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14 On Behalf of the Plaintiff Class

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT**

ALEX MONTOYA, REX SHIRLEY,
PHILIP PRESSEL, and AARON
GRESSON, individually, and on behalf
of all others similarly situated,

Plaintiffs,

vs.

CITY OF SAN DIEGO, a public entity,
BIRD RIDES, INC., a Delaware
corporation, d/b/a BIRD; NEUTRON
HOLDINGS, INC., a Delaware
corporation, d/b/a LIME; RAZOR USA,
LLC, a California corporation; and
DOES 1-100,

Defendants.

CASE NO. - '19CV0054 JM BGS

**CLASS ACTION COMPLAINT
FOR:**

1. 42 U.S.C. §12101 *et seq.* [THE AMERICANS WITH DISABILITIES ACT];
2. 29 U.S.C. § 794 *et seq.* [Section 504 of the Rehabilitation Act];
3. California Civil Code §54 *et seq.* [California Disabled Persons Act];
4. California Civil Code §51 *et seq.* [Unruh Civil Rights Act];
5. California Government Code §4450 *et seq.*;
6. California Government Code § 11135 *et seq.*

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1 **COMPLAINT**

2 **I. INTRODUCTION**

3 1. This action challenges the failure of the City of San Diego and private
4 companies to maintain the accessibility of the City's public sidewalks, curb ramps,
5 crosswalks and transit stops for people with disabilities, in the face of an onslaught of
6 unregulated dockless scooters. Private scooter companies have been allowed to
7 appropriate the public commons for their own profit, regardless of the impact on the
8 City's residents. Persons with mobility impairments, including people who use
9 wheelchairs or walkers, and people with significant visual impairments are thereby
10 being denied their right to travel freely and safely on our public walkways.

11 2. Without full use of the sidewalk and curb ramps at street intersections,
12 persons with mobility and/or visual impairments have significant barriers in crossing
13 from a pedestrian walkway to a street. This is exacerbated when the sidewalk itself is
14 full of obstructions and no longer able to be fully and freely used by people with
15 disabilities.

16 3. When dockless scooters are left in the middle of the sidewalk and other
17 rights of way, at points of ingress and egress, they block off access to the public rights
18 of way; furthermore, as Defendants know, the dockless scooter riders often ride the
19 Scooters on the sidewalk, turning the sidewalk into a vehicle highway rather than a
20 space for safe pedestrian access and use.

21 4. On July 26, 1990, Congress enacted the Americans With Disabilities Act
22 (ADA), ADA §§ 2 et seq. [42 U.S.C.A. §§ 12101 et seq.], establishing the most
23 important civil rights for persons with disabilities in our country's history, including the
24 right to have full and equal enjoyment of services, programs, or activities of a public
25 entity.

26 5. Congress explicitly stated that the purpose of the ADA was to provide a
27 clear and comprehensive national mandate for the elimination of discrimination against
28 individuals with disabilities. 42 U.S.C. §12101(b)(1)-(2). Congressional statutory

1 findings include: “historically, society has tended to isolate and segregate individuals
2 with disabilities, and despite some improvements, such forms of discrimination against
3 individuals with disabilities continue to be a serious and pervasive social problem”;
4 “discrimination against individuals with disabilities persists in such critical areas as
5 employment, housing, public accommodations, education, transportation,
6 communication, recreation, institutionalization, health services, voting, and access to
7 public services”; “individuals with disabilities continually encounter various forms of
8 discrimination, including outright intentional exclusion, the discriminatory effects of
9 architectural, transportation, and communication barriers”; and, “the Nation’s proper
10 goals regarding individuals with disabilities are to assure equality of opportunity, full
11 participation, independent living, and economic self-sufficiency for such individuals.”
12 42 U.S.C. § 12101.

13 6. In the House Report accompanying the ADA, Congress expressly noted
14 that the “employment, transportation, and public accommodation sections of [the ADA]
15 would be meaningless if people who use wheelchairs were not afforded the opportunity
16 to travel on and between the streets.” See H.R. Rep. No. 101-485(II), at 84, reprinted in
17 1990 U.S.C.C.A.N. 303, 367.

18 7. Congress gave public entities, including state and local governments, 18
19 months to implement the ADA. By January 26, 1992, the effective date of the ADA, all
20 public entities had to comply with the statutory and regulatory provisions of the ADA.

21 8. Nevertheless, instead of complying with the ADA, Defendants have failed
22 to maintain and respect the public sidewalks of the City of San Diego in a way that
23 allows for disabled residents to enjoy unencumbered access. People with disabilities
24 who wish to travel in the City using the City’s walkways are being forced to either put
25 their physical safety at risk or just stay home. This is not a choice that they should have
26 to make.

27 9. Alex Montoya, Rex Shirley, Philip Pressel, and Aaron Greeson (“Lead
28 Plaintiffs”), as individuals and on behalf of all other similarly situated (the “Putative

1 Class”) hereby move against the City of San Diego (the “Municipal Defendant”), and
2 Neutron Holdings, Inc. a Delaware corporation doing business as Lime (“Lime”), Razor
3 USA LLC, a California corporation (“Razor”) and Bird Rides, Inc., a Delaware
4 Corporation, Inc. d/b/a Bird (“Bird”)(collectively, the “Scooter Defendants”).

5 **II. VENUE AND JURISDICTION**

6 10. The claims alleged herein arise under the Americans with Disabilities Act
7 (42 U.S.C. §§ 12131 et seq.), and Section 504 of the Rehabilitation Act of 1973 (29
8 U.S.C. §794 et seq.), such that the jurisdiction of this Court is invoked pursuant to 28
9 U.S.C. §§ 1331 and 1343. Through the same actions and omissions that form the basis
10 of Plaintiffs’ federal claims, Defendants have also violated Plaintiffs’ rights under state
11 law, over which this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
12 This Court has jurisdiction over Plaintiffs’ claims for declaratory and injunctive relief
13 pursuant to 28 U.S.C. §§2201 and 2202 and Rule 65 of the Federal Rules of Civil
14 Procedure.

15 11. Venue over Plaintiffs’ claims is proper in the Southern District of
16 California because the Municipal Defendant resides in the Southern District of
17 California within the meaning of 28 U.S.C. § 1391, and because the acts, events, and
18 omissions giving rise to Plaintiffs’ claims occurred in the Southern District of
19 California.

20 **III. PARTIES**

21 12. Alex Montoya is a San Diego, California resident. Alex Montoya is
22 congenital triple amputee - a birth defect rendered Mr. Montoya without arms and one
23 leg since birth, and Mr. Montoya wears prosthetics on both arms and his right leg every
24 day. Mr. Montoya is mobility impaired. He does not drive, and for that reason, chose to
25 live and work in the East Village neighbourhood of San Diego, where he could access
26 several places as a pedestrian. Because of his prosthetics, Mr. Montoya’s reaction time
27 is slower than an average, non-disabled person – yet, every single day, Mr. Montoya
28 finds himself dodging scooters on sidewalks and street crossings, coming from all

1 directions and rapid rates of speed without warning. As a result of the proliferation of
2 dockless scooters on public sidewalks, Mr. Montoya now will avoid walking
3 somewhere if he can, as he does not feel safe walking. Mr. Montoya, as well as his
4 special-needs brother, have nearly tripped over discarded scooters, as the scooters are
5 strewn all over the sidewalks. Plaintiff Montoya is a “qualified person with a disability”
6 and/or a person with a “disability” within the meaning of all applicable statutes and
7 regulations including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104; 28 C.F.R. § 36.104;
8 29 U.S.C. § 705(2)(B), and California Government Code § 12926.

9 13. Rex Shirley is a San Diego, California resident, in the neighbourhood of
10 Mission Beach. Rex Shirley has been diagnosed with Parkinson’s disease, which has
11 progressively advanced over several years. Mr. Shirley requires the use of a mobility
12 scooter for his transportation. In October of 2018, Mr. Shirley was nearly hit by an
13 electric scooter on the Mission Beach Boardwalk. Mr. Shirley finds dockless electric
14 scooters left on their sides on the alleys and streets of Mission Beach, near his home,
15 and those scooters block access and impede Mr. Shirley’s ability to safely travel the
16 streets and sidewalks of Mission Beach. Mr. Shirley has to drive his mobility scooter
17 around the dockless scooters to get places. Mr. Shirley fears further close encounters
18 with the dockless scooters, and cannot use the sidewalks and public rights of way as he
19 would please because of blocked access and the inability to avoid electric scooters that
20 he cannot hear coming or easily evade. As a result of these issues created by dockless
21 electric scooters, Mr. Shirley goes out less, avoids the Mission Beach Boardwalk and
22 strand areas near where he lives, and finds his local travel impeded when he does go
23 out. Mr. Shirley also finds it difficult to utilize the public rights of way to walk his dog.
24 Mr. Shirley is a “qualified person with a disability” and/or a person with a “disability”
25 within the meaning of all applicable federal and state statutes and regulations including
26 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104; 28 C.F.R. § 36.104; 29 U.S.C. § 705(2)(B),
27 and California Government Code § 12926.

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1 14. Philip Pressel is a San Diego, California resident, living in downtown San
2 Diego. Mr. Pressel has lost the use of his left leg and is an amputee, and now requires
3 the use of an electric mobility scooter unless walking very short distances, usually no
4 more than one block or so. Mr. Pressel is also immunosuppressed because of an organ
5 transplant. Mr. Pressel chose to live in downtown because of the ability to easily access
6 numerous places. Mr. Pressel's wife has had to move scooters out of the way for Mr.
7 Pressel to access the pedestrian walkways. Mr. Pressel has had numerous occasions
8 where he could not see a discarded scooter laying on the ground, and has nearly collided
9 with those grounded scooters. Plaintiff Pressel is a "qualified person with a disability"
10 and/or a person with a "disability" within the meaning of all applicable federal and state
11 statutes and regulations including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104; 28 C.F.R.
12 § 36.104; 29 U.S.C. § 705(2)(B), and California Government Code § 12926.

13 15. Aaron Greeson is a Spring Valley, California resident. Mr. Greeson has
14 been blind for the past ten years and several times per week goes to the Blind
15 Community Center of San Diego, located at 1805 Upas Street, San Diego, CA 92101.
16 Mr. Greeson has had several incidents where he has nearly been hit by or has collided
17 with electric scooters, as he cannot see them coming and cannot see the scooters laying
18 down on the sidewalk when walking. Mr. Greeson now will only walk near the Blind
19 Community Center of San Diego if he has somebody to walk with, to avoid discarded
20 scooters he cannot see and active scooters he cannot easily evade. Plaintiff Greeson is
21 a "qualified person with a disability" and/or a person with a "disability" within the
22 meaning of all applicable federal and state statutes and regulations including 42 U.S.C.
23 § 12131(2), 28 C.F.R. § 35.104; 28 C.F.R. § 36.104; 29 U.S.C. § 705(2)(B), and
24 California Government Code § 12926.

25 16. The putative class consists of all persons with mobility and/or visual
26 impairments who have been denied equal access to city sidewalks, streets, crosswalks,
27 and transit stops as a result of the Defendants' policies and practices with regard to
28 dockless scooters that impede and deny disability access.

1 17. Hereafter, references to Plaintiffs shall be deemed to include Lead
2 Plaintiffs and each member of the Putative Class, unless otherwise indicated.

3 18. Defendant Bird Rides, Inc. d/b/a BIRD (“Bird”) is a for-profit corporation
4 which rents Bird Scooters (defined below) to Bird Customers (defined below) through
5 the Bird App (defined below). Bird is a Delaware corporation, with its principal office
6 located at 406 Broadway, #369, Santa Monica, California 90401.

7 19. Defendant Neutron Holdings, Inc. d/b/a LIME (“Lime”) is a for-profit
8 corporation which rents Lime Scooters (defined below) to Lime Customers (defined
9 below) through the Lime App (defined below). Lime is a Delaware corporation, with
10 its principal office located at 66 Bovet Rd, Suite 320, San Mateo, California 94402.

11 20. Defendant Razor USA LLC (“Razor”) is a for-profit corporation which
12 rents Razor Scooters to Razor Customers through the Razor App. Razor USA LLC is a
13 California corporation, with its principal office located at 12723 166th Street, Cerritos,
14 California.

15 21. Defendant City of San Diego is a public entity within the meaning of Title
16 II of the Americans with Disabilities Act (the “ADA”) and on information and belief,
17 has received federal financial assistance within the meaning of Section 504 of the
18 Rehabilitation Act, 29 U.S.C. §794, et seq. (the “Rehabilitation Act”) and state financial
19 assistance within the meaning of Government Code 11135. Defendant City of San
20 Diego has received federal and state financial assistance sufficient to invoke the
21 coverage of Section 504 of the Rehabilitation Act and California Government Code
22 Section 11135.

23 22. Defendant City of San Diego is a local government entity with the
24 responsibility of providing Plaintiffs access to its public facilities, programs, services
25 and activities. Defendant City of San Diego is responsible for maintaining and
26 regulating the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian
27 crossings and other walkways within the City of San Diego.

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