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On Behalf of the Plaintiff Class  
9

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

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

14 Plaintiffs, )

15 vs. )

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

20 Defendants. )  
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25 )  
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28 )

CASE NO. -  
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**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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1 **IV. FACTUAL ALLEGATIONS**

2 23. The City of San Diego has failed to adequately maintain the system of  
3 sidewalks, crosswalks, curb ramps, transit stops, pedestrian crossings and other  
4 walkways, by allowing dockless scooters used primarily for recreational purposes to  
5 proliferate unchecked throughout San Diego and to block safe and equal access for  
6 people with disabilities who live in or visit the City. Defendant City of San Diego has  
7 thereby denied Plaintiffs the benefits of the City’s services, programs, and activities  
8 based on their disabilities.

9 24. The Scooter Defendants have used and appropriated varying portions of  
10 the City’s public sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings  
11 and walkways with impunity for their own private profit – effectively turning them into  
12 their private retail stores, showrooms, highways, and storage facilities -in abject  
13 disregard for the safety and access rights of San Diego’s residents or visitors with  
14 disabilities.

15 25. Bird rents electric scooters (“Bird Scooters”) to its customers (“Bird  
16 Customers”) through a mobile application (the “Bird App”). Travis VanderZanden,  
17 Bird's CEO, stated on or about October 9, 2018 that "[w]e don't go to New York because  
18 it's technically illegal to use a scooter at the state level" and that "[w]here there's no  
19 laws, that's where we go in." See “Bird CEO: ‘The Places Where There Are No Laws,  
20 That’s Where We Go In’”, *Fortune*, at <[http://fortune.com/2018/10/09/bird-ceo-  
21 scooters-laws/](http://fortune.com/2018/10/09/bird-ceo-scooters-laws/)>, last accessed January 5, 2019 at 11:22 A.M.

22 26. Razor also rents electric scooters (“Razor Scooters”) to its customers  
23 through a mobile application (“Razor App”).

24 27. Lime also rents electric scooters (“Lime Scooters”, together with Bird  
25 Scooters and Razor Scooters, hereinafter, collectively, “Scooters”) to its customers  
26 (“Lime Customers”, together with Bird Customers and Razor Customers, hereinafter,  
27 collectively, “Scooter Customers”) through a mobile application (the “Lime App”,  
28

1 together with the Bird App and the Razor App, hereinafter, collectively, “Scooter  
2 Apps”).

3 28. Scooters present obstacles and block full access and use of the sidewalk  
4 when left on the ground. Across the City of San Diego, idle scooters clog the system of  
5 sidewalks, crosswalks, curb ramps, transit stops, pedestrian crossings and other  
6 walkways.

7 29. Perhaps even more dangerous, Scooter Defendants enable or recklessly  
8 allow Scooter Customers to drive Scooters at speeds much faster than the speed of foot  
9 traffic through the system of sidewalks, crosswalks, curb ramps, transit stops, pedestrian  
10 crossings and other walkways, despite the California Vehicle Code’s prohibition against  
11 operation of a motorized scooter upon the sidewalks. Effectively, the practice turns the  
12 systems of sidewalks into a Scooter highway.

13 30. Once a Scooter Customer is done using the Scooter, Scooter Defendants  
14 permit and/or recklessly enable the Scooter Customers to leave the Scooters anywhere  
15 the user may see fit, as part of their “dockless” business model – typically, idle Scooters  
16 end up on public property in the system of sidewalks, crosswalks, transit stops, curb  
17 ramps, pedestrian crossings and other walkways, either on the ground, parked upright,  
18 or left resting sideways blocking portions of the systems of sidewalks and rights of way.  
19 Groups of Scooters may be discarded in close proximity, causing a blockade and  
20 diminishing full use of the sidewalks for pedestrians.

21 31. This “dockless” business practice violates San Diego Municipal Code  
22 §129.0702(a)(2), which states that “no object (e.g. structure, basketball hoop, etc.) is to  
23 be placed in the public right of way”. Yet, the City, while vigorously enforcing this  
24 provision against homeless individuals - citing and arresting them for placing sleeping  
25 bags, shopping carts and other personal belongings on the ground – has intentionally or  
26 recklessly overlooked the egregious actions of the Scooter Defendants and their severe  
27 negative impact on disability access.

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1           32. To continue appropriating and re-purposing the City of San Diego's  
2 sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings, the Scooter  
3 Defendants hire independent contractors to tend to any Scooters with any kind of  
4 maintenance need, including battery exhaustion, before returning the Scooters to the  
5 system of public sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings  
6 and other walkways.

7           33. Scooters cause barriers in paths of travel when they are operated. Scooters  
8 are operated on the system of sidewalks, crosswalks, transit stops, curb ramps,  
9 pedestrian crossings and other walkways. The Scooters are motor powered, propelling  
10 them at speeds around twenty (20) miles per hour, or more. Defendants do not require  
11 any training or education for people to ride Scooters. The combination of high relative  
12 speeds, compared to pedestrians, and lack of restrictions regarding the operator, creates  
13 hazardous conditions which causes Lead Plaintiffs, and others in the Putative Class,  
14 difficulty, frustration, and risk of serious physical harm. Lead Plaintiffs, should they  
15 waver trying to access the benefits of the system of sidewalks, crosswalks, transit stops,  
16 curb ramps, pedestrian crossings and other walkways, do so in a state of hypervigilance  
17 and stress as the concern of being struck and possibly injured by a wayward scooter  
18 persists.

19           34. Scooter Defendants hinder and inhibit Plaintiffs from using the system of  
20 sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other  
21 walkways, and have actually caused Plaintiffs to use the sidewalks less often. As in-use  
22 Scooters speed by and deny safe, equal and full access to the sidewalks, and as idle  
23 Scooters occupy, partition, and block the sidewalks and other pedestrian rights of way,  
24 the sidewalk has become inaccessible, dangerous, and much more difficult to trust as a  
25 walkway. As a result of the difficulty and frustration with the experience of attempting  
26 to use the sidewalks and other pedestrian rights of way and fear of injury, Plaintiffs are  
27 disheartened and deterred from using the system of sidewalks, crosswalks, transit stops,  
28 curb ramps, pedestrian crossings and other walkways.

1           35. The Scooter Defendants’ burgeoning proliferation and uncurbed growth  
2 comes at the detriment of the rights of all disabled persons with mobility and/or visual  
3 impairments who are residents and visitors of the City of San Diego, causing Plaintiffs  
4 injury and severe anxiety, diminishing their comfort and discriminating against them  
5 based on their disabilities by denying them access to and safe use of public walkways  
6 and other essential public services, resulting in isolation in their homes and deterioration  
7 in Plaintiffs’ quality of life.

8           36. The Municipal Defendant is responsible for maintaining the system of  
9 sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other  
10 walkways, which constitute an essential government program, service, and activity for  
11 residents and visitors of the City of San Diego.

12           37. The Municipal Defendant is responsible for providing public  
13 transportation for the residents and visitors to the City of San Diego, which constitutes  
14 an essential government program, service and activity for residents and visitors of the  
15 City of San Diego.

16           38. The Municipal Defendant has further failed to maintain the system of  
17 sidewalks and rights of way in a fashion that ensures that access is not only assured to  
18 all residents and visitors with disabilities, but also that allows residents and visitors with  
19 disabilities to enjoy the full and equal benefit of the sidewalks and pedestrian rights of  
20 way. Notably, the City of San Diego has failed to develop an adequate number of  
21 alternative lanes that are not on the sidewalk (i.e., bike lanes) that might provide for a  
22 lawful and proper use of Scooters.

23           39. Despite knowledge of the California Vehicle Code, the Scooter Defendants  
24 chose to carry out its business in the City of San Diego by appropriating public spaces  
25 and have allowed and continue to allow use of the Scooters on the City’s system of  
26 sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other  
27 walkways, declining to employ geo-fencing or other available mechanisms to ensure  
28 that Scooters are used or reasonably maintained in a way that ensures full and equal

1 access for people with disabilities to the system of sidewalks, crosswalks, transit stops,  
2 curb ramps, pedestrian crossings and other walkways.

3 40. The combination of the City of San Diego's failure to maintain the system  
4 of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other  
5 walkways in compliance with the needs of disabled individuals, and the Scooter  
6 Defendants' knowing and reckless disregard for the need to maintain full and equal  
7 access to public walkways for people with disabilities, results in Plaintiffs suffering  
8 disproportionate harm based on their disabilities. The City of San Diego's system of  
9 sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other  
10 walkways is no longer readily accessible to and usable by persons with mobility and/or  
11 visual disabilities due to the pervasive, unregulated, and ever-growing presence of  
12 Scooters that create physical access barriers along the path of travel on the City's public  
13 walkways.

14 41. Lead Plaintiffs and other persons with mobility or visual impairments must  
15 roll the dice every time they choose to use the system of sidewalks and other pedestrian  
16 rights of way, as they gamble as to whether the system of sidewalks, crosswalks, transit  
17 stops, curb ramps, pedestrian crossings and other walkways might be unfettered or  
18 instead that Plaintiffs might be blocked or themselves placed in danger by encountering  
19 Scooters strewn along their path. These obstructions deny people with disabilities  
20 access to the City of San Diego's system of sidewalks, crosswalks, transit stops, curb  
21 ramps, pedestrian crossings and other walkways and strip them of their freedom and  
22 their right to safely use the public sidewalk in the same fashion and with the same  
23 benefit as enjoyed by those without disabilities.

24 42. Lead Plaintiffs and class members have mobility and/or visual  
25 impairments. Lead Plaintiffs and class members have encountered Scooters strewn  
26 across, blocking, and/or being driven upon the system of public sidewalks, crosswalks,  
27 transit stops, curb ramps, pedestrian crossings and other walkways in the City of San  
28 Diego, denying them full and equal access based on disability, and, causing Plaintiffs

1 difficulty, frustration and embarrassment, and placing them in danger of injury or death.  
2 Plaintiffs continue to be deterred from leaving their homes and their places of business  
3 since the invasion of these Scooters onto the streets of the City of San Diego.

4 43. The maintenance of an accessible system of sidewalks, crosswalks, transit  
5 stops, curb ramps, pedestrian crossings and other walkways for people with disabilities  
6 go to the heart of the purpose of the ADA and other disability rights laws, and is  
7 essential for full integration into the community. The Scooter Defendants' private  
8 appropriation and exploitation of varying portions of public sidewalks, crosswalks,  
9 transit stops, curb ramps, pedestrian crossings and other walkways turning them into  
10 inaccessible places of public accommodation for their business use - and the Municipal  
11 Defendant's failure to ensure that the system of public walkways is kept accessible to  
12 persons with mobility or visual impairments free of Scooter obstructions - discriminates  
13 based on disability in violation of multiple federal and state disability rights laws. This  
14 lawsuit seeks to ensure fair, full, and equal access to the system of sidewalks,  
15 crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways for all  
16 residents and visitors with disabilities in the City of San Diego.

17 44. Plaintiffs thus bring this action to, among other things, remedy violations  
18 of Title II of the ADA, 42 U.S.C. §12131, et seq., and its accompanying regulations,  
19 Title III of the ADA, 42 U.S.C. § 12182, et seq. and its accompanying regulations; the  
20 Rehabilitation Act and its accompanying regulations, as well as analogous state statutes  
21 including California Government Code §11135, California Civil Code §54, et seq.,  
22 California Government Code §4450, and California Civil Code §51, et seq. Plaintiffs  
23 seek declaratory and injunctive relief pursuant to the above, as well as an award of  
24 attorneys' fees and costs under applicable law. Plaintiffs also seek statutory damages  
25 under California law.

## 26 **V. CLASS ACTION ALLEGATIONS**

27 45. The Lead Plaintiffs bring this action individually, and on behalf of all  
28 persons with disabilities with mobility or visual impairments who have been denied

1 access to or full enjoyment of the system of sidewalks, crosswalks, transit stops, curb  
2 ramps, pedestrian crossings and other walkways in the City of San Diego because of  
3 their disabilities.

4 46. Each member of the Putative Class is a “qualified person with a disability”  
5 and/or a person with a “disability” within the meaning of all applicable federal and state  
6 statutes and regulations including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104; 28 C.F.R.  
7 § 36.104; 29 U.S.C. § 705(2)(B), and California Government Code § 12926. The  
8 persons in the Putative Class are so numerous that the joinder of all such persons is  
9 impracticable and that the disposition of their claims in a class action rather than in  
10 individual actions will benefit the parties and the Court. The Putative Class consists of  
11 tens of thousands of persons with disabilities of mobility or visual impairment that  
12 reside in or regularly visit the City of San Diego.

13 47. Lead Plaintiffs are informed, believe, and thereon allege that the  
14 Defendants’ policies and procedures violate the ADA, the Rehabilitation Act, and  
15 analogous state statutes with regard to the system of sidewalks, crosswalks, curb ramps,  
16 pedestrian crossings and other walkways and disability access.

17 48. Lead Plaintiffs are informed, believe, and thereon allege that Defendants  
18 have not adopted and do not enforce appropriate policies to prevent discrimination  
19 against persons with disabilities and to ensure equal access to programs, services and  
20 activities and places of public accommodation for persons with disabilities.

21 49. The violations of the ADA, the Rehabilitation Act and related California  
22 statutes set forth in detail have injured all members of the Putative Class, violating their  
23 rights.

24 50. Defendants acted or refused to act on grounds generally applicable to the  
25 Putative Class, thereby making appropriate final injunctive or declaratory relief with  
26 respect to the class as a whole appropriate.

27 ///

28 ///

1           51. The claims of the Lead Plaintiffs are typical of the Putative Class that they  
2 arise from the same course of conduct engaged in by Defendants. The relief sought  
3 herein will benefit all class members alike.

4           52. Lead Plaintiffs will fairly and adequately represent the interests of the  
5 class. Lead Plaintiffs have no interests adverse to the interests of other members of the  
6 class and have retained counsel that is competent and experienced in litigation complex  
7 class actions, including disability rights cases.

8           53. With regard to the Putative Class, the requirements of Rule of the Federal  
9 Rules of Civil Procedure are satisfied as such:

- 10           a. The class is so numerous that it would be impractical to bring all  
11 class members before the Court;
- 12           b. There are questions of law and fact which are common to the class;
- 13           c. The Lead Plaintiffs' claims are typical of the claims of the class;
- 14           d. The Lead Plaintiffs will fairly and adequately represent common  
15 class interests and are represented by counsel who are experienced  
16 in class actions and the disability rights issues in this case.
- 17           e. Defendants have acted or generally refused to act on grounds  
18 generally applicable to the class; and,
- 19           f. The common questions of law and fact which are common to the  
20 class predominate over individual questions.

21           54. The common questions of law and fact, shared by all class members,  
22 include:

- 23           a. Whether the Municipal Defendant is violating Title II of the ADA,  
24 42 U.S.C. § 12131 et seq., by depriving persons with disabilities  
25 access to programs, services and activities of the City of San Diego,  
26 and otherwise discriminating against persons with disabilities, as set  
27 forth above;





1           57. In response to these findings, Congress explicitly stated that the purpose  
2 of the ADA is to provide “a clear and comprehensive national mandate for the  
3 elimination of discrimination against individuals with disabilities” and “clear, strong,  
4 consistent, enforceable standards addressing discrimination against individuals with  
5 disabilities.” 42 U.S.C. §12101(b)(1)-(2).

6           58. Title II of the ADA provides in relevant part: “[N]o qualified individual  
7 with a disability shall, by reason of such disability, be excluded from participation in or  
8 be denied the benefits of the services, programs, or activities of a public entity, or be  
9 subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

10           59. At all times relevant to this action, the Municipal Defendant was a “public  
11 entity” within the meaning of Title II of the ADA and provided and provides a program,  
12 service or activity to the general public.

13           60. At all times relevant to this action, Plaintiffs were qualified individuals  
14 with disabilities within the meaning of Title II of the ADA and met the essential  
15 eligibility requirements for the receipt of the services, programs, or activities of the City  
16 of San Diego. 42 U.S.C §12131.

17           61. Municipal Defendant is mandated to operate each program, service, or  
18 activity “so that, when, viewed in its entirety, it is readily accessible to and useable by  
19 individuals with disabilities.” 28 C.F.R. § 35.150; see also 28 C.F.R. §§ 35.149 &  
20 35.151. The system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian  
21 crossings and other walkways themselves constitute an essential public service,  
22 program, or activity under Title II of the ADA. 28 C.F.R. § 35.104; see *Barden v. City*  
23 *of Sacramento*, 292 F.3d 1073 (2002).

24           62. The regulations implementing Title II of the ADA provide that a public  
25 entity must maintain the features of all facilities required to be accessible by the ADA.  
26 28 C.F.R. § 35.133. Facilities required to be accessible include roads, walks and  
27 passageways. 28 C.F.R. § 1035.104.

28

1           63. Plaintiffs are informed, believe and thereon allege that the system of  
2 sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other  
3 walkways are not fully, equally and safely accessible to Plaintiffs when viewed in their  
4 entirety.

5           64. Plaintiffs are informed, believe and thereon allege that the Municipal  
6 Defendant violated and continues to violate the ADA by failing to ensure that the system  
7 of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other  
8 walkways are kept free of the Scooter obstructions and thereby deny Plaintiffs due to  
9 their disabilities the benefits of the system of sidewalks, crosswalks, transit stops, curb  
10 ramps, pedestrian crossings and other walkways.

11           65. Plaintiffs are informed, believe and thereon allege that the Municipal  
12 Defendant failed and continues to fail to adopt, implement or enforce ordinances or  
13 other regulations necessary to ensure that the system of sidewalks, crosswalks, transit  
14 stops, curb ramps, pedestrian crossings and other walkways are kept free of the Scooter  
15 obstructions.

16           66. Plaintiffs are informed, believe and thereon allege that the Municipal  
17 Defendant and their agents and employees have and continue to violate the ADA by  
18 failing to timely respond to and remedy complaints about the said barriers through their  
19 policies and practices with regard the system of sidewalks, crosswalks, transit stops,  
20 curb ramps, pedestrian crossings and other walkways thereby denying disability access.

21           67. Plaintiffs are informed, believe and thereon allege that the Municipal  
22 Defendant committed the acts and omissions alleged herein with intent and/or reckless  
23 disregard of Plaintiffs' rights.

24           68. As a direct and proximate result of the aforementioned acts, Plaintiffs have  
25 suffered, and continue to suffer humiliation, hardship and anxiety, due to Defendants'  
26 failure to address accommodations, modifications, services and access required for  
27 Plaintiffs' disabilities.

28



1 transit stops, curb ramps, pedestrian crossings and other walkways for the reasons set  
2 forth above, based solely by reason of their disability.

3 76. Plaintiffs are informed, believe and thereon alleges that the Municipal  
4 Defendant committed the acts and omissions alleged herein with intent and/or reckless  
5 disregard of Plaintiffs' rights.

6 77. As a direct and proximate result of the aforementioned acts, Plaintiffs have  
7 suffered, and continue to suffer humiliation, hardship and anxiety, due to the Municipal  
8 Defendant's failure to address accommodations, modifications, services and access  
9 required for Plaintiffs' disabilities.

10 78. Municipal Defendant's discriminatory conduct is ongoing. Plaintiffs have  
11 no adequate remedy at law and are entitled to declaratory and injunctive relief set forth  
12 in 29 U.S.C. §794(a) and the Civil Rights Act of 1964, 42 U.S.C. 2000d-7(2).

13 79. Plaintiffs are also entitled to reasonable attorneys' fees and costs incurred  
14 in bringing this action.

15 **VIII. THIRD CAUSE OF ACTION**  
16 **The Americans with Disabilities Act, Title III**  
17 **(Against Scooter Defendants)**

18 80. Plaintiffs incorporate by reference each and every allegation contained in  
19 the foregoing paragraphs.

20 81. Title III of the ADA provides in relevant part: "No individual shall be  
21 discriminated against on the basis of disability in the full and equal enjoyment of the  
22 goods, services, facilities, privileges, advantages, or accommodations of any place of  
23 public accommodation by any person who owns, leases (or leases to) or operates a place  
24 of public accommodation." 42 U.S.C. § 12182(a).

25 82. Places of public accommodation are facilities operated by a private entity  
26 including a sales or rental establishment and a place of exercise and recreation. 42  
27 U.S.C. § 12181 (7)(E) & (I); 28 C.F.R. § 36.104.

28

1           83.     Discrimination under Title III includes a failure to remove barriers to  
2 access when the removal of a barrier is readily achievable. 42 U.S.C. § 12181(2)(a)(iv).

3           84.     The ADA’s broad protection against discrimination based on disability  
4 under Title III is not limited to clients or customers of the operator of a place of public  
5 accommodation. See *Molski v. Cable, Inc.*, 481 F. 3d 724 (9th Cir. 2007).

6           85.     The Scooter Defendants have used and appropriated and continue to use  
7 and appropriate various portions of the City’s public sidewalks, crosswalks, transit  
8 stops, curb ramps, pedestrian crossing and walkways, effectively turning them into their  
9 private retail stores, showrooms and storage facilities for their recreational dockless  
10 scooters business. The public walkways utilized by Scooter Defendants are therefore  
11 places of public accommodation covered by Title III of the ADA.

12           86.     The Scooter Defendants have violated Title III of the ADA by  
13 discriminating against persons based on their disability as described herein and denying  
14 access to Scooter Defendants’ facilities.

15           87.     The Scooter Defendants’ use and appropriation of portions of the City’s  
16 public sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and  
17 walkways for its business operations have created multiple barriers and hazards for  
18 Plaintiffs due to their mobility and/or visual disabilities making these walkways  
19 inaccessible to them, forcing Plaintiffs to risk their safety and well-being whenever they  
20 venture around the City and deterring them from leaving their home.

21           88.     The removal of these barriers and hazards is readily achievable by Scooter  
22 Defendants but Defendants have failed and refused to remove or mitigate them.

23           89.     Plaintiffs are entitled to declaratory and injunctive relief pursuant to 42  
24 U.S.C. § 12188(a).

25           90.     Plaintiffs are further entitled to reasonable attorneys’ fees and costs  
26 incurred in bringing this action.

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**IX. FOURTH CAUSE OF ACTION**  
**(California Government Code §4450)**  
**(Against Municipal Defendant)**

1  
2  
3  
4       91. Plaintiffs incorporate by reference each and every allegation contained in  
5 the foregoing paragraphs.

6       92. The system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian  
7 crossings and other walkways are publicly funded and intended for use by the public  
8 within the meaning of California Government Code § 4450, et seq.

9       93. Plaintiffs are informed, believe and thereon alleges that the Municipal  
10 Defendant and its agents and employees have and continue to violate California  
11 Government Code § 4450 et seq. and regulations implemented pursuant thereto by  
12 operating the system of sidewalks, crosswalks, curb ramps, pedestrian crossings and  
13 other walkways in violation of disability access requirements, for the reasons set forth  
14 above.

15       94. The aforementioned acts and omissions of the Municipal Defendant  
16 constitute denial of equal access to and use of the system of sidewalks, crosswalks,  
17 transit stops, curb ramps, pedestrian crossings and other walkways and caused Plaintiffs  
18 to suffer deprivation of their civil rights.

19       95. As a direct and proximate result of the aforementioned acts, Plaintiffs have  
20 suffered, and continue to suffer, humiliation, hardship and anxiety, due to the Municipal  
21 Defendant's failure to address accommodations, modifications, services and access  
22 required for Plaintiffs' disabilities.

23       96. The Municipal Defendant's discriminatory conduct is ongoing. There is no  
24 adequate remedy at law, and Plaintiffs are entitled to declaratory and injunctive relief.

25       97. Plaintiffs are also entitled to reasonable attorneys' fees and costs in filing  
26 this action.

27 ///

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1 **X. FIFTH CAUSE OF ACTION**  
2 **(California Government Code §11135)**  
3 **(Against All Defendants)**

4 98. Plaintiffs incorporate by reference each and every allegation contained in  
5 the foregoing paragraphs.

6 99. Section 11135(a) of California Government Code provides in relevant part:  
7 “[N]o person in the State of California shall, on the basis of...disability, be unlawfully  
8 denied the benefits of, or be unlawfully subjected to discrimination under, any program  
9 or activity that is conducted, operated, or administered by the state or by any state  
10 agency, is funded directly by the state, or receives any financial assistance from the  
11 state.”

12 100. The Municipal Defendant is funded directly by the State of California and  
13 receives financial assistance from the State of California sufficient to invoke the  
14 coverage of Government Code Sections 11135, et seq. The Municipal Defendant was  
15 and is the recipient of such funding and financial assistance at all times relevant to the  
16 claims asserted in this Complaint.

17 101. Section 11150 of the California Code of Regulations defines a “program  
18 or activity” as “any project, action or procedure undertaken directly by recipients of  
19 State support or indirectly by recipients through others by contracts, arrangements or  
20 agreements, with respect to the public generally or with respect to any private or public  
21 entity.”

22 102. Section 11150 of the California Code of Regulations defines “[s]tate  
23 financial assistance” as “any grant, entitlement, loan, cooperative agreement, contract  
24 or any other arrangement by which a State agency provides or otherwise makes  
25 available aid to recipients in the form of... (3) real or personal property or any interest  
26 in or use of such property, including: (A) transfers or leases of property for less than  
27 fair market value or for reduced consideration...”

28 ///



1           103. Section 11150 of the California Code of Regulations defines “[r]ecipient”  
2 as any “person, who...receives State support...in an amount in excess of \$10,000 in the  
3 aggregate per State fiscal year...by grant, contract or otherwise, directly or through  
4 another recipient...”.

5           104. The Municipal Defendant is a direct recipient of state financial assistance.  
6 The Scooter Defendants are recipients of state financial assistance through another  
7 recipient, the Municipal Defendant.

8           105. Plaintiffs are informed, believe and thereon allege that Defendants and  
9 their agents and employees have and continue to violate California Government Code  
10 §11135 by unlawfully denying Plaintiffs the benefits of the system of sidewalks,  
11 crosswalks, curb ramps, transit stops, pedestrian crossings and other walkways, and  
12 unlawfully subjecting Plaintiffs to discrimination regarding the Municipal Defendant’s  
13 programs and activities, for the reasons set forth above.

14           106. Defendants have refused and failed to provide Plaintiffs with full and equal  
15 access to their facilities, programs, services and activities as required by California  
16 Government Code Sections 11135, et seq. through their policies and practices with  
17 regard to the system of sidewalks, crosswalks, curb ramps, transit stops, pedestrian  
18 crossings and other walkways that fail to maintain and/or that obstruct the system’s  
19 accessibility for people with disabilities.

20           107. As a direct and proximate result of the aforementioned acts, Plaintiffs have  
21 suffered, and continue to suffer humiliation, hardship and anxiety, due to Defendants’  
22 failure to address accommodations, modifications, services and access required for  
23 Plaintiffs’ disabilities.

24           108. Defendants’ discriminatory conduct is ongoing. There is no adequate  
25 remedy at law, and Plaintiffs are entitled to declaratory and injunctive relief.

26           109. Plaintiffs are also entitled to reasonable attorneys’ fees and costs in filing  
27 this action.

28 ///

1 **XI. SIXTH CAUSE OF ACTION**

2 **California Civil Code § 54 et seq.**

3 **(Against All Defendants)**

4 110. Plaintiffs incorporate by reference each and every allegation contained in  
5 the foregoing paragraphs.

6 111. California Civil Code § 54(a) provides that “[i]ndividuals with disabilities  
7 or medical conditions have the same right as the general public to the full and free use  
8 of ...sidewalks, walkways... and other public places.”

9 112. Plaintiffs are persons with disabilities within the meaning of California  
10 Civil Code § 54(b)(1) and California Government Code § 12926.

11 113. California Civil Code Section 54.3 provides that “[a]ny person or persons,  
12 firm or corporation who denies or interferes with admittance to or enjoyment of the  
13 public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the  
14 rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for  
15 each offense for the actual damages and any amount as may be determined by a jury, or  
16 the court sitting without a jury, up to a maximum of three times the amount of actual  
17 damages but in no case less than one thousand dollars (\$1,000), and attorney’s fees as  
18 may be determined by the court in addition thereto, suffered by any person denied any  
19 of the rights provided in Sections 54, 54.1, and 54.2.”

20 114. Defendants have deprived Plaintiffs of their right to have full and free use  
21 of sidewalks, walkways, transit stops, and other public places, and therefore violate  
22 California Civil Code § 54.

23 115. For all the reasons outlined above, Defendants violated the rights of  
24 Plaintiffs under California Civil Code § 54.

25 116. As a direct and proximate result of the aforementioned acts, Plaintiffs have  
26 suffered, and continue to suffer, humiliation, hardship and anxiety, due to Defendants’  
27 failure to address accommodations, modifications, services and access required for  
28 Plaintiffs’ disabilities.

1 117. Because Defendants’ discriminatory conduct is ongoing, declaratory and  
2 injunctive relief are appropriate remedies.

3 118. Plaintiffs are entitled to reasonable attorneys’ fees and costs in filing this  
4 action.

5 119. Plaintiffs also seek an award of statutory damages under California Civil  
6 Code § 54.3.

7 **XII. SEVENTH CAUSE OF ACTION**  
8 **(California Civil Code §51 et seq.)(The Unruh Act)**  
9 **(Against All Defendants)**

10 120. Plaintiffs incorporate by reference each and every allegation contained in  
11 the foregoing paragraphs.

12 121. California Civil Code § 51(b) (the Unruh Civil Rights Act) provides that  
13 “All persons within the jurisdiction of this state are free and equal, and no matter what  
14 their sex, race, color, religion, ancestry, national origin, disability, medical condition,  
15 genetic information, marital status, sexual orientation, citizenship, primary language, or  
16 immigration status are entitled to the full and equal accommodations, advantages,  
17 facilities, privileges, or services in all business establishments of every kind  
18 whatsoever”.

19 122. The Unruh Civil Rights Act prohibits discrimination on the basis of  
20 disability in the full and equal access to the services, facilities, and advantages of a  
21 business establishment. The term “business establishment” has been interpreted in the  
22 broadest sense reasonably possible, to include public entities such as schools, see  
23 *Gibson v. County of Riverside*, 181 F. Supp. 2d 1057 (2002), and entities whose  
24 activities demonstrate that it is the functional equivalent of a classical place of public  
25 accommodation or amusement, see *Stevens v. Optimum Health Institute, San Diego*,  
26 810 F. Supp. 2d 1074 (2011).

27 123. A violation of the right of any individual under the ADA is also a violation  
28 of the Unruh Act. Ca. Civil Code § 51(f).

1           124. Defendant City of San Diego’s system of public sidewalks, crosswalks,  
2 transit stops, curb ramps, pedestrian crossings and other walkways is a “business  
3 establishment” operated by the City as defined by the Unruh Act, Ca. Civil Code § 51.

4           125. The Scooter Defendants’ appropriation of varying portions of public  
5 sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossing, and other  
6 walkways for use as their functional retail stores, showrooms and storage facilities for  
7 their dockless scooter business is a “business establishment” of said Defendants as  
8 defined by the Unruh Act.

9           126. Defendants have denied full and equal accommodations and/or services to  
10 Plaintiffs, harming Plaintiffs as set forth throughout this action. The conduct of  
11 Defendants was a substantial factor in causing Plaintiffs’ harm.

12           127. Whoever denies, aids, or incites a denial, or makes any discrimination or  
13 distinction contrary to the provisions of the Unruh Civil Rights Act, is liable for each  
14 and every offense for the actual damages, and any amount that may be determined by a  
15 jury, or a court sitting without a jury, up to a maximum of three times the amount of  
16 actual damage but in no case less than a \$4,000, suffered by a person denied rights under  
17 the Act. In addition, a court may award attorney's fees to a prevailing plaintiff. Ca. Civil  
18 Code § 52(a).

19           128. Plaintiffs also seek an award of statutory damages, attorneys’ fees and  
20 costs pursuant to Civil Code §52.

21           129. Defendants are engaged in conduct of resistance to the full enjoyment of  
22 rights of people with disabilities as described herein. Plaintiffs are therefore entitled to  
23 preventative relief including a permanent or temporary injunction and other equitable  
24 relief. Ca. Civil Code § 52(c)(3).

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26 ///

27 ///

28 ///



1 **JURY DEMAND**

2 Plaintiffs demand a trial by jury on all issues so triable.

3  
4 Respectfully submitted,

5 Dated: January 9, 2019

NEIL, DYMOTT, FRANK, MCCABE & HUDSON  
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6  
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