Ele	ectronically FILED by	Superior	Court of California, County of Los Angeles on 01/02/2020 06:10 PM Sherri R. Carter, Executive Officer/Clerk of Court, by R. Clifton, Deputy Clerk 20STCV00120
			Assigned for all purposes to: Spring Street Courthouse, Judicial Officer: Daniel Crowley
		1 2 3 4 5 6 7	ALEXIS GALINDO, SBN 136643 CURD, GALINDO & SMITH, LLP 301 East Ocean Boulevard, Suite 1700 Long Beach, CA 90802 Telephone: (562) 624-1177 Facsimile: (562) 624-1178 agalindo@cgsattys.com Attorney for Plaintiff BRYAN JOHN LEMBKE
		8	SUPERIOR COURT OF THE STATE OF CALIFORNIA
		9	COUNTY OF LOS ANGELES
		10	
		11	BRADLEY LEMBKE,) CASE NO.:
	. 00	12)) COMPLAINT FOR DAMAGES
	h, L.L.P. Suite 1700 0802 77 78	13	
	Curd, Galindo & Smith, L.L.P. 301 E. Ocean Boulevard, Suite 170 Long Beach, CA 90802 Ph: (562) 624-1177 Fx: (562)624-1178	14	Plaintiff(s),
		15	VS)
		16	CITY OF LONG BEACH,)DOES 1 THROUGH 10,)
		17	INCLUSIVE,
		18	Defendant(s))
		19	GENERAL ALLEGATIONS
		20	1. Pursuant to the provisions of Code of Civil Procedure §377.60(a), Plaintiff,
		21	Bradley Lembke, hereinafter referred to as PLAINTIFF has standing to bring a wrongful death
		22	action against the defendant, CITY OF LONG BEACH, herein, as he is the sole heir of decedent
		23	BRYAN JOHN LEMBKE (hereinafter "DECEDENT"). As a result of the collision, which is the
		²⁴	subject of this litigation, DECEDENT sustained catastrophic injuries that ultimately resulted in
		25	his death on November 8, 2018.
		26	2. At all times mentioned herein, Defendant CITY OF LONG BEACH was a public
		27	entity within the meaning of the California Government Tort Claims Act. On or about May 3,
		28	2019, PLAINTIFF submitted tort claims for the wrongful death of DECEDENT to the City of
			Complaint for Damages

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Long Beach City Clerk. The claim was denied on July 30, 2019 pursuant to Government Code §§912.4.

3. At the time of the collision, which is the subject matter of this litigation, DECEDENT was the owner and operator of a Sondors Electric bicycle #MT1642428.

4. PLAINTIFF is informed and believes and thereon alleges that at all times and places herein mentioned, Non-defendant JAMES YOUNG owned, operated, maintained and controlled a blue 2007 Honda Accord bearing license number 5XTX555.

5. At all times herein mentioned, Spring Street was and is a public street and
highway running in a general easterly and westerly direction within the City of Long Beach,
State of California. Spring Street shall be hereinafter referred to as the SUBJECT ROADWAY.

6. At all relevant times, Defendant CITY OF LONG BEACH was responsible for ownership, maintenance, administration, control and operation of Spring Street the SUBJECT ROADWAY.

7. The true names and capacities, whether individual, corporate, associate, governmental or otherwise of Defendants, Does 1 through 10, inclusive, are unknown to Plaintiffs at this time, who therefore sue said Defendants by said fictitious names, and when the true names and capacities of said Defendants are ascertained, leave of Court will be sought to amend this Complaint to allege the true names and capacities of said Defendants.

8. That the Plaintiff is informed and believes, and thereupon alleges, that each of the
Defendants, designated herein as a DOE is legally responsible in some manner or means for the
events and happenings to the Plaintiff, as herein alleged, either through their contractual duty,
conduct or through the conduct of their agents, servants, or employees, or due to their ownership,
design, construction, study, inspection, management, and/or maintenance of the SUBJECT
ROADWAY, and failure to maintain the SUBJECT ROADWAY, the Plaintiff was injured and
suffered damages which shall be proven at trial.

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2	FIRST CAUSE OF ACTION			
3	(Wrongful Death Against defendant CITY OF LON BEACH; DOES 1-10 for			
4	Dangerous Condition of Public Property)			
5	9. PLAINTIFF incorporates herein by reference paragraphs 1 through 8, inclusive,			
6	of the common allegations as though fully set forth herein at length.			
7	Dangerous Condition of Public Property (Gov. Code 835.4)			
8	10. The Plaintiff alleges and incorporates the Government Codes which set forth the			
9	statutory authority to seek damages against a governmental entity such as the CITY OF LONG			
10	BEACH.			
11	11. Government Code, section 815 provides:			
12_	"Except as otherwise provided by statute:			
13	(a) A public entity is not liable for an injury, whether such injury arises out of an act or			
14	omission of the public entity or a public employee or any other person.			
15	(b) The liability of a public entity established by this part (commencing with section			
16	814) is subject to any immunity of the public entity provided by statute, including this part, and			
17	is subject to any defenses that would be available to the public entity if it were a private person.			
18	12. The Plaintiff also alleges that Government Code, Section 835 provides for the			
19	appropriate statute whereby the defendants CITY OF LONG BEACH and DOES 1 through 5 can	l		
20 21	be held liable for injury to plaintiff.			
21	Government Code, Section 835 provides:			
23	Except as provided by statute, a public entity is liable for injury caused by a dangerous			
24	condition of its property if the plaintiff establishes that the property was in a dangerous condition			
25	at the time of the injury, that the injury was proximately caused by the dangerous condition,			
26	That the dangerous condition created a reasonably foreseeable risk of the kind of injury which			
27	was incurred, and that either			
28	(a) A negligent or wrongful act or omission of an employee of the public entity within			
	the scope of his employment created the dangerous condition or			
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 (b) The public entity had actual or constructive notice of the dangerous condition Under section 835.2 a sufficient a time prior to the injury to have taken measures to protect against the dangerous condition.

Further the Plaintiff alleges that certain employees of the defendants, CITY OF
 LONG BEACH and DOES 1 through 5 were negligent and that such negligence proximately
 caused the injury to Plaintiff.

Government Code, Section 840.2 provides the following:

"An employee of a public entity is liable for injury caused by a dangerous condition of public property if the plaintiff establishes that the property of the public entity was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that either:

(a) The dangerous condition was directly attributable wholly or in substantial part to a negligent or wrongful act of the employee and the employee had the authority and the funds and or means immediately available to take alternative action which would not have created the dangerous condition or

(b) The employee had the authority and it was his responsibility to take adequate measures to protect against the dangerous condition and that expense of the public entity and the funds and other means for doing so were immediately available to him, and he had actual or constructive notice of the dangerous condition under section 840.4 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

14. On November 7, 2018, and before that time, the defendants, and each of them, so
negligently and carelessly failed to prevent the creation of a dangerous and defective condition,
by not adequately taking safety measures, not installing street lights, not installing a bike lane,
warn of dangerous conditions, adequately erect, place and install bike lane barricades where
needed as well as supervise and monitor Spring Street for speeding vehicles.

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15. The defendant, CITY OF LONG BEACH failed to take reasonable steps to properly maintain the Spring Street for the benefit of cyclist which created a dangerous condition for pedestrians and cyclist.

16. At all times herein mentioned, and for some time prior thereto, defendant, CITY OF LONG BEACH, in the exercise of due care, had both constructive and actual notice, pursuant to Government Code, Section 840.4 (a) and (b), of the dangerous and defective condition of the subject city premises due to the lack of proper maintenance of SUBJECT ROADWAY.

17. At all times herein mentioned defendant CITY OF LONG BEACH, and DOES 1-10, was/were responsible for, among other things, the planning, design, supervision, control, construction, servicing, management, inspection, monitoring, testing, evaluation, improvement, redesigning, redevelopment, resurfacing, modification, operation, signing, striping, maintenance, repair, traffic control, and other activities related to the SUBJECT ROADWAY where the subject incident occurred.

18. On or about November 7, 2018, DECEDENT was heading west on Spring Street, riding his bicycle in the number 3 lane west of the entrance to the El Dorado Regional Park.
DECEDENT was compelled to use the SUBJECT ROADWAY as the City of Long Beach Municipal Code 10.48.070 prohibits cyclist to use the city's sidewalks. Due to the dangerous condition of the SUBJECT ROADWAY, DECEDENT'S bicycle was struck by the vehicle driven by JAMES YOUNG.

19. At the time of the November 7, 2018 crash, the SUBJECT ROADWAY was in a dangerous and defective condition such that cyclist did not have a dedicated bike lane and the SUBJECT ROADWAY lacked any street lighting such that motorist could not see the cyclist.

20. Eastbound vehicles travelling along Spring Street at El Dorado Park have no
 warning that cyclist are sharing the SUBJECT ROADWAY and the lack of street lighting at that
 area of the SUBJECT ROADWAY prevent the eastbound motorist from seeing the cyclist.

21. The CITY OF LONG BEACH and DOES 1-10, and its/their employees,

contractors, personnel, agents and assigns were negligent and are responsible for the

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PLAINTIFF'S injuries because they created the dangerous condition and had actual or constructive notice of the dangerous conditions.

22. The dangerous lack of street lighting and lack of bike lane, the lack of traffic control to reduce speed from motorist exiting the 605 Interstate Highway on to Spring Street Along with the absence of proper roadway markings, warnings, traffic controls, striping, and/or signs to warn drivers of the cyclist sharing the SUBJECT ROADWAY constitute a "trap" to cyclist using the SUBJECT ROADWAY with due care.

23. More specifically, the "trap" was, among other things, the conjunction of the dangerous condition of the SUBJECT ROADWAY with the CITY OF LONG BEACH failing to provide a dedicated bicycle lane along Spring Street near the entrance of a park such as El
Dorado Park which is visited by pedestrians and cyclist daily.

24. At the time of the incident, DECEDENT was using the SUBJECT ROADWAY with due care, using a head light on the front end of his bicycle and a red light at the rear and using reflective clothing, however, due to the dangerous and unreasonably poor visibility and poor lighting, so as to increase the likelihood that vehicles would impact with cyclist on the SUBJECT ROADWAY even at low speeds causing conflicts with the cyclist traveling on the SUBJECT ROADWAY at reasonable and foreseeable speeds.

25. The-SUBJECT ROADWAY was, among other things, inadequately and improperly maintained, inspected, surfaced, striped, contoured, signed, regulated, monitored and/or controlled by the CITY OF LONG BEACH, thereby interfering with the safe operation of cyclist due to the absence of any required or adequate warnings of the aforementioned conditions and without a designated bicycle lane.

26. The dangerous condition of public property, as alleged above, was the proximate
cause of DECEDENT'S death in that, among other things, that the CITY OF LONG BEACH
and DOES 1- 10 failed to provide safeguards against a dangerous condition of public property,
which: (1) was known, or should have been known, by the CITY OF LONG BEACH in time to
make the condition safe, and (2) the CITY OF LONG BEACH has had the means to make the

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condition safe, and (3) the CITY OF LONG BEACH knew of a number of accidents and injuries which required the installation of street lighting, signage and a dedicated bike lane to remediate the dangerous condition but failed to take action.

27. As a proximate result of defendant's, CITY OF LONG BEACH failure to remedy a dangerous condition of public property, as alleged above, PLAINTIFF, the lawful heir of DECEDENT, has sustained pecuniary loss, including loss of support, and has been denied care, protection, consideration, companionship, love, solace, affection, and society of the decedent, all to his damage in an amount in excess of the jurisdictional limits of this court, said amount to be determined according to proof at time of trial.

28. As a further, proximate result of the acts and omissions of defendants, and each of them, PLAINTIFF has incurred funeral and burial expenses in an amount to be determined according to proof at time of trial.

DEMAND FOR JURY TRIAL

29. Plaintiff hereby demands a trial by jury on all issues so triable.

WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of them, as follows:

1. For general damages to be proven at trial;

- 2. For special damages to be proven at trial;
- 3. For interest pursuant to law;
- 4. For costs of suit incurred herein; and

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

CURD, GALINDO & SMITH. LLP

Alexis Galindo Attorneys for Plaintiff

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