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 On Behalf of the Plaintiff Class

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

ALEX MONTOYA, REX SHIRLEY,  
 PHILIP PRESSEL, and WYLENE  
 HINKLE, individually, and on behalf of  
 all others similarly situated,  
  
 Plaintiffs,  
  
 vs.  
  
 CITY OF SAN DIEGO, a public entity,;  
 and DOES 1-100,  
  
 Defendants.

**CASE NO. 3:19-cv-00054-JM-BGS**

**SECOND AMENDED 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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## SECOND AMENDED COMPLAINT

### I. INTRODUCTION

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

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

3. When dockless vehicles are left in the middle of the sidewalk and other rights of way, at points of ingress and egress, they block off access to the public rights of way; furthermore, as the City of San Diego knows, the dockless vehicle riders often ride the vehicles on the sidewalk, turning the sidewalk into a vehicle highway rather than a space for safe pedestrian access and use.

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

5. Congress explicitly stated that the purpose of the ADA was to provide a clear and comprehensive national mandate for the elimination of discrimination against 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,  
19 eighteen 18 months to implement the ADA. By January 26, 1992, the effective date of  
20 the ADA, all public entities had to comply with the statutory and regulatory provisions  
21 of the ADA.

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

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1           9. Alex Montoya, Rex Shirley, Philip Pressel, and Wylene Hinkle (“Lead  
2 Plaintiffs”), as individuals and on behalf of all other similarly situated (the “Putative  
3 Class”) hereby move against the City of San Diego (“Municipal Defendant” or  
4 “Defendant”).

## 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, Defendant has 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, and he has more difficulty navigating  
28 around obstacles in his path of travel – yet, almost every single day since October of

1 2018, Mr. Montoya finds his access impeded as dockless electric scooters and bikes  
2 diminish available sidewalks for walking and diminish his enjoyment of the sidewalk,  
3 as he finds himself dodging dockless vehicles on sidewalks and street crossings, coming  
4 from all directions and rapid rates of speed without warning. As a result of the  
5 proliferation of dockless vehicles on public sidewalks and the limitation caused by his  
6 disability, Mr. Montoya now will avoid walking somewhere if he can, as he does not  
7 feel safe walking and has been deterred from accessing from the City's system of  
8 sidewalks. Mr. Montoya, as well as his special-needs brother, have nearly tripped over  
9 discarded dockless electric vehicles, as the scooters and bikes are strewn all over the  
10 sidewalks. Plaintiff Montoya is a "qualified person with a disability" and/or a person  
11 with a "disability" within the meaning of all applicable statutes and regulations  
12 including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104; 28 C.F.R. § 36.104; 29 U.S.C. §  
13 705(2)(B), and California Government Code § 12926.

14 13. Rex Shirley is a San Diego, California resident, in the neighbourhood of  
15 Mission Beach. Rex Shirley has been diagnosed with Parkinson's disease, which has  
16 progressively advanced over several years. Mr. Shirley requires the use of a mobility  
17 scooter for his transportation. In October of 2018, Mr. Shirley was nearly hit by an  
18 electric scooter on the Mission Beach Boardwalk. Since approximately October of  
19 2018, Mr. Shirley has found dockless electric bikes and scooters blocking his access to  
20 the sidewalks of Mission Beach on a nearly continuous basis and has often been unable  
21 to maneuver his mobility scooter around the obstacles in his path. Mr. Shirley has seen  
22 dockless electric scooters left on their sides on the alleys and streets of Mission Beach,  
23 near his home, and those scooters block access and impede Mr. Shirley's ability to  
24 safely travel the streets and sidewalks of Mission Beach. Mr. Shirley has to drive his  
25 mobility scooter around the dockless electric vehicles to get places, and is often unable  
26 to do so. Mr. Shirley fears further close encounters with the dockless vehicles, and  
27 cannot use the sidewalks and public rights of way as he would please because of blocked  
28 access and the inability to avoid electric vehicles that, due to his Parkinson's disease,

1 he cannot hear coming or easily evade. As a result of these issues created by dockless  
 2 vehicles, Mr. Shirley goes out less as he is deterred from utilizing the system of  
 3 sidewalks, avoids the Mission Beach Boardwalk and strand areas near where he lives,  
 4 and finds his local travel impeded when he does go out. For the same reasons, Mr.  
 5 Shirley also finds it difficult to utilize the public rights of way to walk his dog. Mr.  
 6 Shirley is a “qualified person with a disability” and/or a person with a “disability”  
 7 within the meaning of all applicable federal and state statutes and regulations including  
 8 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),  
 9 and California Government Code § 12926.

10 14. Philip Pressel is a San Diego, California resident, living in downtown San  
 11 Diego. Mr. Pressel has lost the use of his left leg and is an amputee. Mr. Pressel has also  
 12 undergone two back surgeries and has severe lower back pain. Mr. Pressel now requires  
 13 the use of an electric mobility scooter unless walking very short distances, usually no  
 14 more than one block or so. Mr. Pressel is also immune-suppressed because of an organ  
 15 transplant. Mr. Pressel chose to live in downtown because of the ability to easily access  
 16 numerous places. Since approximately October of 2018, Mr. Pressel has encountered  
 17 dockless electric scooters and bikes on sidewalks and near or in curb cuts which, due to  
 18 his disability, he is unable to safely navigate around without assistance. Mr. Pressel’s  
 19 wife has had to move dockless scooters and bikes out of the way for Mr. Pressel to  
 20 access the pedestrian walkways, and Mr. Pressel has been deterred from utilizing the  
 21 system of sidewalks both independently and with other people. Mr. Pressel has had  
 22 numerous occasions where he could not see a discarded dockless scooter laying on the  
 23 ground, and has nearly collided with those grounded scooters. Plaintiff Pressel is a  
 24 “qualified person with a disability” and/or a person with a “disability” within the  
 25 meaning of all applicable federal and state statutes and regulations including 42 U.S.C.  
 26 § 12131(2), 28 C.F.R. § 35.104; 28 C.F.R. § 36.104; 29 U.S.C. § 705(2)(B), and  
 27 California Government Code § 12926.

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1           15. Wylene Hinkle is a resident of the City of San Diego, living in downtown  
 2 San Diego. Ms. Hinkle is a person who is blind, and has been her entire life. She uses  
 3 hearing aids and has Psoriatic Arthritis, which makes it difficult for her to walk or stand  
 4 for long periods of time. Because she cannot see, it is impossible for her to safely avoid  
 5 dockless vehicles, whether they are being driven on the sidewalk or left strewn across  
 6 her path of travel. Ms. Hinkle has had two incidents, in September of 2018 and  
 7 September of 2019, where she was hit by a scooter while walking downtown near her  
 8 home, causing her to sustain minor injuries. In addition, since October of 2018, Ms.  
 9 Hinkle's access to crosswalks in the City has been impeded as scooters discarded and  
 10 left leaning against traffic light poles block access to the buttons which trigger the  
 11 audible signals which tell Ms. Hinkle whether it is safe to cross. Ms. Hinkle does not  
 12 drive, and as a result of this impeded access, has been forced to use the public rights of  
 13 way less often. Plaintiff Hinkle is a "qualified person with a disability" and/or a person  
 14 with a "disability" within the meaning of all applicable federal and state statutes and  
 15 regulations including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104; 28 C.F.R. § 36.104;  
 16 29 U.S.C. § 705(2)(B), and California Government Code § 12926.

17           16. The putative class consists of all residents of the City of San Diego with  
 18 mobility and/or visual impairments. The class shall be divided into two subclasses:

- 19           a. Residents of the City of San Diego with mobility impairments (the  
 20           "Mobility Impairment Subclass"); and,
- 21           b. Residents of the City of San Diego with visual impairments (the "Visual  
 22           Impairment Subclass").

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

25           18. Defendant City of San Diego is a public entity within the meaning of Title  
 26 II of the Americans with Disabilities Act (the "ADA") and on information and belief,  
 27 has received federal financial assistance within the meaning of Section 504 of the  
 28 Rehabilitation Act, 29 U.S.C. §794, et seq. (the "Rehabilitation Act") and state financial



1 assistance within the meaning of Government Code 11135. Defendant City of San  
2 Diego has received federal and state financial assistance sufficient to invoke the  
3 coverage of Section 504 of the Rehabilitation Act and California Government Code  
4 Section 11135.

5 19. Defendant City of San Diego is a local government entity with the  
6 responsibility of providing Plaintiffs access to its public facilities, programs, services  
7 and activities. Defendant City of San Diego is responsible for maintaining the system  
8 of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other  
9 walkways within the City of San Diego.

#### 10 **IV. FACTUAL ALLEGATIONS**

11 20. The City of San Diego has failed to adequately maintain the system of  
12 sidewalks, crosswalks, curb ramps, transit stops, pedestrian crossings and other  
13 walkways, by allowing dockless vehicles to proliferate unchecked throughout San  
14 Diego and to block safe and equal access for people with disabilities who reside in the  
15 City. Defendant City of San Diego has thereby denied Plaintiffs the benefits of the  
16 City's services, programs, and activities based on their disabilities.

17 21. Dockless vehicle companies have used and appropriated varying portions  
18 of the City's public sidewalks, crosswalks, transit stops, curb ramps, pedestrian  
19 crossings and walkways with impunity for their own private profit – effectively turning  
20 them into their private retail stores, showrooms, highways, and storage facilities - in  
21 abject disregard for the safety and access rights of San Diego's residents with  
22 disabilities.

23 22. Dockless scooters and bikes present obstacles and block full access and  
24 use of the sidewalk when left on the ground. Across the City of San Diego, idle dockless  
25 vehicles clog the system of sidewalks, crosswalks, curb ramps, transit stops, pedestrian  
26 crossings and other walkways.

27 23. Perhaps even more dangerous, dockless vehicles may be driven at speeds  
28 much faster than the speed of foot traffic through the system of sidewalks, crosswalks,

1 curb ramps, transit stops, pedestrian crossings and other walkways, despite the  
2 California Vehicle Code's prohibition against operation of a motorized vehicle upon  
3 the sidewalks. Effectively, the practice turns the systems of sidewalks into a dockless  
4 vehicle highway.

5 24. Once a dockless vehicle rider is done using the dockless vehicle, the  
6 dockless vehicle rider can leave the dockless vehicles where the user may see fit, as part  
7 of the "dockless" business model – typically, idle dockless vehicles end up on public  
8 property in the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian  
9 crossings and other walkways, either on the ground, parked upright, or left resting  
10 sideways blocking portions of the systems of sidewalks and rights of way. Groups of  
11 dockless vehicles may be discarded in close proximity, causing a blockade and  
12 diminishing full use of the sidewalks for pedestrians.

13 25. 37. This "dockless" practice violates San Diego Municipal Code  
14 §129.0702(a)(2), which requires a Public Right-of-Way Permit for the construction of  
15 "privately owned structures, facilities, or improvements in the public right-of-way or in  
16 a public service easement."

17 26. This "dockless" practice also violates San Diego Municipal Code  
18 §54.0110, which states: "It is unlawful for any person to erect, place, allow to remain,  
19 construct, establish, plant, or maintain any vegetation or object on any public street,  
20 alley, sidewalk, highway, or other public property or public right-of-way, except as  
21 otherwise provided by this Code." Yet, the City, while vigorously enforcing this  
22 provision against homeless individuals - citing and arresting them for placing sleeping  
23 bags, shopping carts and other personal belongings on the ground – has intentionally,  
24 recklessly, or thoughtlessly overlooked the impact of dockless vehicles and their severe  
25 negative impact on disability access.

26 27. To continue appropriating and re-purposing the City of San Diego's  
27 sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings, dockless vehicle  
28 companies hire independent contractors to tend to stage, recover, and return the

1 dockless vehicles to the system of public sidewalks, crosswalks, transit stops, curb  
2 ramps, pedestrian crossings and other walkways.

3       28. Dockless vehicles cause barriers in paths of travel when they are operated.  
4 Dockless vehicles are operated on the system of sidewalks, crosswalks, transit stops,  
5 curb ramps, pedestrian crossings and other walkways. The dockless scooters are motor  
6 powered via an electric battery, propelling them at speeds around twenty (20) miles per  
7 hour, or more. Dockless bikes are also motor powered via an electric battery, propelling  
8 them at speeds around fifteen (15) miles per hour, or more. No training or education is  
9 required for people to ride dockless vehicles. The combination of high relative speeds,  
10 compared to pedestrians, and lack of restrictions regarding the operator, creates  
11 hazardous conditions which causes Lead Plaintiffs, and others in the Putative Class,  
12 difficulty, frustration, and risk of serious physical harm. Lead Plaintiffs, should they  
13 wager trying to access the benefits of the system of sidewalks, crosswalks, transit stops,  
14 curb ramps, pedestrian crossings and other walkways, do so in a state of hypervigilance  
15 and stress as the concern of being struck and possibly injured by a wayward dockless  
16 vehicle persists, and Lead Plaintiffs do not know whether, due to their disabilities, they  
17 will be unable to safely navigate the obstacles caused by the dockless vehicle in their  
18 path and therefore be unable to access the sidewalks on an independent basis.

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

1 sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other  
2 walkways.

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

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

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

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

25 34. The combination of the City of San Diego's thoughtlessness, indifference,  
26 and failure to maintain the system of sidewalks, crosswalks, transit stops, curb ramps,  
27 pedestrian crossings and other walkways in compliance with the needs of disabled  
28 individuals results in Plaintiffs suffering disproportionate harm based on their

1 disabilities. The City of San Diego's system of sidewalks, crosswalks, transit stops, curb  
2 ramps, pedestrian crossings and other walkways is no longer readily accessible to and  
3 usable by persons with mobility and/or visual disabilities due to the pervasive and ever-  
4 growing presence of dockless vehicles that create physical access barriers along the path  
5 of travel on the City's public walkways.

6 35. Lead Plaintiffs and other persons with mobility or visual impairments must  
7 roll the dice every time they choose to use the system of sidewalks and other pedestrian  
8 rights of way, as they gamble as to whether the system of sidewalks, crosswalks, transit  
9 stops, curb ramps, pedestrian crossings and other walkways might be unfettered or  
10 instead that Plaintiffs might be blocked or themselves placed in danger by encountering  
11 dockless vehicles strewn along their path that, due to their disabilities, they cannot  
12 reasonably circumvent or avoid. These obstructions deny people with disabilities equal  
13 access to the City of San Diego's system of sidewalks, crosswalks, transit stops, curb  
14 ramps, pedestrian crossings and other walkways and strip them of their freedom and  
15 their right to safely use the public sidewalk in the same fashion and with the same  
16 benefit as enjoyed by those without disabilities.

17 36. Lead Plaintiffs and class members have mobility and/or visual  
18 impairments. Lead Plaintiffs and class members have encountered dockless vehicles  
19 strewn across, blocking, and/or being driven upon the system of public sidewalks,  
20 crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways in the  
21 City of San Diego, denying them full and equal access based on disability, and causing  
22 Plaintiffs difficulty, frustration and embarrassment, and placing them in danger of  
23 injury or death. Plaintiffs continue to be deterred from leaving their homes and their  
24 places of business since the invasion of these dockless vehicles onto the streets of the  
25 City of San Diego.

26 37. The maintenance of an accessible system of sidewalks, crosswalks, transit  
27 stops, curb ramps, pedestrian crossings and other walkways for people with disabilities  
28 go to the heart of the purpose of the ADA and other disability rights laws, and is

1 essential for full integration of people with disabilities into the community. The  
 2 Municipal Defendant's failure to ensure that the system of public walkways is kept  
 3 accessible to persons with mobility or visual impairments free of dockless vehicle  
 4 obstructions causes disproportionate harm to people with disabilities and thereby  
 5 discriminates based on disability in violation of multiple federal and state disability  
 6 rights laws. This lawsuit seeks to ensure fair, full, and equal access to the system of  
 7 sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other  
 8 walkways for all residents with disabilities in the City of San Diego.

9 38. Plaintiffs thus bring this action to, among other things, remedy violations  
 10 of Title II of the ADA, 42 U.S.C. §12131, et seq., and its accompanying regulations,;  
 11 and, Section 504 of the Rehabilitation Act and its accompanying regulations, as well as  
 12 analogous state statutes including California Government Code §11135, California  
 13 Civil Code §54, et seq., California Government Code §4450, and California Civil Code  
 14 §51, et seq. Plaintiffs seek declaratory and injunctive relief pursuant to the above, as  
 15 well as an award of attorneys' fees and costs under applicable law. Plaintiffs also seek  
 16 statutory minimum penalties under California law – Plaintiffs do not seek actual  
 17 damages in this class action.

## 18 **V. CLASS ACTION ALLEGATIONS**

19 39. The Lead Plaintiffs bring this action individually, and on behalf of all  
 20 residents of the City of San Diego with mobility or visual impairments. The class shall  
 21 be divided into two subclasses:

- 22 a. Residents of the City of San Diego with mobility impairments (the  
 23 “Mobility Impairment Subclass”); and,
- 24 b. Residents of the City of San Diego with visual impairments (the “Visual  
 25 Impairment Subclass”).

26 40. Each member of the Putative Class is a “qualified person with a disability”  
 27 and/or a person with a “disability” within the meaning of all applicable federal and state  
 28 statutes and regulations including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104; 28 C.F.R.

1 § 36.104; 29 U.S.C. § 705(2)(B), and California Government Code § 12926. The  
2 persons in the Putative Class are so numerous that the joinder of all such persons is  
3 impracticable and that the disposition of their claims in a class action rather than in  
4 individual actions will benefit the parties and the Court. The Putative Class consists of  
5 tens of thousands of persons with disabilities of mobility or visual impairment that  
6 reside in the City of San Diego.

7 41. Lead Plaintiffs are informed, believe, and thereon allege that the  
8 Defendant's policies and procedures violate the ADA, the Rehabilitation Act, and  
9 analogous state statutes with regard to the system of sidewalks, crosswalks, curb ramps,  
10 pedestrian crossings and other walkways and disability access.

11 42. Lead Plaintiffs are informed, believe, and thereon allege that Defendant  
12 has not adopted and does not enforce appropriate policies to prevent discrimination  
13 against persons with disabilities and to ensure equal access to programs, services and  
14 activities for persons with disabilities.

15 43. The violations of the ADA, the Rehabilitation Act and related California  
16 statutes set forth in detail above, have injured all members of the Putative Class,  
17 violating their rights.

18 44. Defendant acted or refused to act on grounds generally applicable to the  
19 Putative Class, thereby making appropriate final injunctive or declaratory relief with  
20 respect to the class as a whole appropriate.

21 45. The claims of the Lead Plaintiffs are typical of the Putative Class that they  
22 arise from the same course of conduct engaged in by Defendant. The relief sought herein  
23 will benefit all class members alike.

24 46. Lead Plaintiffs will fairly and adequately represent the interests of the  
25 class. Lead Plaintiffs have no interests adverse to the interests of other members of the  
26 class and have retained counsel that is competent and experienced in litigation complex  
27 class actions, including disability rights cases.

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1           47. With regard to the Putative Class, the requirements of Rule 23 of the  
2 Federal Rules of Civil Procedure are satisfied as such:

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

14          48. The common questions of law and fact, shared by all class members,  
15 include:

- 16          a. Whether the Municipal Defendant is violating Title II of the ADA,  
17 42 U.S.C. § 12131 et seq., by depriving persons with disabilities  
18 access to programs, services and activities of the City of San Diego,  
19 and otherwise discriminating against persons with disabilities, as set  
20 forth above;
- 21          b. Whether the Municipal Defendant is violating Section 504 of the  
22 Rehabilitation Act, 29 U.S.C. § 794 et seq., by depriving persons  
23 with disabilities access to programs, services and activities of the  
24 City of San Diego, and otherwise discriminating against persons  
25 with disabilities, as set forth above;
- 26          c. Whether the Defendant is violating California Government Code  
27 Section 11135(a), which prohibits denial of benefits to persons with  
28

disabilities of any program or activity that is funded directly by the state or receives any financial assistance from the state;

d. Whether the Defendant is violating California Civil Code §54 et seq., by depriving persons with disabilities full and equal access;

e. Whether the Defendant is violating California Government Code §4450; and,

f. Whether the Defendant is violating California Civil Code §51 et seq.

## **VI. FIRST CAUSE OF ACTION**

### **The Americans with Disabilities Act – Title II**

49. Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs.

50. Congress enacted the ADA upon finding, among other things, that “society has tended to isolate and segregate individuals with disabilities” and that such forms of discrimination continue to be a “serious and pervasive social problem.” 42 U.S.C. § 12101 (a)(2).

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

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

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

54. At all times relevant to this action, Plaintiffs were qualified individuals

1 with disabilities within the meaning of Title II of the ADA and met the essential  
 2 eligibility requirements for the receipt of the services, programs, or activities of the City  
 3 of San Diego. 42 U.S.C §12131.

4 55. Municipal Defendant is mandated to operate each program, service, or  
 5 activity “so that, when, viewed in its entirety, it is readily accessible to and useable by  
 6 individuals with disabilities.” 28 C.F.R. § 35.150; see also 28 C.F.R. §§ 35.149 &  
 7 35.151. The system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian  
 8 crossings and other walkways themselves constitute an essential public service,  
 9 program, or activity under Title II of the ADA. 28 C.F.R. § 35.104; see *Barden v. City*  
 10 *of Sacramento*, 292 F.3d 1073 (2002).

11 56. The regulations implementing Title II of the ADA provide that a public  
 12 entity must maintain the features of all facilities required to be accessible by the ADA.  
 13 28 C.F.R. § 35.133. Facilities required to be accessible include roads, walks and  
 14 passageways. 28 C.F.R. § 1035.104.

15 57. Plaintiffs are informed, believe and thereon allege that the system of  
 16 sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other  
 17 walkways are not fully, equally and safely accessible to Plaintiffs when viewed in their  
 18 entirety.

19 58. Plaintiffs are informed, believe and thereon allege that the Municipal  
 20 Defendant violated and continues to violate the ADA by failing to ensure that the system  
 21 of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other  
 22 walkways are kept free of the dockless vehicle obstructions and thereby the City of San  
 23 Diego denies Plaintiffs the benefits of the system of sidewalks, crosswalks, transit stops,  
 24 curb ramps, pedestrian crossings and other walkways, due to their disabilities.

25 59. Plaintiffs are informed, believe and thereon allege that the Municipal  
 26 Defendant failed and continues to fail to adopt, implement or enforce ordinances or  
 27 other regulations necessary to ensure that the system of sidewalks, crosswalks, transit  
 28

1 stops, curb ramps, pedestrian crossings and other walkways are kept free of the dockless  
2 vehicle obstructions.

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

8 61. Plaintiffs are informed, believe and thereon allege that the Municipal  
9 Defendant committed the acts and omissions alleged herein with intent and/or reckless  
10 disregard, thoughtlessness and indifference to Plaintiffs' rights.

11 62. As a direct and proximate result of the aforementioned acts, Plaintiffs have  
12 suffered, and continue to suffer humiliation, hardship and anxiety, due to Defendant's  
13 failure to address accommodations, modifications, services and access required for  
14 Plaintiffs' disabilities. Plaintiffs have been deterred from utilizing the system of  
15 sidewalks and pedestrian rights of way, and have been stripped of their independence.

16 63. Municipal Defendant's discriminatory conduct is ongoing, and causing  
17 continuing harm, including deterrence and stripping Plaintiffs of their independence.  
18 Plaintiffs have no adequate remedy at law and are therefore entitled to declaratory and  
19 injunctive relief pursuant to 42 U.S.C. § 12133.

20 64. Plaintiffs are further entitled to reasonable attorneys' fees and costs  
21 incurred in bringing this action.

## 22 **VII. SECOND CAUSE OF ACTION**

### 23 **(The Rehabilitation Act)**

24 65. Plaintiffs incorporate by reference each and every allegation contained in  
25 the foregoing paragraphs.

26 66. Section 504 of the Rehabilitation Act of 1973 provides in relevant part:  
27 "[N]o otherwise qualified person with a disability...shall, solely by reason of her or his  
28 disability, be excluded from the participation in, be denied the benefits of, or be

1 subjected to discrimination under any program or activity receiving federal financial  
2 assistance...” 29 U.S.C. § 794.

3 67. Plaintiffs are otherwise qualified to participate in the services, programs,  
4 or activities that are provided to individuals in the City of San Diego. See 29 U.S.C. §  
5 794(b).

6 68. The Municipal Defendant is a direct recipient of federal financial  
7 assistance sufficient to invoke the coverage of Section 504 of the Rehabilitation Act and  
8 have received such federal assistance at all times relevant to the claims asserted in this  
9 Complaint.

10 69. Plaintiffs are informed, believe and thereon allege that the Municipal  
11 Defendant and their agents and employees have violated and continue to violate the  
12 Rehabilitation Act and the regulations promulgated thereunder by excluding Plaintiffs  
13 from participation in, denying Plaintiffs the benefits of, and subjecting Plaintiffs to  
14 discrimination in the benefits and services of the system of sidewalks, crosswalks,  
15 transit stops, curb ramps, pedestrian crossings and other walkways for the reasons set  
16 forth above, based solely by reason of their disabilities.

17 70. Plaintiffs are informed, believe and thereon alleges that the Municipal  
18 Defendant committed the acts and omissions alleged herein with intent and/or reckless  
19 disregard of Plaintiffs’ rights.

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

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

27 73. Plaintiffs are also entitled to reasonable attorneys’ fees and costs incurred  
28 in bringing this action.

**VIII. THIRD CAUSE OF ACTION**  
**(California Government Code §4450)**

74. Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs.

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

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

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

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

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

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

**IX. FOURTH CAUSE OF ACTION**  
**(California Government Code §11135)**

1           81. Plaintiffs incorporate by reference each and every allegation contained in  
2 the foregoing paragraphs.

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

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

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

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

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



1           87. The Municipal Defendant is a direct recipient of state financial assistance.

2           88. Plaintiffs are informed, believe and thereon allege that Defendants and  
3 their agents and employees have and continue to violate California Government Code  
4 §11135 by unlawfully denying Plaintiffs the benefits of the system of sidewalks,  
5 crosswalks, curb ramps, transit stops, pedestrian crossings and other walkways, and  
6 unlawfully subjecting Plaintiffs to discrimination regarding the Municipal Defendant's  
7 programs and activities, for the reasons set forth above.

8           89. Defendant has refused and failed to provide Plaintiffs with full and equal  
9 access to their facilities, programs, services and activities as required by California  
10 Government Code Sections 11135, et seq. through their policies and practices with  
11 regard to the system of sidewalks, crosswalks, curb ramps, transit stops, pedestrian  
12 crossings and other walkways that fail to maintain and/or that obstruct the system's  
13 accessibility for people with disabilities.

14           90. As a direct and proximate result of the aforementioned acts, Plaintiffs have  
15 suffered, and continue to suffer humiliation, hardship and anxiety, due to Defendant's  
16 failure to address accommodations, modifications, services and access required for  
17 Plaintiffs' disabilities.

18           91. Defendant's discriminatory conduct is ongoing. There is no adequate  
19 remedy at law, and Plaintiffs are entitled to declaratory and injunctive relief.

20           92. Plaintiffs are also entitled to reasonable attorneys' fees and costs in filing  
21 this action.

## 22                                   **X. FIFTH CAUSE OF ACTION**

### 23                                   **California Civil Code § 54 et seq.**

24           93. Plaintiffs incorporate by reference each and every allegation contained in  
25 the foregoing paragraphs.

26           94. California Civil Code § 54(a) provides that "[i]ndividuals with disabilities  
27 or medical conditions have the same right as the general public to the full and free use  
28 of ...sidewalks, walkways... and other public places."

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

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

12           97. The City of San Diego has deprived Plaintiffs of their right to have full and  
13 free use of sidewalks, walkways, transit stops, and other public places, and therefore  
14 violated California Civil Code § 54.

15           98. For all the reasons outlined above, Defendant violated the rights of  
16 Plaintiffs under California Civil Code § 54.

17           99. As a direct and proximate result of the aforementioned acts, Plaintiffs have  
18 suffered, and continue to suffer, humiliation, hardship and anxiety, due to Defendant’s  
19 failure to address accommodations, modifications, services and access required for  
20 Plaintiffs’ disabilities.

21           100. Because Defendant’s discriminatory conduct is ongoing, declaratory and  
22 injunctive relief are appropriate remedies.

23           101. Plaintiffs are entitled to reasonable attorneys’ fees and costs in filing this  
24 action.

25           102. Plaintiffs seek an award of statutory damages of at least \$1,000 per  
26 violation, available as the statutory minimum penalty for each violation of Plaintiffs’  
27 rights under California Civil Code § 54.3.

28 ///

**XI. SIXTH CAUSE OF ACTION**

**(California Civil Code §51 et seq.)(The Unruh Act)**

103. Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs.

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

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

106. A violation of the right of any individual under the ADA is also a violation of the Unruh Act. California Civil Code § 51(f).

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

108. Defendant has denied full and equal accommodations and/or services to Plaintiffs, harming Plaintiffs as set forth throughout this action, notably including deterring Plaintiffs from utilizing the City of San Diego’s system of sidewalks,

1 crosswalks, curb ramps, transit stops, pedestrian crossings and other walkways. The  
2 conduct of Defendant was a substantial factor in causing Plaintiffs' harm.

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

10 110. Plaintiffs seek an award of statutory damages of at least \$4,000 per  
11 violation, available as the statutory minimum penalty for each violation of each  
12 Plaintiffs' rights, as well as attorneys' fees and costs pursuant to Civil Code §52.

13 111. Defendant is engaged in conduct of resistance to the full enjoyment of  
14 rights of people with disabilities as described herein. Plaintiffs are therefore entitled to  
15 preventative relief including a permanent or temporary injunction and other equitable  
16 relief. Ca. Civil Code § 52(c)(3).

## 17 **XII. PRAYER FOR RELIEF**

18 112. Lead Plaintiffs, individually, and on behalf of the Putative Class, pray for  
19 judgment and relief against Defendant as follows:

- 20 A. For an order declaring this a class action pursuant to Rule 23 of the
- 21 Federal Rules of Civil Procedure on behalf of the Putative Class
- 22 described herein and appointing Lead Plaintiffs to serve as class
- 23 representatives and Plaintiffs' counsel Neil Dymott Frank McCabe and
- 24 Hudson, APLC as Lead Counsel for the Putative Class;
- 25 B. For an order enjoining the City of San Diego from permitting dockless
- 26 vehicles to be present in any manner, including parking and storage,
- 27 on the system of sidewalks, crosswalks, curb ramps, transit stops,
- 28 pedestrian crossings and other walkways in the City of San Diego;

- 1 C. For an order that this matter remain under this Court's jurisdiction until  
2 Defendant fully complies with the Orders of this Court;  
3 D. For statutory minimum penalty arising from Defendant's wrongful and  
4 illegal conduct;  
5 E. For an award of reasonable attorneys' fees and all costs and expenses  
6 incurred in the course of prosecuting this action;  
7 F. For pre-judgment and post-judgment interest at the legal rate; and  
8 G. For such other and further relief as the Court deems just and proper.

9 **JURY DEMAND**

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

11 Dated: April 10, 2020

Respectfully submitted.  
NEIL, DYMOTT, FRANK, MCCABE & HUDSON  
A Professional Law Corporation

13 By: *s/ Robert W. Frank*

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22 Dated: April 10, 2020

DISABILITY RIGHTS CALIFORNIA

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1 Dated: April 10, 2020

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