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CITY OF LONG BEACH

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CITY OF LONG BEACH,
Plaintiff,

vs.

NEUTRON HOLDINGS, INC. dba LIME;
AXIS SURPLUS INSURANCE
COMPANY; and DOES 1 through 25,
Defendants.

*(Exempt from Filing Fees pursuant to
Government Code §6103)*

Case No.: 20LBCV00115

**CITY OF LONG BEACH'S
COMPLAINT FOR DECLARATORY
RELIEF, BREACH OF CONTRACT,
AND TORTIOUS BREACH OF THE
IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING**

Complaint Filed:
Trial Date:

Plaintiff, CITY OF LONG BEACH (the "CITY"), complains of defendants, and each
of them, and alleges:

THE PARTIES

1. Plaintiff, CITY OF LONG BEACH ("CITY"), is a municipal entity organized
under the laws of the State of California and is qualified to do and is doing business in the
State of California, with its principal place of business in Los Angeles County.

2. Defendant, NEUTRON HOLDINGS, INC. dba LIME, is a corporation
licensed to transact business and is transacting business in the State of California within Los
Angeles County.

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3. Defendant, AXIS SURPLUS INSURANCE COMPANY, is a corporation licensed to transact business and is transacting business in the State of California within Los Angeles County.

4. The CITY is unaware of the true names and capacities, whether individual, partnership, corporate, associate, or otherwise, of those Defendants sued herein as DOES 1 through 25, including (the “DOE Defendants”) and, therefore, sues these Defendants by fictitious names. The CITY will amend this Complaint to allege their true names and capacities when ascertained.

5. At all times relevant herein, Defendants, and each of them, were acting as the agents, servants and/or employees of each of the other Defendants and were acting within the course and scope of said agency and employment.

VENUE

6. Venue is proper in this Court pursuant to California Code of Civil Procedure section 395.5 because various transactions, acts, events, and occurrences giving rise to this Complaint took place within Los Angeles County.

THE NATURE OF THE ACTION AND UNDERLYING LAWSUITS

7. With this Complaint, the CITY seeks declaratory relief from Defendants, and each of them, for their breach of contract and tortious breach of the covenant of good faith and fair dealing by refusing to provide coverage for defense and indemnity for numerous claims and lawsuits pending in the Los Angeles County Superior Court.

8. In July 2018, the CITY initiated a shared e-scooter pilot program.

9. Defendant, NEUTRON HOLDINGS, INC. dba LIME, participated in the shared e-scooter pilot program and executed a business operation agreement with the CITY. Exhibit 1.

10. As part of the operation agreement, Defendant, NEUTRON HOLDINGS, INC. dba LIME, agreed to defend, indemnify, and hold harmless the CITY from and against any and all demands, claims, causes of action, liability, loss, liens, damages, costs, and expenses arising from or in any way connected or alleged to be connected with NEUTRON

1 HOLDINGS, INC. dba LIME's work, operations, or activities; or the work, operations or
2 activities of its employees, agents, customers, invitees, or contractors in operating its
3 mobility scooters.

4 11. Defendant, NEUTRON HOLDINGS, INC. dba LIME, further agreed to
5 procure and maintain a commercial general liability insurance policy to cover liability
6 resulting from the use or operation by NEUTRON HOLDINGS, INC. dba LIME or its
7 customers, employees, or invitees of its mobility scooters.

8 12. The CITY is informed and believes, Defendant, NEUTRON HOLDINGS,
9 INC. dba LIME, procured and maintained a commercial general liability with Defendant,
10 AXIS SURPLUS INSURANCE COMPANY, under policy number P-0001-000027914-01,
11 at all time relevant herein. Exhibit 2.

12 **DUARDO LAWSUIT - LASC CASE NO. 19STCV32414**

13 13. On September 16, 2019, the CITY was served with Summons and Complaint
14 in a lawsuit initiated by Plaintiff Martha Duardo.

15 14. The case was filed in the Los Angeles County Superior Court, Case No.
16 19STCV32414. Plaintiff alleges in discovery that she was riding a Lime scooter when she
17 fell off the scooter.

18 15. The underlying causes of action are premises liability/dangerous condition of
19 public property and negligence against the CITY and NEUTRON HOLDINGS.

20 16. The CITY tendered the defense and indemnity to NEUTRON HOLDINGS
21 and AXIS SURPLUS in December 2019.

22 17. The tender was denied on January 8, 2019.

23 **HEARD LAWSUIT - LASC CASE NO. 19STCV35469**

24 18. On November 5, 2019, the CITY was served with Summons and Complaint
25 in a lawsuit initiated by Plaintiffs Ashley Heard and Jason Heard. Exhibit 5.

26 19. The case was filed in the Los Angeles County Superior Court, Case No.
27 19STCV35469.

28 20. Said Complaint alleges that Plaintiff Ashley Heard was operating a Lime

1 electric scooter on the CITY's streets and fell off the scooter.

2 21. The underlying causes of action are premises liability/dangerous condition of
3 public property and negligence against the CITY and NEUTRON HOLDINGS.

4 22. The CITY tendered the defense and indemnity to NEUTRONS in or around
5 December 2019.

6 23. The tender was denied on December 20, 2019.

7 **FIRST CAUSE OF ACTION**
8 **FOR DECLARATORY RELIEF**
9 **(Against All Defendants)**

10 24. The CITY refers to and incorporates herein by this reference each and every
11 allegation of all preceding paragraphs of this Complaint as though fully set forth at length
12 herein.

13 25. Defendants, and each of them, have refused to defend, indemnify and hold the
14 CITY harmless in the action brought by plaintiff herein. By reason of the refusal of
15 Defendants, and each of them, to defend, indemnify and hold the CITY harmless, a dispute
16 has arisen and an actual controversy exists between the CITY and said Defendants, and each
17 of them, concerning their respective rights, duties and obligations to indemnify the CITY.
18 The CITY is therefore, entitled to a declaration of the rights, duties and obligations of
19 Defendants, and each of them, to the CITY herein.

20 **SECOND CAUSE OF ACTION**
21 **FOR BREACH OF CONTRACT - DUTY TO DEFEND**
22 **(Against All Defendants)**

23 26. The CITY refers to and incorporates herein by this reference each and every
24 allegation of all preceding paragraphs of this Complaint as though fully set forth at length
25 herein.

26 27. As a result of the material breach of contract by Defendants, and each of them,
27 in refusing to defend the CITY in the underlying lawsuits, the CITY will incur costs of
28 litigation in defending itself in the underlying lawsuits.

28. The CITY has duly performed all necessary conditions precedent, except in so far as such performance has been prevented by the acts and omissions of the Defendants.

THIRD CAUSE OF ACTION

FOR BREACH OF CONTRACT - DUTY TO INDEMNITY

(Against All Defendants)

29. The CITY refers to and incorporates herein by this reference each and every allegation of all preceding paragraphs of this Complaint as though fully set forth at length herein.

30. As a result of the material breach of contract by Defendants, and each of them, in refusing to indemnify the CITY in the underlying lawsuits, the CITY will incur costs of litigation in defending itself in the underlying lawsuits.

31. The CITY has duly performed all necessary conditions precedent, except in so far as such performance has been prevented by the acts and omissions of the Defendants.

FOURTH CAUSE OF ACTION

FOR BAD FAITH

(Against All Defendants)

32. The CITY refers to and incorporates herein by this reference each and every allegation of all preceding paragraphs of this Complaint as though fully set forth at length herein.

33. AXIS SURPLUS INSURANCE COMPANY's policy was and is a contract, of which the CITY, as an additional insured, was a beneficiary. Like all contracts, said policies contained an implied covenant of good faith and fair dealing. Among other things, that implied covenant required AXIS SURPLUS INSURANCE COMPANY to refrain from taking any action that would improperly deprive the CITY of the benefits to which it was entitled as an additional insured under the policy, and to treat an additional insured's interests with at least as much respect as its own.

34. In or around December of 2019, the CITY sought to be defended and indemnified by Defendant, NEUTRON HOLDINGS, INC., relating to the claim and

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