

# **EXHIBIT 2**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**DEE ANN EVANS, PATRICIA HILL, LISA ANDERSON AND PATRICK DUCKWALD**, each individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

**BIRD RIDES, INC.**, a Delaware corporation; **NEUTRON HOLDINGS, INC.**, a Delaware corporation; **CITY OF OAKLAND**, a public entity, **CITY OF PIEDMONT**, a public entity; **CITY OF SANTA CLARA**, a public entity; **CITY OF SAN JOSE**, a public entity; **CITY OF MOUNTAIN VIEW**, a public entity; **CITY OF SAN MATEO**, a public entity; **CITY OF BURLINGAME**, a public entity; **CITY OF WALNUT CREEK**, a public entity; **CITY OF RICHMOND**, a public entity; and **DOES 1-10**,

Defendants.

Case No.: 3:19-cv-01207-VC

~~[PROPOSED]~~ **ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

**Judge: Hon. Vince Chhabria**

**Date: February 25, 2021**

**Time: 2:00 p.m.**

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**~~PROPOSED~~ ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT**

On February 25, 2020, the Court held a hearing on Plaintiff's Motion for Preliminary Approval of Class Action Settlement reached with Defendant City of Oakland. The Court has carefully considered the Settlement Agreement, as amended by the Parties<sup>1</sup>, the arguments of counsel, and the record in this case. The Court hereby certifies the proposed Settlement Class for settlement purposes under Fed. R. Civ. P. 23(b)(2); appoints Plaintiff Dee Ann Evans as Class Representative for the purposes of this settlement; appoints J. Randall Jones, Esq. of KEMP JONES, LLP as Class Counsel; gives its preliminary approval of the Settlement finding that the Settlement and Settlement Agreement are sufficiently fair, reasonable, and adequate with no objections thereto noted on the docket and no objections from anyone in the audience at the time of the hearing; and schedules a Final Fairness Hearing.

**IT IS HEREBY ORDERED THAT:**

1. The Amended Settlement Agreement is hereby incorporated by reference in this Order, and all terms or phrases used in this Order shall have the same meaning as in the Settlement Agreement.
2. The Court preliminarily approves the Settlement finding that the terms of the agreement are fair, reasonable, and adequate and within the range of possible approval.
3. Pursuant to Fed. R. Civ. P. 23(b)(2), the Court certifies, for settlement purposes only, a Settlement Class defined as follows: All persons with mobility and/or visual disabilities who have encountered an Electric Vehicle obstructing their access to one or more Pedestrian Rights of Way in the City of Oakland, from March 5, 2016 to the date of entry of a final order granting class settlement. The Court's preliminary certification is limited to an injunctive class only, and all claims for monetary relief are preserved.
4. The Court finds, for settlement purposes only, that the Action may be maintained as a class action on behalf of the Settlement Class because:

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<sup>1</sup> After listening to the Court's concerns related to the Release language in the Settlement Agreement, the Parties agreed to amend the Settlement Agreement to add a Class Period and to clearly express in the Release language that Plaintiff and the Proposed Class are only releasing injunctive claims against the City of Oakland that may have accrued during the Class Period.

a. Numerosity: The City of Oakland is home to at least 30,000 persons with visual and/or mobility disabilities, and it is visited by hundreds, if not thousands, of other persons with disabilities that reside in other cities throughout California and the country. This satisfies the Rule 23(a)(1) numerosity requirement.

b. Commonality: The claims of the Settlement Class members stem from the same legal and factual questions, including (i) whether the City of Oakland is violating Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, by depriving persons with disabilities access to programs, services and activities, specifically equal access to the City's Pedestrian Rights of Way unobstructed by electric scooters, and otherwise discriminating against these persons with disabilities; (ii) whether the City of Oakland is violating Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 *et seq.*, by depriving persons with disabilities access to programs, services and activities, specifically equal access to the City's Pedestrian Rights of Way unobstructed by electric scooters, and otherwise discriminating against these persons with disabilities; (iii) whether the City of Oakland is violating Cal. Govt. Code § 11135(a), which prohibits denial of benefits to persons with disabilities of any program or activity that is funded directly by the State of California or receives any financial assistance from the State; and (iv) whether the City of Oakland is violating California Civil Code § 54 *et seq.*, by depriving persons with disabilities to full and equal access of the City's Pedestrian Rights of Way. These common questions are sufficient to satisfy the Rule 23(a)(2) commonality requirement.

c. Typicality: Plaintiff's claims are typical of those of the Class because they arise from the same course of conduct and the injunctive relief provided by the settlement will benefit all class members alike. Thus, Plaintiff's claims are unquestionably typical of those of the Settlement Class and the pursuit of her claims will necessarily advance the interests of the absent Settlement Class members. Rule 23(a)(3) regarding typicality is readily satisfied.

d. Adequacy: There are no conflicts of interest between Named Plaintiff and the Settlement Class members and Named Plaintiff has retained competent counsel to represent the settlement class. Class counsel regularly engages in complex litigation and has dedicated substantial resources to the prosecution of this action. The adequacy requirement is satisfied.

e. Rule 23(b)(2): In addition to the four requirements for certification under Rule 23(a),

the proposed Settlement Class also satisfies the additional requirement imposed under Rule 23(b)(2), that Defendant has “acted or refused to act on grounds generally applicable to the class,” thereby making injunctive relief appropriate. Fed. R. Civ. P. 23(b)(2). Preliminary certification of the Settlement Class under Rule 23(b)(2) is proper for at least two reasons: (1) the laws Plaintiff claims have been violated, including, but not limited to, Title II of ADA, Section 504 of the Rehabilitation Act, and California Civil Code § 54, provide for injunctive relief as a remedy, and Plaintiff has sought such relief in her Amended Complaint; (2) the injunctive relief sought by Plaintiff applies generally to each Settlement Class member. The changes Oakland has agreed to make to enhance its program governing the operation of electric scooter within its city limits will benefit and affect all Settlement Class members equally. In this circumstance, the “agreed-upon injunctive relief will redress an alleged group-wide injury,” and makes class certification under Rule 23(b)(2) appropriate.

5. The Court appoints as class representative, for settlement purposes only, Named Plaintiff Dee Ann Evans. The Court finds, for settlement purposes only, that Named Plaintiff will adequately represent the Settlement Class.

6. Pursuant to Fed. R. Civ. P. 23(g), and for settlement purposes only, the Court designates as Class Counsel J. Randall Jones, Esq. of Kemp Jones, LLP. The Court preliminarily finds that, based on the work Class Counsel have done identifying, investigating, and prosecuting the claims in this action; Class Counsel’s experience in handling class actions and other complex litigation similar to the type asserted in this action; and the resources Class Counsel have and will commit to representing the class, that Class Counsel have represented and will represent the interests of the Settlement Class fairly and adequately.

7. The Court finds that notice to the Settlement Class is not required because the Class Settlement releases only injunctive relief claims and expressly preserves Settlement Class member’s claims for monetary relief.

8. The Court directs that a hearing be scheduled on April 15, 2021 at 2:00 ~~a.m.~~ p.m. (the “Fairness Hearing”) to assist the Court in making its final determination that the Settlement is fair, reasonable, and adequate; whether the Released Claims should be dismissed with prejudice; and whether Class Counsel’s application for fees and expenses should be approved.

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9. Class Counsel may file a motion for attorney's fees and costs no later than 14 days before the Fairness Hearing.

**IT IS SO ORDERED.**

Dated: March 8, 2021

  
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HON. VINCE CHHABRIA  
UNITED STATES DISTRICT JUDGE