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**ELECTRONICALLY
FILED**

Superior Court of California,
County of San Francisco

**11/16/2021
Clerk of the Court**

BY: ERNALYN BURA
Deputy Clerk

6 Attorney for Plaintiff DAVID NELSON

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

11 DAVID NELSON,

12 Plaintiff,

13 vs.

14 BAY AREA RAPID TRANSIT DISTRICT
15 (BART); RYAN VENTURA; DOES 1 through
16 50, Inclusive; and ROE COMPANIES 1 through
17 10, Inclusive,

18 Defendants.

Case No.: CGC-21-592738

**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

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,

1 causing his right leg to be severely injured, necessitating the amputation of said leg above the knee.
2 NELSON also suffered severe head trauma and other life-altering permanent injuries.

3 2. NELSON, a long-time resident of San Francisco, was a passenger on a BART
4 commuter train heading to his home in San Francisco at the time of the incident.

5 3. This lawsuit seeks to hold Defendants liable for their Gross Negligence, Negligence,
6 Battery and for Products Liability and Strict Liability for their faulty design and manufacture of said
7 BART commuter train. It seeks to compensate NELSON for his devastating life-altering injuries.
8 This lawsuit also seeks to punish Defendant RYAN VENTURA (hereinafter referred to as
9 “VENTURA”) for his outrageous act of closing the door of his train on NELSON as he was
10 attempting to remove his bicycle, bags and other items from the train, knowing that NELSON had
11 not cleared the door. It is NELSON’S desire that such punishment will deter other train conductors
12 from making such callous decisions in the future.

13 **PARTIES**

14 4. At all times herein mentioned, NELSON was a resident of the City and County of
15 San Francisco, California.

16 5. NELSON is informed and believes that Defendant BART is and was a California
17 entity, authorized to engage in and engaged in substantial business in the City of San Francisco and
18 in the greater San Francisco Bay Area. BART is and was engaged in interstate commerce in the
19 state of California. BART is and was a quasi-municipal entity whose business is to move
20 commuters from location to location.

21 6. NELSON is informed and believes that Defendant VENTURA was the conductor of
22 the BART train on which NELSON was injured.

23 7. NELSON is informed and believes and herein alleges that ROE Company 1 was the
24 designer and manufacturer of the train car on which NELSON was a passenger.

25 8. The true names and/or capacities, whether individual, corporate, associate or
26 otherwise of Defendants DOES 1 through 50 AND ROE Companies 1 through 25 are unknown to
27 NELSON at this time, who therefore sues said Defendants by such fictitious names. NELSON is
28 informed that each of the Defendants fictitiously named herein as a DOE and a ROE is legally

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 **DAMAGES**

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.

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **For Battery**

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

4 25. NELSON restates and incorporates by reference the allegations in Paragraphs 1
5 through 24, as if fully set forth herein.

6 26. Defendant VENTURA’S act of intentionally closing the door was done with the
7 knowledge that such an act would cause a passenger such as NELSON to become entangled in the
8 door and severely harmed.

9 27. When NELSON entered said BART train, he did not know that a door would be
10 closed on him as herein described. He did not consent to said touching of the door on him and he
11 certainly did not consent to the severe injuries that he sustained.

12 **FOURTH CAUSE OF ACTION**

13 **For Intentional Infliction of Emotional Distress**

14 **(Against Defendants BART and VENTURA and DOES 1 through 50)**

15 28. NELSON restates and incorporates by reference the allegations in Paragraphs 1
16 through 27, as if fully set forth herein.

17 29. As described in the foregoing paragraphs, Defendant VENTURA was a highly
18 trained conductor of a common carrier. Defendant VENTURA was well-versed in all safety
19 protocol. Defendant VENTURA knew what was expected of him to prevent the kind of incident
20 that occurred herein. Instead of comporting himself as he was trained, he made the calculated
21 decision to close the door on NELSON as herein alleged and accelerated the train at a high rate of
22 speed. Defendant VENTURA’S conduct was cold, calculated, and was so far beyond the standard
23 of conduct expected of a common carrier that it shocks the conscience.

24 30. In committing the acts as described herein Defendants engaged in extreme and
25 outrageous conduct that transcended the bounds of human decency.

26 31. Defendants intended to cause, and did cause, Plaintiff to suffer severe physical
27 injuries and emotional distress and they each acted with reckless disregard of the probability that
28 Plaintiff NELSON would suffer such injuries.

32. As a proximate result of said conduct, NELSON suffered severe emotional distress.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

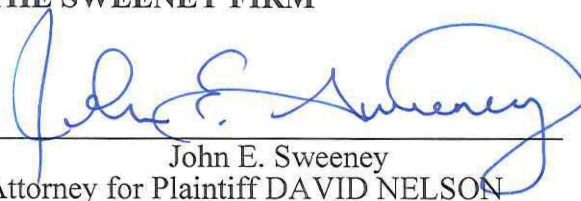
- 3 1. For economic and property losses in an amount according to proof at trial;
- 4 2. For pain and suffering, anxiety and emotional distress;
- 5 3. For interest on any judgment as provided by law;
- 6 4. For costs of suit incurred herein;
- 7 5. For punitive damages against Defendant VENTURA, based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

10

11 Dated: November 15, 2021

Respectfully submitted,

12 **THE SWEENEY FIRM**

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14 _____

15 John E. Sweeney

16 Attorney for Plaintiff DAVID NELSON

1 **PROOF OF SERVICE**

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

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

10 **Mark F. Hazelwood, Esq.**
11 **Kimberly Y. Chin, Esq.**
12 **Allen, Glaessner, Hazelwood & Werth, LLP**
13 **180 Montgomery Street, Suite 1200**
14 **San Francisco, CA 94104**
15 **Email: MHazelwood@aghwlaw.com**
16 **Email: KChin@aghwlaw.com**

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

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

26 **BY FEDERAL EXPRESS:** I am "readily familiar" with the firm's practice of
27 collection and processing correspondence for overnight delivery. Under that practice it would be
28 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.

26 
27 Leticia R. Shirley
28