1	John E. Sweeney, Esq. – State Bar No. 116285 THE SWEENEY FIRM	
2	315 South Beverly Drive, Suite 200	ELECTRONICALLY
3	Beverly Hills, California 90212 Phone: (310) 277-9595 Fax: (310) 277-0177	FILED Superior Court of California, County of San Francisco
5	Email: jes@thesweeneyfirm.com	11/16/2021 Clerk of the Court BY: ERNALYN BURA
6	Attorney for Plaintiff DAVID NELSON	Deputy Clerk
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8	SUPERIOR COURT OF CALIFORNIA	
9	COUNTY OF SAN FRANCISCO	
10		
11	DAVID NELSON,	Case No.: CGC-21-592738
12	Plaintiff,	TINGT (IKTIVE TO COMPLANT TO D
13	VS.	FIRST AMENDED COMPLAINT FOR DAMAGES:
14	BAY AREA RAPID TRANSIT DISTRICT	1) NEGLIGENCE;
15	100, morasive, and rest committees i amough	2) GROSS NEGLIGENCE;3) BATTERY;
16	10, Inclusive,	4) INTENTIONAL INFLICTION OF
17	Defendants.	EMOTIONAL DISTRESS; 5) PRODUCT LIABILITY; and
18		6) STRICT LIABILITY
19		DEMAND FOR JURY TRIAL
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21	COMES NOW Plaintiff, DAVID NELSON, to complain of Defendants and allege as	
22	follows:	
23	INTRODUCTION	
24	1. This case concerns a horrifying incident that occurred at the BAY AREA RAPID	
25	TRANSIT DISTRICT (hereinafter "BART") Powell Street station on February 11, 2021 at or about	
26	9:00 pm. On that fateful evening Plaintiff DAVID NELSON (hereinafter referred to as	
27	"NELSON"), while alighting a BART train, became entangled in a door and was violently dragged	
28	by the train. NELSON'S legs were thrust between the train and the platform, while it sped away,	
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causing his right leg to be severely injured, necessitating the amputation of said leg above the knee. NELSON also suffered severe head trauma and other life-altering permanent injuries.

- 2. NELSON, a long-time resident of San Francisco, was a passenger on a BART commuter train heading to his home in San Francisco at the time of the incident.
- 3. This lawsuit seeks to hold Defendants liable for their Gross Negligence, Negligence, Battery and for Products Liability and Strict Liability for their faulty design and manufacture of said BART commuter train. It seeks to compensate NELSON for his devastating life-altering injuries. This lawsuit also seeks to punish Defendant RYAN VENTURA (hereinafter referred to as "VENTURA") for his outrageous act of closing the door of his train on NELSON as he was attempting to remove his bicycle, bags and other items from the train, knowing that NELSON had not cleared the door. It is NELSON'S desire that such punishment will deter other train conductors from making such callous decisions in the future.

PARTIES

- 4. At all times herein mentioned, NELSON was a resident of the City and County of San Francisco, California.
- 5. NELSON is informed and believes that Defendant BART is and was a California entity, authorized to engage in and engaged in substantial business in the City of San Francisco and in the greater San Francisco Bay Area. BART is and was engaged in interstate commerce in the state of California. BART is and was a quasi-municipal entity whose business is to move commuters from location to location.
- 6. NELSON is informed and believes that Defendant VENTURA was the conductor of the BART train on which NELSON was injured.
- 7. NELSON is informed and believes and herein alleges that ROE Company 1 was the designer and manufacturer of the train car on which NELSON was a passenger.
- 8. The true names and/or capacities, whether individual, corporate, associate or otherwise of Defendants DOES 1 through 50 AND ROE Companies 1 through 25 are unknown to NELSON at this time, who therefore sues said Defendants by such fictitious names. NELSON is informed that each of the Defendants fictitiously named herein as a DOE and a ROE is legally

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1	responsible, in negligence, gross negligence and for failure to manufacture a safe product and	
2	placing said product in this station of commerce, or in some other actionable manner, for the events	
3	and happenings referred to herein, and thereby proximately caused the injuries and damages to	
4	NELSON as alleged herein. NELSON will ask leave of court to amend this Complaint to insert the	
5	true names and/or capacities of such fictitiously named Defendants when the same have been	
6	ascertained.	
7	9. All Defendants were and are the agents, representatives, servants, employers and	
8	employees of each of the remaining Defendants, and acted at all times within the purpose and scope	
9	of said agency and in said capacity.	
10	10. Under California Government Code § 815.2, a public entity such as BART is	
11	vicariously liable for injuries proximately caused by its employee's (in this case Defendant	
12	VENTURA's) acts within the course and scope of employment if the act would otherwise give rise	
13	to a cause of action against the employee. State of California Dept of Highway Patrol v. Superior	
14	Court (2015) 60 94th 1002, 1009; C.A. v. Williams S. Hart Union School District (2012) 53 C.4th	
15	861, 868.	
16	PROCEDURAL REQUIREMENTS	
17	11. On February 26, 2021, NELSON caused to be filed a Claim for Damages against	
18	Defendants BART and VENTURA pursuant to California Government Code § 911 et seq.	
19	12. On April 12, 2021, Defendant BART rejected the Claim for Damages filed by	
20	NELSON.	
21	<u>DAMAGES</u>	
22	13. At the time of this tragic incident, NELSON, age 58, was in good general health.	
23	NELSON transported about on his bicycle and on public transportation. As a result of the incident,	
24	NELSON has suffered several debilitating injuries, including the complete loss of his right leg.	
25	NELSON has been reduced to a wheelchair-bound shell of his former self. Additionally, severe	
26	head trauma suffered in the incident has left him with cognitive impairment.	
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- 14. By reason of the foregoing, NELSON has sustained general damages for pain and suffering, as well as economic damages in a sum in excess of the jurisdictional amount of this Court, together with such exemplary damages against Defendant VENTURA a jury may award as this Court may sustain.
- 15. Defendant's conduct was a substantial factor in causing all of the damages to Plaintiff Nelson as herein alleged.

FIRST CAUSE OF ACTION

For Negligence (Against Defendants BART; VENTURA; and DOES 1 through 50)

- 16. Plaintiff restates and incorporates by reference the allegations of Paragraphs 1 through 15, as if fully set forth herein.
- 17. Defendants BART and VENTURA owed a duty of care to NELSON as a passenger on their commuter train. California Civil Code § 2100 states that a common carrier "must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill." The Defendants breached that duty by the conduct described below and that breach caused the damages previously described.
- 18. Defendant BART publicly encourages citizens of the greater San Francisco Bay Area to ride public transportation. BART encourages passengers to bring bicycles aboard their trains for transportation before and after their train ride.
- 19. On February 11, 2021, NELSON was a passenger on a BART train, bound for Daly City (Run Number 509), intending to alight at the Powell Street station. NELSON can be seen in the video of a surveillance camera on that fateful evening removing his bicycle from the train onto the platform and then, while holding the door open, removing other belongings. NELSON, who had not removed all of his belongings, is seen on the video footage trying to keep the doors of the train open as they were closing. The doors snapped shut and NELSON is seen being dragged backwards at a high rate of speed. NELSON's legs became trapped between the train and the Powell Street platform all while being dragged and sustaining severe injuries. As the train sped away, NELSON was dislodged from the door and was thrusted on the station platform where he laid with a severed leg, severe head trauma, and other horrible injuries.

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20. Defendant VENTURA, after the incident described above, stated to BART investigating officers that he was operating a train from a "new fleet" and not an older model train. Defendant VENTURA indicated that with the new fleet of trains a red light appears on his control console if a door on the train is obstructed and a separate console shows what train door is not closed. Defendant VENTURA stated that a red indicator warning light came on at the Powell Street station, indicating something was obstructing the door of the car from which NELSON was alighting. Instead of taking heed of the warning light and making sure that NELSON had fully cleared the door, Defendant VENTURA negligently pressed a button to force the door to close and causing NELSON to be dragged to his near death.

SECOND CAUSE OF ACTION

For Gross Negligence (Against Defendants BART; and VENTURA; and DOES 1 through 50)

- 21. NELSON restates and incorporates by reference the allegations in Paragraphs 1 through 20, as if fully set forth herein.
- 22. As stated in prior paragraphs a common carrier owes the utmost duty to its passengers. Not the mere "duty of care" that one owes another driver of a motor vehicle, but the very, very highest of standards must be adhered to because one is entrusting themselves to the conductor/operator of a train.
- 23. All BART conductors are trained that when there is an obstruction of a door which passengers use to enter and disembark, that extreme caution should be used to ensure that the obstruction has been cleared. This training is the standard of conduct for train conductors, including Defendant VENTURA.
- 24. Here, Defendant VENTURA knew that NELSON was attempting to remove his belongings from the train. Defendant VENTURA knew that NELSON required at least two (2) trips from inside of the train to the Powell Street platform and back into the train to remove all of his belongings. Defendant VENTURA'S act of callously forcing the door closed on NELSON before he had fully alighted the train was an extreme departure for the aforementioned standard of conduct.

THIRD CAUSE OF ACTION

For Battery

(Against Defendants BART; VENTURA; and DOES 1 through 50)

- 25. NELSON restates and incorporates by reference the allegations in Paragraphs 1 through 24, as if fully set forth herein.
- 26. Defendant VENTURA'S act of intentionally closing the door was done with the knowledge that such an act would cause a passenger such as NELSON to become entangled in the door and severely harmed.
- 27. When NELSON entered said BART train, he did not know that a door would be closed on him as herein described. He did not consent to said touching of the door on him and he certainly did not consent to the severe injuries that he sustained.

FOURTH CAUSE OF ACTION

For Intentional Infliction of Emotional Distress (Against Defendants BART and VENTURA and DOES 1 through 50)

- 28. NELSON restates and incorporates by reference the allegations in Paragraphs 1 through 27, as if fully set forth herein.
- 29. As described in the foregoing paragraphs, Defendant VENTURA was a highly trained conductor of a common carrier. Defendant VENTURA was well-versed in all safety protocol. Defendant VENTURA knew what was expected of him to prevent the kind of incident that occurred herein. Instead of comporting himself as he was trained, he made the calculated decision to close the door on NELSON as herein alleged and accelerated the train at a high rate of speed. Defendant VENTURA'S conduct was cold, calculated, and was so far beyond the standard of conduct expected of a common carrier that it shocks the conscience.
- 30. In committing the acts as described herein Defendants engaged in extreme and outrageous conduct that transcended the bounds of human decency.
- 31. Defendants intended to cause, and did cause, Plaintiff to suffer severe physical injuries and emotional distress and they each acted with reckless disregard of the probability that Plaintiff NELSON would suffer \such injuries.
 - 32. As a proximate result of said conduct, NELSON suffered severe emotional distress.

FIFTH CAUSE OF ACTION 1 2 (Against ROE Company No. 1 and ROES 2 through 10) 33. NELSON restates and incorporates by reference the allegations in Paragraphs 1 3 through 32, as if fully set forth herein. 4 34. NELSON is unaware of the name or form of the company that designed and 5 manufactured the train, including engine and carriages, that he was a passenger on at the time of this 6 incident. NELSON therefore sues this entity as ROE Company No. 1 and when the name and form 7 8 of said company is ascertained, NELSON will amend this Complaint accordingly. 9 35. NELSON is informed and believes that the train, particularly the doors for ingress and egress of passengers, were so negligently designed and manufactured that they were a 10 11 substantial factor in causing the injuries to NELSON as described herein. 12 SIXTH CAUSE OF ACTION 13 For Strict Liability (Against ROE Company No. 1 and ROES 2 through 10) 14 36. NELSON restates and incorporates by reference the allegations in Paragraphs 1 15 16 through 35, as if fully set forth herein. 37. Nelson is informed and believes that the train that he was alighting at the time of the 17 incident contained a manufacturing defect, was defectively designed and did not include sufficient 18 19 instructions or warn of potential safety hazards. /// 20 21 /// 22 /// 23 /// 24 25 26 27 28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 1. For economic and property losses in an amount according to proof at trial;
- 2. For pain and suffering, anxiety and emotional distress;
- 3. For interest on any judgment as provided by law;
- 4. For costs of suit incurred herein;
- For punitive damages against Defendant VENTURA, based on the willful and intentional misconduct and conscious disregard for safety described herein; and
- 6. For such other and further relief as this Court may deem just and proper.

Dated: November 15, 2021

Respectfully submitted,

THE SWEENEY FIRM

John E. Sweeney

Attorney for Plaintiff DAVID NELSON

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 315 South Beverly Drive, Suite 200, Beverly Hills, California 90212-4309.

On November 16, 2021, I served the foregoing documents described as: FIRST AMENDED COMPLAINT FOR DAMAGES: 1) NEGLIGENCE; 2) GROSS NEGLIGENCE; 3) BATTERY; 4) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; 5) PRODUCT LIABILITY; and 6) STRICT LIABILITY; DEMAND FOR JURY TRIAL on the interested parties in this action:

Mark F. Hazelwood, Esq.
Kimberly Y. Chin, Esq.
Allen, Glaessner, Hazelwood & Werth, LLP
180 Montgomery Street, Suite 1200
San Francisco, CA 94104

Email: MHazelwood@aghwlaw.com

Email: KChin@aghwlaw.com

X BY U.S. MAIL: I deposited or caused to be deposited such envelope(s) in the mail at Beverly Hills, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit stated in the affidavit of mailing.

X BY E-MAIL OR ELECTRONIC SERVICE: I caused a copy of the document(s) to be sent from e-mail address <u>lshirley@thesweeneyfirm.com</u> to the persons at the e-mail address(es) listed on the attached Service List.

BY FEDERAL EXPRESS: I am "readily familiar" with the firm's practice of collection and processing correspondence for overnight delivery. Under that practice it would be deposited with the express service carrier on that same day, in an envelope designated by the express service carrier with delivery fees provided for, Beverly Hills, California, in the ordinary course of business.

By placing true copies thereof enclosed in sealed envelope(s) addressed to as addressee(s) listed on the attached Service List.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 16, 2021, at Beverly Hills, California.

Leticia R. Shirley