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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
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Clerk of the Superior Court  
By Erika Engel, Deputy Clerk

7 Attorneys for Plaintiff City of San Diego

Exempt from fees per Gov't Code § 6103  
To the benefit of the City of San Diego

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO  
9

10 CITY OF SAN DIEGO, a public entity	)	Case No. 37-2021-00046487-CU-BC-CTL
	)	
11 Plaintiff,	)	<b>CITY OF SAN DIEGO'S COMPLAINT</b>
	)	<b>FOR:</b>
12 v.	)	
	)	<b>1. BREACH OF CONTRACT-</b>
13 WHEELS LAB, INC., a Delaware corporation;	)	<b>FAILURE TO DEFEND</b>
14 SKIP TRANSPORT, INC., a Delaware	)	<b>2. BREACH OF CONTRACT-</b>
corporation; SKINNY LABS INC., a Delaware	)	<b>FAILURE TO SETTLE /</b>
15 corporation; NEUTRON HOLDINGS, INC., a	)	<b>INDEMNIFY</b>
Delaware corporation; LYFT, INC., a Delaware	)	<b>3. DECLARATORY RELIEF</b>
16 corporation; BIRD RIDES, INC., a Delaware	)	
corporation; and DOES 1 to 50, inclusive;	)	
17	)	<b>[DEMAND FOR JURY TRIAL]</b>
	)	
18 Defendants.	)	
	)	

19  
20 COMES NOW Plaintiff, CITY OF SAN DIEGO, a public entity, by and through their  
21 attorneys of record, Danna W. Nicholas and Shawn Robinson, and who hereby complain and allege  
22 against WHEELS LAB, INC., a Delaware corporation; SKIP TRANSPORT, INC., a Delaware  
23 corporation; SKINNY LABS INC., a Delaware corporation; NEUTRON HOLDINGS, INC., a  
24 Delaware corporation; LYFT, INC., a Delaware corporation; BIRD RIDES, INC., a Delaware  
25 corporation; and DOES 1 to 50, inclusive (hereinafter collectively referred to as "Defendants"),  
26 and each of them, as follows:

27 ///  
28 ///

**THE PARTIES**

1  
2           1.       Plaintiff, CITY OF SAN DIEGO (hereinafter “Plaintiff” or “City”) is informed and  
3 believes, and on that basis alleges, that Plaintiff, at all times mentioned herein was a charter CITY,  
4 organized and existing under the laws of the State of California.

5           2.       Plaintiff is informed and believes, and thereon alleges, that at all times relevant to  
6 the subject matter of this litigation, WHEELS LAB, INC. (hereinafter “WHEELS”) was and is a  
7 Delaware corporation duly authorized to conduct business in the state of California.

8           3.       Plaintiff is informed and believes, and thereon alleges, that at all times relevant to  
9 the subject matter of this litigation, SKIP TRANSPORT, INC. (hereinafter “SKIP”) was and is a  
10 Delaware corporation duly authorized to conduct business in the state of California.

11          4.       Plaintiff is informed and believes, and thereon alleges, that at all times relevant to  
12 the subject matter of this litigation, SKINNY LABS INC. (hereinafter “SKINNY”) was and is a  
13 Delaware corporation duly authorized to conduct business in the state of California. On  
14 information and belief, SKINNY conducted business under the fictitious business name “Spin.”

15          5.       Plaintiff is informed and believes, and thereon alleges, that at all times relevant to  
16 the subject matter of this litigation, NEUTRON HOLDINGS, INC. (hereinafter “NEUTRON”)  
17 was and is a Delaware corporation duly authorized to conduct business in the state of California.  
18 On information and belief, NEUTRON conducted business under the fictitious business name  
19 “Lime.”

20          6.       Plaintiff is informed and believes, and thereon alleges, that at all times relevant to  
21 the subject matter of this litigation, LYFT, INC. (hereinafter “LYFT”) was and is a Delaware  
22 corporation duly authorized to conduct business in the state of California.

23          7.       Plaintiff is informed and believes, and thereon alleges, that at all times relevant to  
24 the subject matter of this litigation, BIRD RIDES, INC. d/b/a BIRD (hereinafter “BIRD”) was and  
25 is a Delaware corporation duly authorized to conduct business in the state of California. On  
26 information and belief, BIRD conducted business under the fictitious business name “Bird.”

27          8.       Plaintiff is informed and believes, and thereon alleges, that at all times relevant to  
28 the subject matter of this litigation, Defendants named herein were and are either individuals,

1 sole proprietorships, partnerships, registered professionals, corporations or other legal entities  
2 which were licensed to do and were doing business in the County of San Diego, State of California.

3 9. The true names and capacities of Defendants DOES 1 to 50, inclusive, whether  
4 individual, corporate, associate, or otherwise, are presently unknown to Plaintiff, who, therefore,  
5 sues said Defendants by such fictitious names. Plaintiff is informed and believes, and based  
6 thereon alleges DOES 1 to 50, and each of them, proximately caused Plaintiff's damages as alleged  
7 herein, and are liable for the causes of action alleged. Plaintiff will amend this Complaint to show  
8 their true names and capacities when the same have been ascertained, in accordance with  
9 California Code of Civil Procedure section 474.

10 10. Plaintiff is informed and believes, and thereon alleges Defendants, and each of  
11 them, including those described herein as DOES, were at all times herein mentioned the  
12 employees, agents, representatives, joint venturers, and/or partners of Defendants, and in doing the  
13 things hereinafter alleged, were acting within the purpose, course, and scope of such agency,  
14 employment, joint venture, partner relationship, and with the permission, consent, and ratification  
15 of Defendants.

### 16 **JURISDICTION**

17 11. This Court has personal jurisdiction over the Defendants, and each of them, as they  
18 were at all relevant times hereinafter mentioned engaged in business in the State of California and  
19 the County of San Diego.

20 12. Further, this action arises from claims of breach of contract and for declaratory  
21 judgment arising from a dispute relating to agreements entered into in the State of California and  
22 business operations in the County of San Diego.

### 23 **THE CONTRACTS**

24 13. Defendants, and each of them, entered into separate agreements with Plaintiff.  
25 Specifically, each Defendant submitted a Shared Mobility Device Application (hereinafter  
26 "Application") to Plaintiff seeking permits for operations relating to shared mobility devices,  
27 commonly referred to as "electric scooters," in the City of San Diego. Defendants, upon receipt of  
28 approval from Plaintiff, were permitted to operate and provide the public with dockless electric

1 scooters and/or bicycles for rent and use.

2 14. As a condition of the permits sought, Defendants, and each of them, agreed to and  
3 executed identical Indemnification Agreements, which were a part of the Applications submitted  
4 by each Defendant.

5 15. The Indemnification Agreements provide in relevant part:

6 A. GENERAL

7 As a condition of this Permit, Operator agrees to defend, indemnify, and hold harmless the  
8 City, its officers, elected or appointed officials, employees, agents, and volunteers from  
9 and against any and all claims, damages, losses, expenses, fines, penalties, judgments,  
10 demands, and defense costs (including, without limitation, actual, direct, out- of-pocket  
11 costs and expenses, and amounts paid in compromise, settlement, or judgment, and  
12 reasonable legal fees arising from any claim or litigation of every kind or nature or liability  
13 of any kind or nature including civil, criminal, administrative or investigative) arising out  
14 of, in connection with, or which are in any way related to, the City's issuance of or decision  
15 to approve the Permit, the process used by the City in making decisions, the Operator's  
16 (including its officers, managers, employees, Operators, agents, and volunteers) business  
17 conduct and operations, any violation of any laws by the Operator (including its officers,  
18 managers, employees, Operators, agents, and volunteers) or its users, or any bodily injury  
19 including death or damage to property arising out of or in connection with any use, misuse,  
20 placement or misplacement, including but not limited to placement or misplacement  
21 resulting in alleged violations of the Americans with Disabilities Act (ADA), of Operator's  
22 device, property or equipment by any person, except such loss or damage which was caused  
23 by the sole willful misconduct of the City. Operator will conduct all defenses pursuant to  
24 this Agreement at Operator's sole cost and expense, and City shall reasonably approve  
25 selection of the counsel to represent City as proposed by Operator. This Agreement shall  
26 apply to all claims and liability regardless of whether any insurance of Operator, its  
27 affiliates or other parties are applicable thereto. The policy limits of any insurance of  
28 Operator, its affiliates or other parties are not a limitation upon the obligation of Operator,  
including without limitation, the amount of indemnification to be provided by Operator.  
The provisions of this Agreement shall survive the termination of the Permit.

20 16. WHEELS submitted its executed Application on July 9, 2019. A true and accurate  
21 copy of WHEELS' Application is attached hereto as **Exhibit 1**.

22 17. WHEELS submitted a renewal Application on January 8, 2020. A true and accurate  
23 copy of WHEELS' renewal Application is attached hereto as **Exhibit 2**.

24 18. SKIP submitted its executed Application on June 26, 2019. A true and accurate  
25 copy of SKIP's Application is attached hereto as **Exhibit 3**.

26 19. SKINNY submitted its executed Application on June 17, 2019. A true and accurate  
27 copy of SKINNY's Application is attached hereto as **Exhibit 4**.

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1           20.     SKINNY submitted a renewal Application on January 16, 2020. A true and accurate  
2 copy of SKINNY’s renewal Application is attached hereto as **Exhibit 5**.

3           21.     NEUTRON submitted its executed Application on June 27, 2019. A true and  
4 accurate copy of NEUTRON’s Application is attached hereto as **Exhibit 6**.

5           22.     LYFT submitted its executed Application on July 1, 2019. A true and accurate copy  
6 of LYFT’s Application is attached hereto as **Exhibit 7**.

7           23.     LYFT submitted a renewal Application on January 16, 2020. A true and accurate  
8 copy of LYFT’s renewal Application is attached hereto as **Exhibit 8**.

9           24.     BIRD submitted its executed Application on June 21, 2019. A true and accurate  
10 copy of BIRD’s Application is attached hereto as **Exhibit 9**.

11           25.     BIRD submitted a renewal Application on January 24, 2020. A true and accurate  
12 copy of BIRD’s renewal Application is attached hereto as **Exhibit 10**.

13   **THE UNDERLYING ACTION**

14           26.     On or about January 9, 2019, putative class plaintiffs Alex Montoya, Rex Shirley,  
15 Philip Pressel, and Aaron Gresson, individually, and on behalf of all others similarly situated, filed  
16 a Class Action Complaint against Plaintiff, among other defendants (the “Underlying Action.”

17           27.     On or about April 15, 2020, the putative class filed its operative Second Amended  
18 Complaint in the Underlying Action, asserting causes of action for alleged violations of:

- 19                   a.     42 U.S.C. § 12101 et seq. [The Americans with Disabilities Act];
- 20                   b.     29 U.S.C. § 794 et seq. [Section 504 of the Rehabilitation Act];
- 21                   c.     California Civil Code § 54 et seq. [California Disabled Persons Act];
- 22                   d.     California Civil Code § 51 et seq. [Unruh Civil Rights Act];
- 23                   e.     California Government Code § 4450 et seq.; and
- 24                   f.     California Government Code § 11135 et seq.

25           A true and accurate copy of the Second Amended Complaint in the Underlying Action is attached  
26 hereto as **Exhibit 11**.

27           28.     The claims in the Underlying Action arise wholly out of the operations of  
28 Defendants, including but not limited to the placement or misplacement of Shared Mobility

1 devices, such as electric scooters, resulting in alleged violations of the Americans with Disabilities  
2 Act (“ADA”), among other statutes.

3 29. Specifically, the putative class has alleged the “onslaught of dockless vehicles” has  
4 resulted in “[p]ersons with mobility impairments, including people who use wheelchairs or  
5 walkers, and people with significant visual impairments [to be] denied their right to travel freely  
6 and safely on our public walkways.” See Exhibit 11, at ¶ 1.

7 30. The class asserts riders are leaving the dockless vehicles in walkways, sidewalks,  
8 curb ramps at intersections, points of ingress and egress, and other rights of way. Further, the class  
9 alleges riders operate the Shared Mobility Devices, including specifically electric scooters, on the  
10 sidewalks, thus posing a danger to the public and prohibiting safe pedestrian access and use.

11 31. The class asserts the City of San Diego has failed to adequately maintain the system  
12 of sidewalks, crosswalks, curb ramps, transit stops, pedestrian crossings and other walkways, by  
13 allowing dockless vehicles to proliferate unchecked throughout San Diego and to block safe and  
14 equal access for people with disabilities who reside in the City. Specifically, the class alleges, “[t]o  
15 continue appropriating and re-purposing the City of San Diego’s sidewalks, crosswalks, transit  
16 stops, curb ramps, pedestrian crossings, dockless vehicle companies hire independent contractors  
17 to tend to stage, recover, and return the dockless vehicles to the system of public sidewalks,  
18 crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways.” See Exhibit 11,  
19 at ¶ 27.

20 32. The class claims in the Underlying Action are directly related to, arising out of, and  
21 a result of the business operations and acts and/or omissions of the Defendants.

22 33. In an effort to address the claims of the putative class and the public, Plaintiff City  
23 drafted regulations to address the Shared Mobility Device issues in early 2019, which went into  
24 effect in mid-2019.

25 34. In early 2020, the emergence of the COVID pandemic and subsequent stay-home  
26 orders and public safety concerns resulted in a substantial reduction of Shared Mobility Device  
27 usage in the City.

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1           35.     As the pandemic has progressed, and the population has begun to return to normal  
2 activities, the number of Shared Mobility Devices has once again proliferated across the City.  
3 Consequently, significant numbers of complaints are being submitted by the public to Plaintiff  
4 regarding the Shared Mobility Devices, in line with the claims asserted by the putative class,  
5 including through the use of a service and application known as “Get It Done,” which permits  
6 anyone to submit a complaint or report to the City.

7           36.     Complaints and reports received by the Plaintiff City through the Get It Done  
8 program have been forwarded to Defendants.

9           37.     The Defendants have not modified their operations and practices to address the  
10 foregoing issues, and their acts and/or omissions continue to create potential liability exposures as  
11 to Plaintiff City.

12                   **TENDER OF DEFENSE AND INDEMNITY TO DEFENDANTS**

13           38.     On June 10, 2021, Plaintiff tendered the Underlying Action to each Defendant in  
14 this matter, seeking a defense and indemnity pursuant to the Indemnification Provisions executed  
15 by each Defendant.

16           39.     To date, no Defendant has agreed to defend and/or indemnify Plaintiff for the  
17 claims asserted in the Underlying Action arising from Defendants’ operations.

18           40.     Whether a duty to defend arises under an indemnity agreement is a matter of law  
19 for the court to decide, and the duty to defend the indemnitee from third party claims which are  
20 embraced by the indemnity agreement arises immediately upon the proper tender of defense, and  
21 thus before the litigation has determined whether indemnity is actually owed. *See Crawford v.*  
22 *Weather Shield Mfg., Inc.* (2008) 44 Cal.4th 541. The duty to defend is a separate, distinct, and  
23 independent duty from the duty to indemnify or hold the Plaintiff City harmless, and is a broader  
24 obligation as set forth and dictated by the court in *Crawford*.

25           41.     The scope of the Indemnification Provision, executed by each Defendant, includes  
26 the use, misuse, placement, misplacement, and/or the discarding of devices for which the  
27 Underlying Action is predicated arising out of Defendants’ business operations renting Shared  
28 Mobility Devices to the public.

1           42.     Based on the express indemnity provision, which clearly and unambiguously states  
2 Defendants will defend, indemnify, and hold harmless Plaintiff City from any and all claims  
3 arising out of, in connection with, or in any way related to the Defendants’ business conduct and  
4 operations including alleged violations of the Americans with Disabilities Act (ADA), Defendants  
5 must assume the defense costs of Plaintiff City and indemnify Plaintiff City in connection with the  
6 Underlying Action.

7   **FIRST CAUSE OF ACTION**

8   **Breach of Contract – Failure to Defend**  
9   **(Against All Defendants and DOES 1 through 50)**

10           43.     Plaintiff repeats, re-alleges, and incorporates by this reference each and all of the  
11 allegations contained in this Complaint.

12           44.     As set forth above, Defendants, pursuant to an express Indemnification Provision  
13 agreed to and executed by each Defendant, agreed to immediately defend, indemnify, and hold  
14 harmless Plaintiff City from claims asserted against Plaintiff City arising out of, in connection  
15 with, or in any way related to the Defendants’ business conduct and operations.

16           45.     On or about January 9, 2019, putative class plaintiffs Alex Montoya, Rex Shirley,  
17 Philip Pressel, and Aaron Gresson, individually, and on behalf of all other similarly situated, filed  
18 their initial class action complaint against City, among other defendants, in the Underlying Action.  
19 A Second Amended Complaint was filed on April 15, 2020.

20           46.     The claims in the Underlying Action arise wholly out of the operations of  
21 Defendants, including but not limited to the placement or misplacement of Shared Mobility  
22 devices, such as electric scooters, resulting in alleged violations of the Americans with Disabilities  
23 Act (“ADA”).

24           47.     The Underlying Action class plaintiffs asserted numerous causes of action arising  
25 wholly out of the operations of Defendants, including but not limited to the placement or  
26 misplacement of Shared Mobility Devices resulting in alleged violations of the Americans with  
27 Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act, the California Disabled Persons  
28 Act, Unruh Civil Rights Act, California Government Code Section 4450 *et seq.*, and California



1 Government Code Section 11135 *et seq.*

2 48. The Underlying Action claims are irrefutably based on the operations of Defendants  
3 relating to Shared Mobility Devices.

4 49. The scope of the duty to defend with respect to the Underlying Action arises from  
5 the operations of the Defendants for which the Plaintiff City faces potential liability in the  
6 Underlying Action.

7 50. Plaintiff duly tendered defense of the Underlying Action to Defendants, and each  
8 of them.

9 51. Defendants have not agreed to participate in the defense of Plaintiff City in the  
10 Underlying Action as required by the Indemnification Provision executed by each Defendant by  
11 refusing to provide any defense or agreement to indemnify in response to Plaintiff's tender.

12 52. Under California law, Plaintiff City is entitled to a defense from Defendants with  
13 respect to the duties owed to Plaintiff City under the express Indemnification Provisions. To date,  
14 in breach of the express terms of the Indemnification Provisions, Defendants have not paid any  
15 money toward Plaintiff City's defense.

16 53. By reason of Defendants' refusal to immediately and fully defend Plaintiff pursuant  
17 to the express obligation to do so in the Applications, Defendants have breached their written  
18 agreements under which Plaintiff was entitled to a defense and indemnity.

19 54. As a direct and proximate result of Defendants' breaches of their contractual duties  
20 and in mitigation of Plaintiff's own damages, Plaintiff incurred and continues to incur substantial  
21 attorneys' fees and costs, experts' fees and costs, and other expenses in defense of the Underlying  
22 Action in an amount within the jurisdictional limits of this Court, according to proof.

23 **SECOND CAUSE OF ACTION**

24 **Breach of Contract – Failure to Settle/Indemnify**

25 **(Against All Defendants and DOES 1 through 50)**

26 55. Plaintiff repeats, re-alleges, and incorporates by reference all of the previous  
27 allegations contained in this Complaint as though fully set forth herein.

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1           56. As set forth above, Defendants, pursuant to an express Indemnification Provision  
2 agreed to and executed by each Defendant, agreed to immediately defend, indemnify, and hold  
3 harmless Plaintiff City from claims asserted against Plaintiff City arising out of, in connection  
4 with, or in any way related to the Defendants’ business conduct and operations.

5           57. The Underlying Action class plaintiffs asserted numerous causes of action arising  
6 wholly out of the operations of Defendants, including but not limited to the placement or  
7 misplacement of Shared Mobility Devices resulting in alleged violations of the Americans with  
8 Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act, the California Disabled Persons  
9 Act, Unruh Civil Rights Act, California Government Code Section 4450 *et seq.*, and California  
10 Government Code Section 11135 *et seq.*

11           58. Plaintiff duly tendered defense of the Underlying Action to Defendants, and each  
12 of them. However, Defendants have not agreed to participate in the defense of Plaintiff City in the  
13 Underlying Action as required by the Indemnification Provision executed by each Defendant by  
14 refusing to provide any defense or agreement to indemnify in response to Plaintiff’s tender.

15           59. Under California law, Plaintiff is entitled to a defense and indemnity for the  
16 Underlying Action from Defendants with respect to the duties owed to Plaintiff under the  
17 Indemnification Provisions executed by Defendants. To date, in breach of the express terms of the  
18 Applications, Defendants have refused to provide a defense, contribute to any settlement, and have  
19 not paid any indemnity money to Plaintiff.

20           60. By reason of Defendants’ refusal to settle or pay indemnity money on behalf of  
21 Plaintiff City pursuant to the express obligation to do so in the Indemnification Provisions executed  
22 by Defendants, and each of them, Defendants have breached their written agreements under which  
23 Plaintiff City was entitled to indemnification for the Underlying Action.

24           61. As a direct and proximate result of Defendants’ breaches of their contractual duties,  
25 Plaintiff City has been damaged in an amount presently unknown, but to be established at the time  
26 of trial, according to proof, including but not limited to any damages awarded the putative class  
27 against the City, the costs of enacting any injunctive relief or other acts ordered by the Court,  
28 attorneys’ fees awarded to the putative class counsel whether under statute or contract, and fines

1 and/or penalties assessed against the City.

2 **THIRD CAUSE OF ACTION**

3 **Declaratory Relief**

4 **(Against All Defendants and DOES 1 through 50)**

5 62. Plaintiff repeats, re-alleges and incorporates by this reference each and all of the  
6 allegations contained in this Complaint.

7 63. As set forth above, Defendants, pursuant to an express Indemnification Provision  
8 agreed to and executed by each Defendant, agreed to immediately defend, indemnify, and hold  
9 harmless Plaintiff City from claims asserted against Plaintiff City arising out of, in connection  
10 with, or in any way related to the Defendants' business conduct and operations.

11 64. The Underlying Action class plaintiffs asserted numerous causes of action arising  
12 wholly out of the operations of Defendants, including but not limited to the placement or  
13 misplacement of Shared Mobility Devices resulting in alleged violations of the Americans with  
14 Disabilities Act ("ADA"), Section 504 of the Rehabilitation Act, the California Disabled Persons  
15 Act, Unruh Civil Rights Act, California Government Code Section 4450 *et seq.*, and California  
16 Government Code Section 11135 *et seq.*

17 65. Plaintiff duly tendered the Underlying Action to Defendants. However, Defendants  
18 refused to immediately and fully defend Plaintiff City or to agree to indemnify Plaintiff City.

19 66. A dispute has arisen between Plaintiff and Defendants in that Plaintiff contends that  
20 Defendants were obligated to immediately and fully defend Plaintiff in the Underlying Action  
21 pursuant to the Applications and express Indemnification Provisions therein which were agreed to  
22 and executed by each Defendant. Plaintiff is informed and believes and thereon alleges that  
23 Defendants unreasonably contend otherwise.

24 67. A dispute has arisen between Plaintiff and Defendants in that Plaintiff contends that  
25 Defendants were obligated to indemnify Plaintiff in the Underlying Action pursuant to the  
26 Applications and express Indemnification Provisions therein which were agreed to and executed  
27 by each Defendant. Plaintiff is informed and believes and thereon alleges that Defendants  
28 unreasonably contend otherwise.



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4. For a declaratory judgment that Defendants have the duty to indemnify Plaintiff in the Underlying Action based on the express Indemnification Provisions executed by each Defendant;

5. For a declaratory judgment that the putative class in the Underlying Action has asserted claims arising out of, in connection with, or related to the Defendants’ business conduct and operations;

6. For a declaratory judgment that Plaintiff’s tender to Defendants for defense and indemnity of the Underlying Action was timely; and

7. For a declaratory judgment that Defendants were not materially or substantially prejudiced by Plaintiff’s alleged delay in tendering the Underlying Action.

**ON ALL CAUSES OF ACTION**

8. For costs of suit herein; and

9. For all such other and further relief as the Court may deem just and proper.

Dated: November 1, 2021

MARA W. ELLIOTT, City Attorney

By Danna W. Nicholas  
Danna W. Nicholas  
Deputy City Attorney

Attorneys for Plaintiff City of San Diego