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Attorneys for Plaintiff  
COURTNEY DeWITT

**SUPERIOR COURT OF CALIFORNIA**

## COUNTY OF SAN DIEGO – HALL OF JUSTICE COURTHOUSE

COURTNEY DeWITT, ) CASE NO. 37-2019-00011085-CU-PO-CTL  
Plaintiff, )  
vs. )  
BIRD RIDES, INC., a Delaware corporation )  
doing business in California; CITY OF SAN )  
DIEGO, a Municipal corporation; and )  
DOES 1 through 25, Inclusive. )  
Defendants. )  
)

**COMES NOW** Plaintiff COURTNEY DeWITT (“MS. DeWITT”), by and through her attorneys of record for causes of action against Defendant BIRD INC., a Delaware Corporation doing business in California (hereinafter “BIRD”), Defendant CITY OF SAN DIEGO, a Municipal corporation (hereinafter “CITY”), and DOES 1 through 25, alleges as follows:

I.

## THE PARTIES

1. MS. DeWITT is and was at all relevant times a natural person and competent adult residing in the City of Tempe, County of Maricopa, State of Arizona.

2. MS. DeWITT is informed and believes that Defendant BIRD, owned, controlled, and/or maintained the electric scooter, which caused the incident, at all relevant times.

3. MS. DeWITT is informed and believes that Defendant CITY is a municipal corporation that owned, controlled, and/or maintained the property which is the location of the subject incident at all relevant times.

4. MS. DeWITT timely filed a claim with the CITY on or about November 5, 2018 in accordance with California Government Code sections 900-915.4. The claim was effectively deemed rejected by the CITY on December 16, 2018 pursuant to Government Code section 911.6(c).

5. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1 through 25, inclusive, are unknown to MS. DeWITT who therefore sue said Defendants by such fictitious names. MS. DeWITT will ask leave of court to amend this Complaint to show their true names and capacities when the same have been ascertained. MS. DeWITT is informed and believes and thereon alleges that each of the Defendants designated herein as DOES 1 through 25, inclusive, are responsible in some manner for the events and happenings referred to herein and negligently, intentionally, or otherwise, proximately caused injury and damage thereby to MS. DeWITT as herein alleged.

6. MS. DeWITT is informed, believes, and thereon alleges that at all times herein mentioned, each of the Defendants, including the fictitiously named Defendants, were the agents and employees of each of the remaining Defendants and were at all times acting within the purpose and scope of said agency and employment.

7. The legal capacities of Defendants are stated on information and belief. MS. DeWITT will ask leave to amend this Complaint to set forth the capacities of those entities of unknown form when ascertained.

8. This Court is the proper court because the injury which is the subject of this action occurred in this jurisdiction and Defendants are subject to service of process in this jurisdiction.

III.

## **GENERAL ALLEGATIONS**

**(Against All Defendants)**

9. BIRD operates an electronic dockless scooter business throughout the California, including in San Diego. BIRD promotes using its electronic scooters (“SCOOTER”) upon city streets,

1 sidewalks, and boardwalks on its various social media accounts, including Twitter and Instagram. Its  
2 SCOOTERS are also stored upon public streets, boardwalks, and sidewalks throughout San Diego,  
3 which provides easy and convenient access to streets, sidewalks and boardwalks.

4 10. DEFENDANTS knew or should have known the BIRD customers were operating its  
5 SCOOTERS upon boardwalks throughout California. DEFENDANTS further knew or should have  
6 known there is an 8-mph speed limit on San Diego's boardwalks, including the approximate area of  
7 Ocean Front Walk (hereinafter "BOARDWALK") and Santa Barbara Place in San Diego's beach  
8 community of Mission Beach (hereinafter "INTERSECTION"). DEFENDANTS knew or should  
9 have known the SCOOTERS do not have speedometers to allow its users to monitor their speed.  
10 DEFENDANTS knew or should have known "geofencing" technology was available, and in fact used  
11 in other California cities, such as Santa Monica, to limit SCOOTER speeds or curtail their use in  
12 certain areas to comply with local laws. Despite the existence and use of geofencing technology,  
13 DEFENDANTS did not utilize or require its use in San Diego. DEFENDANTS knew or should have  
14 known the lack of speed monitoring or geofencing made it impossible for riders to monitor their speed  
15 in order to safely and lawfully operate upon the BOARDWALK. DEFENDNATS knowingly chose  
16 not to implement and/or require these safety precautions. DEFENDANTS therefore intentionally and  
17 knowingly placed riders, pedestrians, and the general public at risk for serious injury or death.

18 11. Despite knowing the SCOOTERS lacked speedometers and geofencing technology,  
19 DEFENDANTS failed to post any signs warning pedestrians and members of the public using the  
20 BOARDWALK that SCOOTERS were also legally allowed to use the BOARDWALK, but they  
21 lacked any method to monitor their speed, which posed a danger to those on the BOARDWALK.  
22 DEFENDANTS knew or should have known this failure created a very dangerous condition that posed  
23 a significant risk of serious injury to MS. DeWITT, SCOOTER users in general, and pedestrians alike  
24 on the BOARDWALK.

25 12. On or about June 22, 2018, MS. DeWITT was riding a SCOOTER on the  
26 BOARDWALK. The SCOOTER lacked any speed monitoring equipment, such as a speedometer, or  
27 speed limiting technology such as geofencing. Because of this, MS. DeWITT had absolutely no idea  
28 who fast she was traveling making it impossible to safely navigate the busy BOARDWALK. MS.

DeWITT collided with a pedestrian and was thrown to the ground sustaining two skull fractures as well as severe pain and suffering.

III.

## **FIRST CAUSE OF ACTION**

(Strict Liability - Design Defects - against Defendant BIRD and DOES 1 through 25, Inclusive)

13. MS. DeWITT alleges and incorporates by reference as though fully set forth at length herein each and every allegation contained in the preceding paragraphs of this complaint.

14. BIRD was the owner, manufacturer, designer, and/or controller of the SCOOTER that caused MS. DeWITT'S injuries.

15. BIRD designed the SCOOTER with the capability of controlling the use, location, and speed of the SCOOTER via “geofencing” technology. If BIRD had properly implemented the designed geofencing, MS. DeWITT’S speed would have been limited and prevented MS. DeWITT’S injuries from ever occurring. BIRD however failed to utilize the readily available geofencing technology resulting in PLAINTFFS’ injuries.

16. BIRD also failed to utilize any type of speedometer to ensure riders complied with posted speed limits. If BIRD had properly done so, MS. DeWITT'S injuries would have been averted. The SCOOTER'S design was a substantial factor in causing harm to MS. DeWITT, and the risks of the SCOOTER'S design outweighed the benefits.

17. As a proximate result of BIRD'S failure to properly utilize geofencing technology any type of speedometer, MS. DeWITT was injured and has suffered economic and non-economic damages in an amount according to proof.

IV.

## **SECOND CAUSE OF ACTION**

**(Negligence against Defendant BIRD and DOES 1 through 25, Inclusive)**

18. MS. DeWITT alleges and incorporates by reference as though fully set forth at length herein each and every allegation contained in the preceding paragraphs of this complaint.

19. BIRD was the owner, manufacturer, designer, and/or controller of the SCOOTER that caused MS. DeWITT'S injuries.

20. BIRD was negligent in designing the SCOOTER by failing to utilize geofencing or a speedometer to limit SCOOTER speed while operating on the boardwalk.

21. MS. DeWITT was injured as a result of BIRD'S negligence.

22. BIRD'S negligence was a substantial factor in causing MS. DeWITT'S injuries as well as economic and non-economic damages in an amount according to proof.

V.

### **THIRD CAUSE OF ACTION**

(Negligence – Recall/Retrofit – against Defendant BIRD and DOES 1 through 25, Inclusive)

23. MS. DeWITT alleges and incorporates by reference as though fully set forth at length herein each and every allegation contained in the preceding paragraphs of this complaint.

24. BIRD was the owner, manufacturer, designer, and/or controller of the SCOOTER that caused MS. DeWITT'S injuries.

25. BIRD knew or reasonably should have known that the SCOOTER was dangerous or was likely to be dangerous when operating above the posted speed limit on the BOARDWALK, and such usage was reasonably foreseeable, if not already known by BIRD.

26. BIRD became aware of the defect, failing to implement geofencing technology therefore allowing SCOOTERS to be operated above the posted speed limit on the BOARDWALK, after the product was released.

27. BIRD failed to recall and/or retrofit the SCOOTER when it failed to utilize or implement geofencing technology or even a speedometer.

28. A reasonable manufacturer and/or distributor under the same or similar circumstances would have recalled and/or retrofitted the SCOOTER with the readily available geofencing technology and/or a speedometer.

29. MS. DeWITT was injured on the BOARDWALK due to BIRD'S failure to implement geofencing technology and/or a speedometer.

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30. BIRD'S failure to recall and/or retrofit the SCOOTER was a substantial factor in causing MS. DeWITT'S injuries as well as economic and non-economic damages in an amount according to proof.

VI.

## **FOURTH CAUSE OF ACTION**

**(Dangerous Condition of Public Property against  
Defendant DOES 1 through 25, Inclusive)**

31. MS. DeWITT alleges and incorporates by reference as though fully set forth at length herein each and every allegation contained in the preceding paragraphs of this complaint.

32. The CITY was the owner, operator, and/or controllers of the above described BOARDWALK. The BOARDWALK was a dangerous condition at the time of the incident due to (1) the lack of geofencing technology; (2) the lack of any speedometers; and (3) the failure to post any signs warning pedestrians and members of the public using the BOARDWALK that SCOOTERS were also legally allowed to use the BOARDWALK, but they lacked any method to monitor their speed and were essentially “flying blind”.

33. The CITY created a reasonably foreseeable risk that pedestrians and members of the public could be harmed by the dangerous condition of the property while using it. The CITY owed a duty of care to the public to protect against dangerous condition created by the SCOOTERS on the subject property.

34. The CITY breached its duty of care owed to pedestrians and members of the public by failing to post any signs warning pedestrians and members of the public in general who were lawfully using the sidewalks of the presence of SCOOTERS on the BOARDWALK and the dangers they posed. The CITY chose not to post warning signs despite having actual knowledge BIRD SCOOTERS were operating on the BOARDWALK without any speed controls or monitoring devices. The CITY'S violation of this independent duty to pedestrians and members of the public lawfully using the BOARDWALK created a dangerous condition of public property.

35. DOE 1 also breached its duty of care owed to MS. DeWITT, pedestrians, and members of the public lawfully using the BOARDWALK by not requiring BIRD to implement measures to

limit and/or allow the user to monitor SCOOTER speed upon the BOARDWALK despite (1) having the readily available technology to do so and (2) knowing these measures were available. The CITY'S violation of this independent duty to MS. DeWITT, pedestrians, and members of the public lawfully using the BOARDWALK created a dangerous condition of the CITY'S property.

36. The CITY had notice of the dangerous conditions created by the presence of SCOOTERS on the subject property for an amount of time sufficient to have protected the public, and MS. DeWITT, against the condition and affirmatively decided not to act. Because the CITY breached its duty and failed to warn of and/or remedy the dangerous condition, MS. DeWITT was irreparably harmed. The dangerous condition of the BOARDWALK was a substantial factor in causing MS. DeWITT'S injuries.

V.

## PRAYER

**WHEREFORE**, MS. DeWITT prays for judgment against Defendants as follows:

1. For general damages, all in an amount to be proven at the time of trial;
  2. For medical and related expenses, past, present and future, all in an amount to be proven at the time of trial;
  3. For loss of earnings or earning ability, past, present and future, all in an amount to be proven at the time of trial;
  4. For pain and suffering and emotional distress;
  5. For punitive damages, as to BIRD only;
  6. For cost of suit incurred herein; and
  7. For such other and further relief as this Court may deem just and proper.

Dated: February 26, 2019

NEIL, DYMOTT, FRANK, MCCABE & HUDSON  
A Professional Law Corporation

By:

~~Michael I. Neil  
Matthew R. Souther  
Attorneys for Plaintiff  
COURTNEY DeWITT~~