16 her spouse's consortium, all to her damage, in a total amount to be established by proof at trial.

17 **PRAYER FOR DAMAGES**

18 WHEREFORE, Plaintiffs SHENG DU and YUN-HUA CHIANG hereby pray for  
19 judgment against Defendants, CITY OF SAN DIEGO, KTA CONSTRUCTION, HARRIS &  
20 ASSOCIATES, INC., and DOES 1 through 50, inclusive, and each of them, as follows:

21 1. For general damages, including but not limited to, past and future pain and  
22 suffering and emotional distress, in an amount in excess of the jurisdictional minimum, according  
23 to proof;

24 2. For special damages, including but not limited to, past and future hospital, medical,  
25 professional, and incidental expenses as well as past and future loss of earnings, loss of  
26 opportunity, and loss of earning capacity, in excess of the jurisdictional minimum, according to  
27 proof;

28 3. For damages for loss of consortium, as to YUN-HUA CHIANG, including the past

1 and future loss of love, companionship, comfort, care, assistance, protection, affection, society,  
2 moral support, as well as the loss of the enjoyment of sexual relations, according to proof at trial;

3 4. For punitive damages, as to Defendants H & A and KTA with respect to Plaintiffs'  
4 Second Cause of Action for Negligence, based on the willful misconduct and conscious disregard  
5 for lives and safety described above in an amount necessary to punish and/or set an example of  
6 said defendants, according to proof;

7 5. For prejudgment interest, according to proof;

8 6. For attorneys' fees and costs of suit incurred herein, according to proof; and

9 7. For such other and further relief as the Court may deem just and proper.

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DATED: October 15, 2018

PANISH SHEA & BOYLE LLP

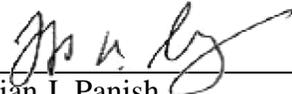
By:   
\_\_\_\_\_  
Brian J. Panish  
Deborah S. Chang  
Thomas A. Schultz  
Attorneys for Plaintiffs

**DEMAND FOR TRIAL BY JURY**

1 Plaintiffs SHENG DU and YUN-HUA CHIANG hereby demand trial by jury as to all  
2 causes of action.  
3

4 DATED: October 15, 2018

PANISH SHEA & BOYLE LLP

5  
6 By:   
7 Brian J. Panish  
8 Deborah S. Chang  
9 Thomas A. Schultz  
10 Attorneys for Plaintiffs

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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 Los Angeles, State of California. My business address is 11111 Santa Monica Boulevard, Suite 700, Los Angeles, CA 90025.

On October 15, 2018, I served true copies of the following document(s) described as **PLAINTIFFS' THIRD AMENDED COMPLAINT FOR DAMAGES** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Panish Shea & Boyle LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

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

Executed on October 15, 2018, at Los Angeles, California.

  
\_\_\_\_\_  
Veronica Herrejon

**SERVICE LIST**  
**DU V. THE CITY OF SAN DIEGO**  
**Case No. 37-2018-00010639-CU-PO-CTL**

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