

1 **SCHLEIER LAW OFFICES, P.C.**

2 3101 N. Central Avenue, Suite 1090

3 Phoenix, Arizona 85012

4 Telephone: (602) 277-0157

5 Facsimile: (602) 230-9250

6 TOD F. SCHLEIER, ESQ. #004612

7 BRADLEY H. SCHLEIER, ESQ. #011696

8 Attorneys for Plaintiffs

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR THE COUNTY OF APACHE

11 Christi El-Meligi, a single woman; Netrisha ) Case No.: SO100CV202100183

12 Dalgai, a single woman, )

13 Plaintiffs, )

14 v. )

15 **FIRST AMENDED COMPLAINT**

16 **(DISCOVERY TIER LEVEL 3)**

17 Navajo Health Foundation – Sage Memorial )

18 Hospital, Inc., an Arizona corporation; ABC )

19 Corporations I-X; Jane Does I-X, )

20 Defendants. )

21 Plaintiffs, by and through counsel, for their First Amended Complaint against the  
22 above-named Defendants, alleges as follows:  
23

24 1. Jurisdiction and venue are proper in this Court. The matter in controversy  
25 exceeds the arbitration limits of \$10,000.00.

26 2. Plaintiff Christi El-Meligi is a single woman currently residing in Maricopa  
27 County, Arizona.

28 3. Plaintiff Netrisha Dalgai, is a single woman currently residing in Apache  
29 County, Arizona.

4. Defendant Navajo Health Foundation – Sage Memorial Hospital Inc. (“Sage”) is and was at all times material hereto an Arizona non-profit corporation duly incorporated under the laws of the State of Arizona.

5. This Court has personal jurisdiction over the parties and subject matter jurisdiction over this litigation and venue is proper in Apache County because the acts hereinafter described occurred in Apache County.

6. The true names and capacities, whether individuals, corporations or otherwise, of Defendants ABC Corporations I-X and Janes Does I-X are unknown to Plaintiffs who, therefore, sues said defendants by fictitious names. Plaintiffs will seek leave to identify and amend the Complaint to include said individuals or entities when same have been ascertained. Plaintiffs are informed and believe and therefore allege that each said fictitiously named defendant may be responsible in some manner for the acts and/or occurrences alleged herein and for Plaintiffs' losses and damages alleged herein.

## GENERAL FACTUAL ALLEGATIONS

7. Plaintiff Christi El-Meligi is the former Chief Executive Officer of Sage Memorial Hospital. Plaintiff Netrishia Dalgai is the former Chief Operating Officer of Sage Memorial Hospital.

8. Defendant Sage operates a Critical Access Hospital on land leased in Ganado, Arizona. Defendant Sage has been in need of a replacement hospital, medical office building, and staff housing (“the Project”). The Board of Directors of Defendant Sage has continually requested and directed the Plaintiffs to work with an architect and general contractor to design, develop and manage the construction of the Project. In addition, the Board of

1 Directors for Defendant Sage directed the Plaintiffs to develop a complex financial method to  
2 finance the construction of the Project. Plaintiffs agreed and presented a proposal for  
3 compensation to the Board to conduct the work as it was outside their operational scope of  
4 duties and job descriptions.

5 9. To that end, the Board agreed, voted, and signed a unanimous resolution on  
6 August 21, 2020. The Board agreed to enter revised employment agreements with Plaintiffs  
7 which would include Strategic Executive Targets & Incentives agreements (“SETI”) under  
8 which the Plaintiffs and two other members of the Sage executive team would be paid an  
9 aggregate amount which would not exceed 4.40% of \$125,000,000 or \$5,500,000. The Board  
10 was specifically authorized to execute the SETI agreements that included a “not to exceed”  
11 amount for compensation to be paid to Plaintiffs and directed Plaintiffs to move the Project  
12 forward. The Board resolution authorized the Board to execute the SETI agreement in  
13 conformity with the intent and purposes of the August 21, 2020 resolution.

14 10. It should be noted that Plaintiffs had been working on the scope of work for the  
15 Project for nearly two years since December 2018 and had made multiple presentations to the  
16 Board demonstrating the work which the Plaintiffs had been performing. Attached as Exhibits  
17 A and B are the resolutions (Exhibit A - 2020.08.21 SMH Resolution for Strategic Executive  
18 Target and Incentives) and minutes of the meeting (Exhibit B - 2020.08.22 Regular BOD  
19 Meeting Draft Minutes). Additionally, Plaintiffs submitted a schedule to the Board which  
20 includes the not to exceed amount of the proposed compensation (Exhibit C - SETI Strat  
21 Exec Target Incentives).

22 11. Based upon the resolutions and minutes set forth in Exhibits A and B, Plaintiffs  
23 continued their work on the Project and relied upon those resolutions and minutes.

24 12. The Board failed to execute the revised employment agreements containing the  
25 SETIs describe above.

1           13. Subsequently, in light of the failure of the Board to execute revised  
2 employment agreements and failure to pay Plaintiffs' compensation for work they had  
3 performed on the Project, the Plaintiffs expressed their concerns about not getting paid the  
4 nondiscretionary compensation promised to them in August 2020 for their past and  
5 continuing work on the Project. Therefore, the Board met during a special meeting on  
6 August 21, 2021 to discuss the compensation to be paid to Plaintiffs for work done and  
7 ongoing work on the Project which was outside of their normal operational scope of work.  
8 Plaintiffs attended that Board meeting and expressed their concerns about not getting paid  
9 nondiscretionary compensation promised to them in August 2020. After extensive  
10 negotiations with Plaintiffs, the Board voted on an amount much lower than the \$5.5 million  
11 not to exceed amount by a 3-2 split vote. Plaintiffs and Defendant Sage reached an agreement  
12 Defendant Sage would make three payments of \$125,000.00 each as follows: August 23,  
13 2021 – For prior work completed, September 21, 2021 - For start of construction, December  
14 22, 2022 – For construction completion. The vote carried. Attached as Exhibit D are the  
15 Board Secretary Minutes (Exhibit D - Special BOD Mtg.8212021). The Board was then  
16 scheduled to have a meeting on August 23, 2021 to memorialize/ratify the resolution for the  
17 payment which was to include payment amounts and dates to be paid to Plaintiffs.

18           14. Following the August 21, 2021 meeting, the two Board members who voted  
19 against compensating the executive team for its prior work performed, met with one of the  
20 other Board members and apparently convinced her to “change her mind” outside of, and  
21 after, the Board meeting.

22           15. The Board was scheduled to meet on August 23, 2021 to memorialize/ratify the  
23 resolution of its vote to compensate Plaintiffs' team during its August 21, 2021 special  
24 meeting. The three Board members who opposed the compensation voted to postpone the  
25 meeting to August 25, 2021 and the meeting was abruptly adjourned.

1           16. The Board then met on August 25, 2021 for the purpose of  
2 memorializing/ratifying the resolution to reflect the vote it passed on August 21, 2021 to  
3 compensate Plaintiffs. The three Board members voted against signing the resolution and  
4 abruptly adjourned the meeting. Attached as Exhibit E are meeting minutes from that meeting  
5 (Exhibit E - Special SMH BOD Mtg.82521). Attached as Exhibit F is the Resolution that was  
6 on the agenda to be signed by the Board memorializing the vote taken on August 21, 2021  
7 (Exhibit F- 20210825 Exec Mgmt Team Construction Compensation).

8           17. As noted above, Plaintiffs had been working on the Project and reporting to the  
9 Board of Directors with the clear expectation that they would be compensated for duties  
10 outside their operational scope of duties since approximately December 2018. The Board of  
11 Directors has not voiced that Plaintiffs would not be compensated for the work since the team  
12 commenced its work.

13           18. On October 4, 2021, without prior warning or notice, Plaintiffs' employment  
14 with Defendant Sage was terminated. Defendant has failed to pay Plaintiffs the monies owed  
15 Defendant Sage agreed to pay them.

16  
17                                   **COUNT ONE**  
18                                   **(BREACH OF CONTRACT – PROMISSORY ESTOPPEL)**

19           19. By reference hereto, Plaintiffs incorporate all references to all above allegations  
20 as if fully set forth herein.

21           20. On or about August 21, 2020, Defendant Sage represented to Plaintiffs that they  
22 would receive compensation for past and continued work on the Project to induce Plaintiffs to  
23 continue their work on the Project which was outside Plaintiff's operational duties as  
24 memorialized in their job descriptions.

25           21. On or about August 21, 2021, Defendant Sage further represented to Plaintiffs they  
would receive compensation for their past and continued work on the Project.

22. Defendant Sage's representations were reasonably expected to induce Plaintiffs to continue their work on the Project which were outside their normal operational duties.

23. Defendant Sage's representations as set forth above constituted promises which induced Plaintiffs to continue work on the project.

24. Plaintiffs relied on Defendant's representations to their detriment.

25. As a direct and proximate cause of Defendant Sage's breach of contract, Plaintiffs have been damaged in the form of unpaid compensation. Defendant's promises must be enforced to avoid injustice.

26. This cause of action arises out of contract, express or implied and Plaintiffs are therefore entitled to recover their attorneys' fees pursuant to A.R.S. § 12-341.01.

**COUNT TWO**  
**(BREACH OF IMPLIED-IN-LAW CONTRACT)**

27. By reference hereto, Plaintiffs incorporate all references to all above allegations as if fully set forth herein.

28. The promises and representations of Defendant Sage's Board constitute implied-in-law or quasi-contracts are inferred by the law as a matter of reason and justice from the acts and conduct of the Defendants.

29. Plaintiffs, as officers of Defendant Sage, have provided special services to Defendant Sage over and beyond what their normal and operational duties required and are therefore entitled to reasonable compensation for the services they provided to Defendant Sage on the Project.

30. Defendant Sage breached the implied-in-law contracts with Plaintiffs by failing to compensate Plaintiffs for services actually rendered on the Project.

1           31. As a direct and proximate result of Defendant Sage's breach of implied-in-law  
2 contracts with Plaintiffs, Plaintiffs have suffered damages in an amount to be proven at trial.

3           32. This matter arises out of a contract, express or implied, contract and Plaintiffs  
4 are entitled to an award of reasonable attorneys' fees pursuant to A.R.S. § 12-341.01.  
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6                                   **COUNT THREE**  
7                                   **(WRONGFUL TERMINATION UNDER A.R.S. § 23-1501)**

8           33. By reference hereto, Plaintiffs incorporate all references to all above allegations  
9 as if fully set forth herein.

10          34. A.R.S. § 23-1501(3) and A.R.S. § 1501(3)(c)(ii) provide that an employee  
11 has a claim for wrongful termination if the following occurs:

12                   The employer has terminated the employment relationship of an employee in  
13 retaliation for any of the following:

14                   (ii) The disclosure by the employee in a reasonable manner that the  
15 employee has information or a reasonable belief that the employer, or an  
16 employee of the employer, has violated, is violating or will violate the  
17 Constitution of Arizona or the statutes of this state to either the employer or  
18 a representative of the employer who the employee reasonably believes is in  
19 a managerial or supervisory position and has the authority to investigate the  
20 information provided by the employee and to take action to prevent further  
21 violations of the Constitution of Arizona or statutes of this state or an  
22 employee of a public body or political subdivision of this state or any agency  
23 of a public body or political subdivision.

24          35. On August 21, 2021, Plaintiffs disclosed in a reasonable manner that they  
25 had a reasonable belief that by diverting wages and compensation owed for their services  
on the Project that Defendant Sage had violated, was violating or would violate the  
statutes of this state to Defendant's Board of Directors to investigate the information  
provided to it.

1           36. As a direct and proximate result of Plaintiffs' disclosure, on October 4, 2021,  
2 Defendant terminated Plaintiffs' employment.

3  
4           37. As a direct and proximate result of the termination of their employment,  
5 Plaintiffs will suffer loss of wages, future loss of wages and benefits, mental and  
6 emotional distress, damage to their reputation, and loss of enjoyment of life.

7  
8           38. As a direct and proximate result of Defendant's reckless indifference to  
9 Plaintiffs' rights and with an evil heart and evil mind, Plaintiffs are entitled to recover  
10 punitive and exemplary damages in an amount to be proven at trial.

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12                                   **COUNT FOUR**  
13                   **(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING)**

14           39. By reference hereto, Plaintiffs incorporate all references to all above allegations  
15 as if fully set forth herein.

16           40. Implied in all employment relationships is a covenant that an employer will not  
17 deprive, in bad faith, an employee of benefits earned.

18           41. By terminating Plaintiffs' employment, Defendant Sage has deprived Plaintiffs,  
19 in bad faith, of the benefits they earned for the work provided on the Project and which was  
20 promised to be paid to Plaintiffs.

21  
22           42. As a direct and proximate result of Defendant Sage's bad faith conduct,  
23 Plaintiffs have been damaged in the form of unpaid compensation.

24           43. This matter arises out of an express or implied contract and Plaintiffs are  
25 entitled to an award of reasonable attorneys' fees pursuant to A.R.S. § 12-341.01.



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**COUNT FIVE**  
**(VIOLATION OF A.R.S. § 23-350, et. seq.)**

44. By reference hereto, Plaintiffs incorporate all references to all above allegations as if fully set forth herein.

45. A.R.S. § 23-350(7) defines "wages" to mean nondiscretionary compensation due an employee in return for labor or services rendered by an employee for which the employee has a reasonable expectation to be paid whether determined by a time, task, piece, commission or other method of calculation.

46. Defendant Sage, without a good faith dispute, failed to pay Plaintiffs nondiscretionary compensation due to Plaintiffs in return for labor or services rendered by Plaintiffs on the Project for which Plaintiffs had a reasonable expectation to be paid.

47. A.R.S. § 23-353(A) provides: "When an employee is discharged from the service of an employer, he shall be paid wages due him within seven working days or the end of the next regular pay period, whichever is sooner."

48. As a direct and proximate result of Defendant Sage's failure to pay nondiscretionary compensation due to Plaintiffs in return for labor or services rendered by Plaintiffs on the Project for which Plaintiffs had a reasonable expectation to be paid pursuant to the terms of Defendant Board's resolutions, Plaintiffs have incurred damages.

49. Defendant Sage's failure to pay the monies owed was done without a good faith dispute as to Plaintiffs' entitlement to said monies and Plaintiffs are entitled to treble damages pursuant to A.R.S. § 23-355.

1           50. This matter arises out of an express or implied contract and Plaintiffs are  
2 entitled to an award of reasonable attorneys' fees pursuant to A.R.S. § 12-341.01.

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4                                   **COUNT SIX**  
                                  **(UNJUST ENRICHMENT/QUANTUM MERUIT)**

5           51. By reference hereto, Plaintiffs incorporate all references to all above allegations  
6 as if fully set forth herein.

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8           52. Plaintiffs worked tirelessly on the Project and their efforts included evenings  
9 and weekends.

10          53. Based upon the foregoing, Defendant Sage has received a substantial benefit  
11 from Plaintiffs efforts and Defendant Sage has been unjustly enriched at Plaintiffs' expense,  
12 under circumstances which are such that it would be unfair and inequitable to allow  
13 Defendant Sage to retain the benefit thereof, and equity and good conscience requires  
14 Defendant Sage to make restitution to Plaintiffs.

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16          54. Defendant Sage was enriched by Plaintiffs' services provided on the Project.

17          55. Defendant Sage's enrichment is the direct result of Plaintiff's impoverishment.

18          56. There is no justification for Defendant Sage's enrichment and Plaintiffs'  
19 impoverishment.

20  
21          57. In the event that the Court deems Defendant Sage's promises and  
22 representations as set forth in Board resolutions are unenforceable, there would be an absence  
23 of a legal remedy provided by law.

24          58. The best evidence of the value of Plaintiffs services was the agreed upon  
25 amount in August 2020.

59. As a direct and proximate result of Defendant Sage's failure to pay Plaintiffs for the work on the project, Plaintiffs have been damaged by Defendant Sage and are entitled to be compensated for their efforts.

60. As this cause of action arises out of a contract, express or implied, Plaintiffs are entitled to an award of attorneys' fees pursuant to A.R.S. §12-341.01

**WHEREFORE**, Plaintiffs demand Judgment against Defendant Sage as follows:

1. For Plaintiffs' unpaid compensation and/or equitable compensation in an amount to be proven at trial;

2. For treble damages in accordance with A.R.S. § 23-355;

3. For punitive and exemplary damages to be proven at trial;

4. For attorneys' fees and costs incurred pursuant to the provisions of A.R.S. § 12-341.01; and

5. For any other relief the Court deems just and proper.

DATED this 29<sup>th</sup> day of November 2021.

SCHLEIER LAW OFFICES, P.C.

/s/ Tod F. Schleier

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Tod F. Schleier

Attorney for Plaintiffs