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20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
21 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

22 ASHLEY PETERSON and MARK)  
23 PETERSON, II, individually, as successors-in-)  
24 interest, and as personal representatives of the)  
25 ESTATE OF S.P., decedent and minor child;)  
26 C.P. a minor child, by and through his)  
27 [proposed] *Guardian ad Litem;*)

28 Plaintiffs, )

v. )

1 CITY OF SAN DIEGO, a California public )  
2 entity; COUNTY OF SAN DIEGO, a )  
3 California public entity; SAN DIEGO )  
4 UNIFIED PORT DISTRICT, a California )  
5 public entity; STATE OF CALIFORNIA, a )  
6 public entity; OFFER UP, INC., a Delaware )  
7 corporation; THERESA MIRANDA DE )  
8 VARA, an individual; LEAL SERAFIN, an )  
9 individual ISAAC SHAKER, an individual; )  
10 ARSANYOUS R. GHALY, an individual; )  
11 PETER YOUSSEF; DOES 1-100, inclusive, )

12 Defendants. )

Case No.:

**COMPLAINT FOR WRONGFUL DEATH  
AND SURVIVAL:**

- (1) **Dangerous Condition of Public Property;**
- (2) **Violations of the California Harbors and Navigation Code;**
- (3) **Negligence *per se*;**
- (4) **Gross Negligence;**
- (5) **Negligence; and**
- (6) **Loss of Companionship.**

**[JURY TRIAL DEMANDED]**

13 Plaintiffs Ashley Peterson (“**Ashley**” or “**S.P.’s Mother**”) and Mark Peterson, II (“**Mark**”  
14 or “**S.P.’s Father**”), individually, as successors-in-interest, and personal representatives of the

1 Estate of S.P., decedent and minor child; C.P. a minor child, by and through his [proposed]  
2 *Guardian ad Litem* (“**Plaintiffs**”) bring this Complaint against Defendants the City of San Diego  
3 (“**City**”); San Diego Unified Port District (“**District**”); County of San Diego (“**County**”), State of  
4 California (“**State**”); OfferUp, Inc. (“**OfferUp**”); Theresa Miranda De Vara (“**De Vara**”), an  
5 individual; Leal Serafin (“**Serafin**”), an individual; Arsanyous R. Ghaly (“**Ghaly**”), an individual;  
6 Isaac Shaker (“**Shaker**”), an individual; Peter Youssef (“**Youssef**”), an individual; and DOES 1-  
7 100, inclusive, (collectively, “**Defendants**”) (altogether, the “**Parties**”) as follows:

8 **PARTIES**

9 1. This action arises from a tragic death of 12-year-old minor child, S.P. (“**S.P.**,”  
10 “**Decedent**,” or “**Estate of S.P.**”)

11 2. S.P. was a resident of San Diego, California at the time of her death.

12 3. Plaintiff Ashley Peterson (“**Ashley**”) is S.P.’s surviving mother. She is, and at all  
13 times mentioned herein was, an individual over the age of eighteen (18) who resides in the County  
14 of San Diego, State of California.

15 4. Plaintiff Mark Peterson, II (“**Mark**”) is S.P.’s surviving father. He is, and at all  
16 times mentioned herein was, an individual over the age of eighteen (18) who resides in the County  
17 of San Diego, State of California.

18 5. Plaintiff C.P. (“**C.P.**”) is S.P.’s surviving younger brother. He is, and at all times  
19 mentioned herein was, an individual under the age of eighteen (18) who resides in the County of  
20 San Diego, State of California.

21 6. Plaintiffs are the immediate family members and successors-in-interest of  
22 Decedent.

23 7. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
24 herein, Defendant City of San Diego (“**City**”) is and was a legal and political public entity  
25 established pursuant to the laws of the State of California, with all the powers and responsibilities  
26 necessarily implied by the Constitution and laws of the State of California, and other applicable  
27 laws.  
28

1           8.       Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
2 herein, Defendant County of San Diego (“**County**”) is and was a legal and political public entity  
3 established pursuant to the laws of the State of California, with all the powers and responsibilities  
4 necessarily implied by the Constitution and laws of the State of California, and other applicable  
5 laws.

6           9.       Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
7 herein, Defendant San Diego Unified Port District (“**District**”) is and was a legal and political  
8 public entity established pursuant to the laws of the State of California, with all the powers and  
9 responsibilities necessarily implied by the Constitution and laws of the State of California, and  
10 other applicable laws.

11           10.      Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
12 herein, Defendant State of California (“**State**”) is and was a legal and political public entity  
13 established pursuant to the laws of the United States of America, with all the powers and  
14 responsibilities necessarily implied by the Constitution and laws of the United States of America,  
15 and other applicable laws.

16           11.      Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
17 herein, OfferUp, Inc. (“**OfferUp**”) is a Delaware corporation doing business throughout  
18 California, including without limitation, within the City of San Diego.

19           12.      Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
20 herein, Defendant Arsanyous R. Ghaly (“**Ghaly**”), an individual over the age of eighteen (18) who  
21 resides in the County of Los Angeles, California.

22           13.      Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
23 herein, Defendant Isaac Shaker (“**Shaker**”), an individual over the age of eighteen (18) who resides  
24 in the County of Westmoreland County, Pennsylvania.

25           14.      Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
26 herein, Defendant Theresa Miranda De Vara (“**De Vara**”), an individual over the age of eighteen  
27 (18) who resides in the County of San Diego, California.  
28

1           15.     Plaintiffs are informed and believe, and thereon allege, that at all times mentioned  
2 herein, Defendant Leal Serafin (“**Serafin**”), an individual over the age of eighteen (18) who resides  
3 in the County of San Diego, California.

4           16.     Plaintiffs are ignorant of the true names and capacities of the Defendants sued  
5 herein as DOES 1 through 100, inclusive, and therefore sue these Defendants by such fictitious  
6 names. Plaintiffs will amend this Complaint to allege the true names and capacities if, and when,  
7 they are ascertained.

8           17.     Plaintiffs believe and thereon allege that each, and all, named defendants and the  
9 DOE defendants (herein collectively referred to as “**Defendants**”) are responsible in some manner  
10 for the occurrences herein alleged, and that Plaintiffs’ damages are herein alleged are directly,  
11 proximately, and/or legally caused by Defendants and their actions or inactions.

12           18.     Plaintiffs believe and thereon allege that each of these Defendants named herein as  
13 DOES are the agents, shareholders, members, officers, servants, representatives, and/or  
14 employees, superiors of the other named Defendants and when performing the acts alleged herein,  
15 were acting within the scope of their agency, employment, and/or representative capacity and are  
16 therefore responsible for the acts complained of herein.

17           19.     Defendants and each of them, or a select number of them, were at all times  
18 mentioned herein, the agents, employees, joint venturers, alter-egos and/or co-conspirators of each  
19 of the other co-defendants, and at all times mentioned herein, were acting in the course and scope  
20 of said agency, employment, capacity, or service, and in furtherance of a joint venture and/or  
21 conspiracy or otherwise jointly in agreement.

22           20.     Wherever appearing in this Complaint, each and every reference to Defendants, and  
23 to any or each of them, is intended to be and shall be a reference to all Defendants hereto, and to  
24 each of them, named and unnamed, including all fictitiously named defendants.

25           21.     All allegations made in this Complaint are based upon information and belief,  
26 except those allegations which pertain to the named Plaintiffs, which are based on personal  
27 knowledge. The allegations of this Complaint state on information and belief are likely to have  
28 evidentiary support after a reasonable opportunity for further investigation or discovery.

1 **JURISDICTION AND VENUE**

2 22. This Court has personal jurisdiction over Defendants as they reside in the State of  
3 California and/or conduct business in the State of California and/or have maintained a continuous  
4 presence in the State of California or have otherwise consented to jurisdiction in the State of  
5 California.

6 23. This Court has subject matter jurisdiction over this action because the amount of  
7 relief sought in this action exceeds the statutory minimum.

8 24. Venue is proper in the County of San Diego pursuant to California Code of Civil  
9 Procedure § 393, 394, and 395 because this action concerns an incident that occurred in San Diego  
10 County, and because this county is where the dispute arose and where the transactions occurred.

11 25. Venue is proper in this Court because the defendants reside and/or maintain a place  
12 of business in the State of California, County of San Diego, and/or because all the events and  
13 transactions giving rise to this action took place in the State of California, City of San Diego.

14 **FACTUAL ALLEGATIONS**

15 26. Mission Bay is a navigable water of the United States of America, which, along  
16 with the surrounding areas, is jointly and severally managed, owned and/or controlled by the City,  
17 the County, the District, the State, and other currently unknown DOE defendants, which include  
18 without limitation, individual employees of the named defendants, together (the “**Public Entity**  
19 **Defendants**”)

20 27. Mission Bay is an improved area of water in San Diego, California, which permits  
21 bathers, paddleboarders, jet skiers, personal watercraft enthusiasts, various types of boats, and  
22 wildlife.

23 28. De Anza Cove is part the larger Mission Bay, a popular recreational area located in  
24 San Diego, California.

25 29. Plaintiffs are informed and believe, and thereon allege, that on July 29, 2023,  
26 Ghaly, Shaker, and their “cousin,” Peter Youssef, used the website OfferUp.com to help facilitate  
27 the unlawful and unpermitted rental of two jet skis including, the one that Ghaly and Shaker were  
28 operating.

1           30. Plaintiffs are informed and believe, and thereon allege, that Defendant De Vara and  
2 her husband, Serafin, owned the jet skis illegally and recklessly chartered that day in Mission Bay  
3 by Ghaly, Shaker, and Youssef, which include, without limitation, a 2022 Yamaha jet ski  
4 (Identification No. CF-7550-VU)(Hull Identification No. YAMA3403D222), “**Vessel 1.**”

5           31. Plaintiffs are informed and believe, and thereon allege, that Defendants De Vara  
6 and Serafin had previously published an advertisement for the unlawful rental of the jet skis on  
7 OfferUp.com, and Ghaly, Shaker, and/or Youssef, along with other individual(s), together,  
8 contacted, coordinated with, and paid Defendants De Vara and Serafin through the OfferUp.com  
9 website and otherwise to rent the jet skis.

10           32. Plaintiffs are informed and believe, and thereon allege, that Offer Up, Inc.  
11 (“**OfferUp**”) owns, controls and operates OfferUp.com.

12           33. Plaintiffs are informed and believe, and thereon allege, that OfferUp knew or  
13 should have known that their website is used, on a regular basis, by its users to facilitate the  
14 unlawful, unlicensed, and/or otherwise dangerous use of rental equipment.

15           34. Defendants De Vara, Serafin, Ghaly, Shaker, and/or Youssef, along with other  
16 individual(s), together, met in or near the De Anza Boat Launch area to effectuate the unlawful  
17 unlicensed and/or otherwise unauthorized rental of personal watercraft(s), including without  
18 limitation Vessel 1.

19           35. Neither Defendant Ghaly, Defendant Shaker, nor Defendant Youssef sought or  
20 possessed a California Boater’s card.

21           36. Defendant Ghaly, Defendant Shaker, and Defendant Youssef had minimal, if any,  
22 experience operating a jet ski prior to July 29, 2023.

23           37. Neither Defendant Ghaly, Defendant Shaker, nor Defendant Youssef received any  
24 safety training, instruction, or direction prior to operating the jet skis.

25           38. Plaintiffs are informed and believe, and thereon allege, that Defendants De Vara  
26 and Serafin collected a fee for their unlawful/unpermitted rental, and then left the scene.

27           39. Defendants Ghaly, Shaker, and Youssef entered the water in a  
28 dangerous/unlawful/unpermitted and/or criminal manner.

1           40. Defendants Ghaly, Shaker, and Youssef operated in an unlawful and/or criminal  
2 manner, traveling through an area which presented a dangerous condition, a condition which was  
3 exacerbated by their conduct.

4           41. Earlier that day, on July 29, 2023, a 12-year-old female, S.P. (also referred to as  
5 “**Decedent**”) was visiting Mission Bay for a day out on her paddleboard, believing the bay to be a  
6 safe area.

7           42. Decedent’s paddleboard is known as “**Vessel 2.**”

8           43. Vessel 2 is a Goplus 10ft white and blue inflatable standup paddle board.

9           44. Decedent entered the water with her paddleboard near a lifeguard stand located by  
10 De Anza Cove, which is situated in the northwest corner of Mission Bay.

11           45. At approximately 1:52 p.m. that day, Decedent was using her paddleboard and  
12 traveling westbound within the legal guidelines when she was struck from behind and run over by  
13 a personal watercraft (a jet ski) being operated by Defendant Ghaly and his passenger, Defendant  
14 Shaker (the “**Incident**”).

15           46. Defendants Ghaly and Shaker were operating the jet ski that struck Decedent at the  
16 time of the Incident.

17           47. At the time of the Incident, Defendants Ghaly and Shaker were operating the jet ski  
18 in an extremely dangerous manner, without looking ahead, and travelling at the “top speed” (47-  
19 53 mph) permitted by the mechanisms of the Yamaha jet ski, a speed well in excess of the posted  
20 legal limit (5 mph).

21           48. Approximately eight (8) minutes before the Incident, a San Diego lifeguard,  
22 commanding a San Diego City lifeguard vessel named “**Rescue 2,**” pulled over Defendants  
23 Youssef on one jet ski, and Ghaly and Shaker on Vessel 1, both for excessive speed and reckless  
24 operation under the prevailing conditions in Mission Bay that day.

25           49. At the time, a San Diego lifeguard and other San Diego employees had clear view  
26 of Decedent on her paddle board, only 500 yards away from where they stopped Defendants Ghaly  
27 and Shaker, and were otherwise monitoring, patrolling, and/or otherwise present in the area.  
28

1           50.     However, the lifeguards and others allowed Defendants Ghaly and Shaker to  
2 continue to operate the jet ski at an excessive rate of speed and out of control in the direction of  
3 Decedent until the Incident occurred.

4           51.     At the time, these lifeguards and police officers did not monitor, closely follow,  
5 blow a horn or siren, radio for others to remove the deadly personal watercraft hurtling toward  
6 Decedent or do anything else to ensure Defendants Ghaly and Shaker would operate the jet ski  
7 safely and not hit and kill Decedent or any other person.

8           52.     The acts and omissions of the lifeguards and police officers, and other employees  
9 of public entities named herein, at all times relevant constituted negligence, gross negligence,  
10 and/or an intentional, conscious disregard for the safety of the Decedent and others in the area.

11           53.     Moreover, by allowing Defendants Ghaly and Shaker to continue to operate the jet  
12 ski, the lifeguard exacerbated the already dangerous condition as, among other things, Ghaly and  
13 Shaker believed they could operate the jet ski with impunity.

14           54.     The dangerous condition of the bay, the acts and omissions of lifeguards and police  
15 officers and/or the dangerous condition created by the lifeguards, police officer, those responsible  
16 for posting signs, those responsible for erecting buoys (or similar barriers or aids to navigation),  
17 demarcating, or otherwise segmenting the water or areas in which bathers, paddleboarders,  
18 motorized personal watercraft, and boats could travel, was a substantial factor/proximate cause of  
19 the Incident.

20           55.     The Public Entity Defendants and other individuals failed to supervise and train the  
21 lifeguards and other personnel charged with working to keep Mission Bay safe.

22           56.     In other words, Defendants created a death trap, were aware of this and related  
23 dangerous conditions, and yet failed to warn or abate it.

24           57.     In addition, the acts and omissions of the lifeguard and others and/or the dangerous  
25 condition created by the Public Entity Defendants allowing and enabling the Ghaly/Shaker jet ski  
26 to be operated exacerbated the already dangerous condition and was a substantial factor/proximate  
27 cause of the Incident.  
28



1           58.     The Public Entity Defendants and their staff members, including without limitation  
2 the lifeguards and patrol persons on duty, actually knew or had constructive knowledge that this  
3 thoroughway was unsafe for bathers and paddleboarders, given the volume of motorized watercraft  
4 traveling at high rates of speed in a bottleneck thoroughway.

5           59.     The Public Entity Defendants and their staff also knew that incompetent, untrained,  
6 unskilled jet ski operators were, on a regular basis, unlawfully renting watercraft, and entering the  
7 water without Boating Cards.

8           60.     The Public Entity Defendants and their staff also knew that jetski owners were  
9 unlawfully and without permits, renting jet skis, and that persons who did not have proper safety  
10 training operating in the waters where the Incident occurred.

11          61.     Despite the knowledge of the dangerous conditions alleged herein, Public Entity  
12 Defendants and their staff failed to act in any way to create barriers, to warn, to create, maintain,  
13 and enforce laws, regulations, and ordinances regulating the rental, safety training, safe operation,  
14 speed, and permissible areas of use.

15          62.     The Public Entity Defendants and their staff also failed to demarcate, place buoys  
16 or lines, limit the areas of operation, or otherwise separate dangerous jet ski and other bathers or  
17 paddleboarders in De Anza Cove and in the thoroughway between De Anza Cove and Fiesta Bay.

18          63.     The Public Entity Defendants and their staff further failed to hire, supervise, train,  
19 and appropriately staff Mission Bay in a way that ensured the safety of patrons.

20          64.     The Public Entity maps failed to create documents and publish guidance, such as  
21 some of the same or more protected areas of Mission Bay with less vessel traffic; failed to post  
22 signage, including without limitation, establishing preferred paddling areas; failed to publish  
23 guidance and materials to rental businesses and to post signage or other publications regarding  
24 applicable laws and guidance or warnings of the dangerous conditions; failed to adequately patrol  
25 to monitor safety among paddle boarders; failed to establish safety tips and to air and post public  
26 service announcements in a manner that would prevent or minimize danger.  
27  
28



1           76.     At all times relevant, the Public Entity Defendants and their employees had actual  
2 or constructive knowledge of the illegal chartering and use of jet skis on Mission Bay in violation  
3 of various statutes, codes, and regulations, including without limitation, San Diego Municipal  
4 Code § 63.20.20 *et seq.* The violations included, without limitation, the chartering to and use of  
5 jet skis by untrained, incompetent, dangerous, illegal operators without a Boater Card as required  
6 by California Harbors & Navigation Code § 678.11(b).

7           77.     At all times relevant, the Public Entity Defendants and their employees had actual  
8 or constructive knowledge of the reckless use of jet skis on Mission Bay in violation of various  
9 statutes, codes, and regulations, including without limitation, San Diego Municipal Code Section  
10 63.20.20 *et seq.* The violations included, without limitation, the chartering to and use of jet skis  
11 by untrained, incompetent, dangerous, illegal operators as prohibited by California Harbors &  
12 Navigation Code § 655, *et seq.*

13           78.     At all times relevant, the Public Entity Defendants and their employees, and other  
14 unknown defendants had actual or constructive knowledge that such illegal and dangerous  
15 activities were taking place not only in Mission Bay Park but in particular the boat launch ramps  
16 near De Anza Point.

17           79.     Further, that such illegal chartering and operation was creating dangerous  
18 conditions on the shore and waters near De Anza Point, and that offending vessels and operators  
19 were entering waters from launch ramps where no warnings, preventive barriers, no signs  
20 regarding the need for permitting, no signs regarding the need for Boater Cards, no Boater Card or  
21 permit inspections or anything was done to sufficiently prevent said illegal dangerous activities on  
22 the waters and shores near De Anza Point, and that people on the waters and shores near De Anza  
23 Point were being injured or killed by incompetent and illegal jet ski operators in such a number  
24 that it provided a sufficient level of foreseeability so as to render the condition of the beach/waters  
25 a proximate cause of Decedent's injuries and damages. The danger was substantial, and not trivial;  
26 the conditions and other dangers in the Bay constitute a trap for unwary paddleboarders.

27           80.     Tragically, a crucial opportunity to prevent the death of S.P. was missed when at  
28 approximately 5:44 p.m., a mere eight (8) minutes before the fatal collision, a San Diego lifeguard

1 had pulled over Defendants Ghaly and Shaker for excessive speed and reckless operation under  
2 the prevailing conditions in Mission Bay that day. Despite this clear instance of dangerous  
3 behavior, Defendants Ghaly and Shaker were not removed from the water, resulting in dire  
4 consequences. Furthermore, at the scene of the collision, the same lifeguard recognized Defendants  
5 Ghaly and Shaker, realizing with dismay that he had issued a warning to the same individuals just  
6 minutes earlier. This realization underscores a critical point: had the lifeguard taken more stringent  
7 action following the initial infringement, namely removing Defendants Ghaly and Shaker from the  
8 waters of De Anza Cove or even Mission Bay, the tragic loss of S.P.'s life could have been averted.

9 81. Consequently, there is sufficient nexus between Ghaly and Shaker's conduct and  
10 condition of the launch ramp, shore and waters near De Anza Point such as to satisfy the definition  
11 of a "dangerous condition" within meaning of public liability statute. (*See, e.g. Swaner v. City of*  
12 *Santa Monica*, 150 Cal. App. 3d 789 (Ct. App. 1984).)

13 82. The Public Entity Defendants, and each of them, had mandatory duties to abate  
14 known and dangerous conditions, and/or to warn of them, and further had duties that include  
15 without limitation to create a safe environment for the public, to structure and demarcate Mission  
16 Bay, and to hire, supervise, train, and otherwise sufficiently staff the Bay in a way that ensures  
17 patrons' safety.

18 83. The Public Entity Defendants, and each of them, had mandatory duties to prevent  
19 from entering and remove from Mission Bay persons who violate the law, and otherwise prevent  
20 persons from entering the water who are or who can become, through their behavior and lack of  
21 experience and adherence to laws, deadly to others.

22 84. Under Government Code § 835, a public entity is liable for any injury caused by a  
23 dangerous condition of its property if the property was in a dangerous condition at the time of the  
24 injury, the injury was proximately caused by the dangerous condition, the dangerous condition  
25 created a reasonable foreseeable risk of the kind of injury which was incurred, and either (a)  
26 negligently or wrongful act or omission of an employee of the public entity within the scope of his  
27 employment created the dangerous condition; or (b) the public entity had actual or constructive  
28 notice of the dangerous condition a sufficient time prior to the injury to have taken measures to

1 protect against the dangerous condition. Further, a public entity is also liable for a dangerous  
2 condition created by the foreseeable negligent conduct of a third party of which the public entity  
3 had actual or constructive notice and for which the public entity failed to provide adequate  
4 safeguards.

5 85. A public entity which holds its property open to the public creates a special  
6 relationship with the visitors whereby the public entity assumes a duty to protect the visitors while  
7 they are upon the land for such a purpose from physical harm caused by the negligent or intentional  
8 wrongful acts of third persons. In fact, liability under Gov. Code § 835 may flow from the failure  
9 to exercise reasonable care to (a) discover that such acts are being done or are likely to be done, or  
10 (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise protect them  
11 against it.

12 86. Plaintiffs are informed and believe, and thereon alleges, that Public Entity  
13 Defendants and their employees controlled, owned, designed, constructed, built, approved,  
14 maintained, managed, repaired, regulated and/or inspected Mission Bay and all activities therein.

15 87. Plaintiffs are informed and believe, and thereon allege, that the Public Entity  
16 Defendants and DOES 1 - 100, had the power, obligation and the opportunity to prevent, fix, abate,  
17 guard and/or warn against the conditions of the Bay, and furthermore, that the Public Entity  
18 Defendants and DOES 1 - 100 failed to take adequate precautions to warn and/or guard against the  
19 dangerous conditions.

20 88. As a direct and proximate result of the Public Entity Defendants and DOES 1 -  
21 100's actions, failures to act, and the creation, maintenance, and failure to warn or abate set forth  
22 more fully herein, S.P. lost her life, and Plaintiffs, as successors in interest, are entitled to recover  
23 damages in an amount according to proof.

24 89. Furthermore, as alleged herein, the Public Entity Defendants and DOES 1 - 10  
25 displayed a want of even scant care and extreme departure from the ordinary standard of conduct  
26 in the context of the situation.

27 90. Therefore, as alleged herein, the Public Entity Defendants and DOES 1 - 10 are  
28 guilty of oppression, fraud, and/or malice as defined in California Civil Code § 3294 and

1 elsewhere, and Plaintiffs should recover, in addition to actual damages, exemplary and punitive  
2 damages to make an example of and to punish Defendants in an amount according to proof.

3  
4 **SECOND CAUSE OF ACTION**  
5 **Violations of California Harbors and Navigation Code**  
6 **(Against All Defendants)**

7 91. Plaintiffs reallege and incorporate herein by this reference, as though fully set forth  
8 herein, each and every allegation contained in this pleading.

9 92. Plaintiffs reallege and incorporate herein by this reference, as though fully set forth  
10 herein, each and every allegation contained in this pleading.

11 93. Every other paragraph of this pleading is incorporated by reference as though fully  
12 set forth and re-alleged herein.

13 94. At all times relevant, the Public Entity Defendants and their employees, and other  
14 currently unknown defendants, had actual or constructive knowledge of the illegal chartering and  
15 use of jet skis on Mission Bay in violation of various statutes, codes, and regulations, including  
16 without limitation, San Diego Municipal Code § 63.20.20 *et seq.* The violations included, without  
17 limitation, the chartering to and use of jet skis by untrained, incompetent, dangerous, illegal  
18 operators without a Boater Card as required by California Harbors & Navigation Code § 678.11(b).

19 95. At all times relevant, the Public Entity Defendants and their employees, and other  
20 currently unknown defendants, had actual or constructive knowledge that such illegal and  
21 dangerous activities were taking place not only in Mission Bay Park but in particular the boat  
22 launch ramps near De Anza Point.

23 96. At all times relevant, the Public Entity Defendants and their employees had actual  
24 or constructive knowledge of the reckless use of jet skis on Mission Bay in violation of various  
25 statutes, codes, and regulations, including without limitation, San Diego Municipal Code Section  
26 63.20.20 *et seq.* The violations included, without limitation, the chartering to and use of jet skis  
27 by untrained, incompetent, dangerous, illegal operators as prohibited by California Harbors &  
28 Navigation Code § 655, *et seq.*

97. Further, that such illegal chartering and operation was creating dangerous  
conditions on the shore and waters near De Anza Point, and that offending vessels and operators

1 were entering waters from launch ramps where no warnings, preventive barriers, no signs  
2 regarding the need for permitting, no signs regarding the need for Boater Cards, no Boater Card or  
3 permit inspections or anything was done to prevent said illegal dangerous activities on the waters  
4 and shores near De Anza Point, and that people on the waters and shores near De Anza Point were  
5 being injured or killed by incompetent and illegal jet ski operators in such a number that it provided  
6 a sufficient level of foreseeability so as to render the condition of the beach/waters a proximate  
7 cause of Decedent's injuries and damages. The danger was substantial, and not trivial; the  
8 conditions and other dangers in the Bay constitute a trap for unwary paddleboarders.

9 98. In addition, Defendants OfferUp, De Vara, Serafin, Shaker, Ghaly, and Youssef  
10 knew or are charged with knowing and a duty to comply with the obligations and prohibitions set  
11 forth in under California's Harbor and Navigation Code.

12 99. Defendants, each and all of them, violated or participated in the violation of law,  
13 either willfully, negligently, or with reckless and wanton disregard for the life of others.

14 100. Plaintiffs are informed and believe, and thereon allege, that the Defendants,  
15 including without limitation, DOES 1 - 100, had the power, obligation and the opportunity to  
16 adhere to California's Harbor and Navigation Code failed to do so

17 101. As a direct and proximate result of the Defendants' conduct and violations of law,  
18 S.P. lost her life, and Plaintiffs, as successors in interest, are entitled to recover compensatory  
19 damages in an amount according to proof.

20 102. Furthermore, as alleged herein, Defendants, and each of them, displayed a want of  
21 even scant care and extreme departure from the ordinary standard of conduct in the context of the  
22 situation.

23 103. Therefore, as alleged herein, Defendants are guilty of violations of the law, and  
24 oppression, fraud, and/or malice as defined in California Civil Code § 3294, and Plaintiffs should  
25 recover, in addition to actual damages, exemplary and punitive damages to make an example of  
26 and to punish Defendants in an amount according to proof.

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1  
2 **THIRD CAUSE OF ACTION**  
3 **Negligence Per Se**  
4 **(Against All Defendants)**

5 104. Plaintiffs reallege and incorporate herein by this reference, as though fully set forth  
6 herein, each and every allegation contained in this pleading.

7 105. Plaintiffs reallege and incorporate herein by this reference, as though fully set forth  
8 herein, each and every allegation contained in this pleading.

9 106. Every other paragraph of this pleading is incorporated by reference as though fully  
10 set forth and re-alleged herein.

11 107. At all times herein mentioned, Defendants De Vara and Serafin were the owners of  
12 a Yamaha Wave Runner, bearing VIN No. CF-7550-VU, Vessel 1, and another jet ski rented to  
13 Defendants Ghaly, Shaker, and Youssef.

14 108. Defendants De Vara and Serafin unlawfully and illegally engaged in a rental  
15 transaction of said vessel to Defendant, Shaker, Ghaly and Youssef, through the online  
16 marketplace, OfferUp.com, which violated San Diego Municipal Code § 63.20.20.

17 109. At all times relevant, the Public Entity Defendants had actual or constructive  
18 knowledge of the illegal chartering and use of jet skis on Mission Bay in violation of various  
19 statutes, codes, and regulations, including without limitation, San Diego Municipal Code §  
20 63.20.20 *et seq.*

21 110. The violations that the Public Entity Defendants and their employees were aware  
22 of – and the violations committed by Defendants OfferUp, De Vara, Serafin, Shaker, Ghaly, and  
23 Youssef – included, without limitation, the chartering to and use of jet skis by untrained,  
24 incompetent, dangerous, illegal operators without a Boater Card as required by California Harbors  
& Navigation Code § 678.11(b) and in violation of § 655, *et seq.*

25 111. At all times relevant, the Public Entity Defendants had actual or constructive  
26 knowledge that such illegal and dangerous activities were taking place not only in Mission Bay  
27 Park but in particular the boat launch ramps near De Anza Point.

28 112. Further, that such illegal chartering and operation was creating dangerous  
conditions on the shore and waters near De Anza Point, and that offending vessels and operators



1 were entering waters from launch ramps where no warnings, preventive barriers, no signs  
2 regarding the need for permitting, no signs regarding the need for Boater Cards, no Boater Card or  
3 permit inspections or anything was done to prevent said illegal dangerous activities on the waters  
4 and shores near De Anza Point, and that people on the waters and shores near De Anza Point were  
5 being injured or killed by incompetent and illegal jet ski operators in such a number that it provided  
6 a sufficient level of foreseeability so as to render the condition of the beach/waters a proximate  
7 cause of Decedent's injuries and damages. The danger was substantial, and not trivial; the  
8 conditions and other dangers in the Bay constitute a trap for unwary paddleboarders.

9 113. Plaintiffs are informed and believe, and thereon alleges, that the Public Entity  
10 Defendants and their employees controlled, owned, designed, constructed, built, approved,  
11 maintained, managed, repaired, regulated and/or inspected Mission Bay and all activities therein.

12 114. In addition, Defendants OfferUp, De Vara, Serafin, Shaker, Ghaly, and Youssef  
13 knew and failed to comply with the duties, obligations, and prohibitions set forth in under  
14 California's Harbor and Navigation Code.

15 115. Defendants, each and all of them, violated or participated in the violation of law,  
16 either willfully, negligently, or with reckless disregard to the life of others.

17 116. Plaintiffs are informed and believe, and thereon allege, that the Defendants,  
18 including without limitation, DOES 1 - 100, had the power, obligation and the opportunity to  
19 adhere to California's Harbor and Navigation Code failed to do so

20 117. As a direct and proximate result of the Defendants' conduct and violations of law,  
21 S.P. lost her life, and Plaintiffs, as successors in interest, are entitled to recover compensatory  
22 damages in an amount according to proof.

23 118. Furthermore, as alleged herein, Defendants, and each of them, displayed a want of  
24 even scant care and extreme departure from the ordinary standard of conduct in the context of the  
25 situation.

26 119. Therefore, as alleged herein, Defendants City of San Diego and DOES 1 - 10 are  
27 guilty of oppression, fraud, and/or malice as defined in California Civil Code § 3294, and Plaintiffs  
28

1 should recover, in addition to actual damages, exemplary and punitive damages to make an  
2 example of and to punish Defendants in an amount according to proof.

3 **FOURTH CAUSE OF ACTION**

4 **Gross Negligence**  
5 **(Against All Defendants)**

6 120. Plaintiffs reallege and incorporate herein by this reference, as though fully set forth  
7 herein, each and every allegation contained in this pleading.

8 121. Every other paragraph of this pleading is incorporated by reference as though fully  
9 set forth and re-alleged herein.

10 122. Defendants and each of them had a duty to act as reasonably prudent persons in  
11 similar circumstances.

12 123. The Public Entity Defendants and their employees were so grossly negligent in  
13 performance of their responsibilities and obligations that they breached their mandatory duties.

14 124. Defendants De Vara, Serafin, Shaker, Ghaly, and Youssef so recklessly and with  
15 wanton disregard violated the law and otherwise conducted themselves in a grossly negligent  
16 manner.

17 125. Defendants OfferUp so recklessly and with wanton disregard, and with actual  
18 knowledge of the violations of the law and dangers associated therewith, failed to institute policies  
19 and procedures, and screen users, and otherwise offered a platform that encouraged and enabled  
20 violated the law in a way that created a danger to its users.

21 126. Plaintiffs are informed and believe, and thereon allege, that the Public Entity  
22 Defendants and DOES 1 - 100, had the power, obligation and the opportunity to prevent, fix, guard  
23 and/or warn against the conditions of the Bay, and furthermore, that the Public Entity Defendants  
24 and DOES 1 - 100 failed to take adequate precautions to warn and/or guard against the dangerous  
25 conditions.

26 127. As a direct and proximate result of the Defendants and DOES 1 - 100's grossly  
27 negligent conduct, S.P. lost her life, and Plaintiffs, as successors in interest, are entitled to recover  
28 compensatory damages in an amount according to proof.



1 State of California, when it violently struck the decedent rendering her unconscious and causing a  
2 severe brain bleed. Defendant Ghaly's excessive speed was not only grossly negligent but also a  
3 clear breach of the legal speed limit mandated within close proximity to shorelines and other  
4 vessels. This disregard for maritime law and basic safety norms was a significant contributing  
5 factor to the tragic outcome of this Incident.

6 136. Defendants De Vara, Serafin, negligently and in violation of the law entrusted their  
7 vessel to Shaker, Ghaly, and Youssef.

8 137. Shaker, Ghaly, and Youssef so recklessly and with wanton disregard violated the  
9 law and otherwise conducted themselves in a grossly negligent manner.

10 138. Defendants OfferUp so recklessly and with wanton disregard, and with actual  
11 knowledge of the violations of the law and dangers associated therewith, failed to institute policies  
12 and procedures, and screen users, and otherwise offered a platform that encouraged and enabled  
13 violated the law in a way that created a danger to its users.

14 139. The Public Entity Defendants were so negligent in performance of their  
15 responsibilities and obligations that they breached their mandatory duties.

16 140. At all times herein mention, the Defendants, and each of them, so entrusted,  
17 managed, inspected, maintained, drove, controlled or failed to control, and/or operated Vessel 1  
18 so as to cause a collision with the Decedent resulting in the damages herein described.

19 141. Furthermore, as alleged herein, all Defendants and DOES 1 - 100 displayed a want  
20 of even scant care and extreme departure from the ordinary standard of conduct.

21 142. Plaintiffs are informed and believe, and thereon allege, that the Public Entity  
22 Defendants and DOES 1 - 100, had the power, obligation and the opportunity to prevent, fix, guard  
23 and/or warn against the conditions of the Bay, and furthermore, that the Public Entity Defendants  
24 and DOES 1 - 100 failed to take adequate precautions to warn and/or guard against the dangerous  
25 conditions.

26 143. As a direct and proximate result of Defendants, including without limitation, DOES  
27 1 - 100's negligent conduct, S.P. lost her life, and Plaintiffs, as successors in interest, are entitled  
28 to recover compensatory damages in an amount according to proof.






- e. For reasonable attorney's fees and costs;
- f. For pre-judgment interest at the maximum legal rate;
- g. For post-judgment interest at the maximum legal rate;
- h. For costs of suit incurred herein; and
- i. For such other and further legal and/or equitable relief as the Court may deem proper against Defendants.

Dated: June 17, 2024

**HOFFMAN & FORDE, ATTORNEYS AT LAW**

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