

**BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT
LITIGATION**

IN RE: FUTURE MOTION

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MDL DOCKET NO. 3087

**REPLY MEMORANDUM IN SUPPORT OF DEFENDANT FUTURE MOTION, INC.’S
MOTION TO TRANSFER ACTIONS PURSUANT TO 28 U.S.C. § 1407 FOR
COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

I. INTRODUCTION

Movant Future Motion, Inc. (“Future Motion”) respectfully submits this Reply Memorandum in support of its Motion to Transfer Actions for coordination or consolidation of pretrial proceedings.

There is almost unanimous support for the creation of a coordination or consolidated proceeding for federal Onewheel-related cases. The only three plaintiffs that object to coordinated or consolidated proceedings primarily assert that the procedural posture weighs against coordination. However, these three plaintiffs are not privy to the status of the federal Onewheel-related cases collectively and their unfounded concerns about the stages of the other cases are not shared by the plaintiffs in those respective cases. Centralization of these actions would facilitate coordinated discovery, prevent inconsistent rulings, and promote the efficiency and convenience of the parties, counsel, and court because discovery, whether fact and/or expert, remains outstanding in every case and there are substantial redundancies in the discovery sought, witnesses to be deposed, and experts utilized. Thus, transfer of actions for coordination or consolidation is appropriate under 28 U.S.C. § 1407.

Further, there is no other location that offers convenience for the same quantity of parties, witnesses, and counsel as the Middle District of Florida, and no district that has more experience

with federal Onewheel-related cases. Therefore, all actions should be transferred to the Middle District of Florida for coordinated or consolidated pretrial proceedings.

II. ARGUMENT

a. Transfer of Actions for Coordination or Consolidation is Appropriate Under 28 U.S.C. § 1407.

i. The parties nearly universally agree that transfer for coordination or consolidation is warranted.

There were 32 Onewheel-related actions pending in federal court at the time the present Motion was brought. (Dkt. 20-1). Since that time, one case has resolved. In addition, both Future Motion and the associated plaintiffs agree that one of the federal Onewheel related actions should not be coordinated because it is a class action with allegations that focus on general warranties and advertising to a class of consumers. (Dkt.1-1 at fn. 1; Dkt. 38). Of the 30 federal Onewheel-related actions for which coordination is sought¹, 27 of the plaintiffs affirmatively agree that coordination is warranted or, at least, do not oppose the coordination of proceedings (*i.e.* the plaintiffs in 90 percent of the cases). Future Motion, the sole defendant in all 30 actions, similarly maintains that coordination is appropriate to streamline discovery, prevent inconsistent rulings, and to promote judicial efficiency.

ii. Coordination or consolidation of these actions will serve the convenience of parties and witnesses and promote the just and efficient conduct of such actions.

The creation of a multidistrict litigation is appropriate because the Onewheel-related cases involve one or more common questions of fact in different districts, will serve the convenience of parties and witnesses, and promote the just and efficient conduct of such actions. The objections

¹ Three additional federal Onewheel-related actions have been initiated since Future Motion brought its Motion to Transfer. (Dkt. 28).

lodged by a small minority of plaintiffs are unavailing, are based on their limited knowledge of other cases, and are readily contradicted by their own allegations, discovery requests, and positions taken by their counsel. (Dkt. 32, the “Bunnell/Oatridge plaintiffs”; Dkt. 29 the “Russo plaintiff”).

1. The Onewheel-related cases involve common questions of fact.

It cannot reasonably be argued that common questions of fact do not clearly predominate the Onewheel-related cases. (*See also*, Ex. 1, p. 3; Ex. 2, pp. 8-9). The Complaints of the plaintiffs in the 30 subject federal Onewheel-related actions either contain allegations that are identical, word-for-word and paragraph-for-paragraph, or allegations that are highly similar in substance. That is, every single plaintiff, including the Russo plaintiff and the Oatridge/Bunnell plaintiffs, alleges that the rider fell because they were riding a Onewheel that stopped or shut off unexpectedly.

Despite alleging the exact same claims, the Russo plaintiff argues that there are not common questions of fact because the lawsuits involve two different models of the board (the Onewheel+ XR and the Onewheel Pint) and the boards were utilized by individuals with different skill level under different conditions. (Dkt. 29 at 3-4). The Oatridge/Bunnell plaintiffs similarly note that the circumstances of each plaintiff’s fall are “case specific.” (Dkt. 32 at 3). While Future Motion appreciates the plaintiffs’ acknowledgement that there is no common defect in the board, or across board models, and that each plaintiffs’ fall is a result of the riders’ action and experience level – that same candor is not present in the claims asserted by the plaintiffs or the discovery sought by the plaintiffs.

None of the plaintiffs in the pending federal Onewheel-related cases have ever identified any component of a Onewheel that they claim to be defective and to be causally related to their fall, much less identified a component specific to one model of the board. Rather, the plaintiffs

generically claim that all Onewheels are defective because they have a propensity to suddenly stop or shut off.

The plaintiffs in the federal Onewheel-related cases have broadly demanded discovery from Future Motion that is not specific to the model of the board nor tailored to the case specific facts of the plaintiff's fall. The plaintiffs in the *Oatridge* case recently brought a motion in which the plaintiffs were seeking to compel, among other things, any and all documents that Future Motion has produced in any other lawsuits, specifically including any and all documents produced in the 30 pending federal Onewheel related lawsuits.² Similarly, the *Russo* plaintiff served discovery requests seeking information regarding other Onewheel models. Regardless of the board model, the rider experience level, or the riding conditions, the plaintiffs have consistently utilized the exact same engineering experts and sought depositions of the same Future Motion witnesses.

Identical, or nearly identical, allegations that a product is defective constitute a common question of fact. Neither the Russo plaintiff nor the Oatridge/Bunnell plaintiffs have identified any authority to the contrary. To be clear, Future Motion adamantly denies that any defect exists, much less an "across-the-board" defect, but the focus of the analysis is whether the plaintiffs' similar allegations give rise to a common question of fact. Of course, if a defendant's insistence that a product is not defective could defeat the assertion that there are common questions of fact, every product manufacturing defendant could circumvent the creation of an MDL; yet, MDLs are commonly created for products liability cases.

Further, where allegations that a product is defective involve a common question of fact, there is no requirement that the MDL involve only one model of a product. *See, e.g., In re Avandia*

² *See Oatridge, et. al.v. Future Motion*, Case 5:21-cv-09906-BLF, Dkt. 39. The plaintiffs' motion was denied due to their failure to sufficiently meet and confer and page limits. (*Id.*, Dkt. 41).

Mktg., Sales Practices & Prods. Liab. Litig., 543 F. Supp. 2d 1376, 1378 (J.P.M.L. 2008) (coordinating cases involving a certain diabetes drug and two “sister drugs”); *Moore v. Wyeth-Ayerst Labs.*, 236 F. Supp. 2d 509, 510 (D. Md. 2002) (a coordinated proceeding involving two prescription diet drugs); *In re Ford Motor Co. Ignition Switch Prods. Liab. Litig. v. Ford Motor Co.*, MDL No. 1112 Civil Action No. 96-3125 (JBS), Civil Action No. 96-1814 (JBS), No. 96-3198 (JBS), 1997 U.S. Dist. LEXIS 23996, at *5 (D.N.J. Aug. 28, 1997) (relating to a coordinated proceeding involving numerous models of Ford vehicles). In fact, all California state court Onewheel-related cases are coordinated, and that coordinated proceeding involves five different models of the Onewheel. Transfer and centralization are appropriate here because the actions all have substantial commonality of questions of fact.

Notably, in court filings served yesterday by the Oatridge/ Bunnell plaintiffs’ counsel they took the position that other Onewheel cases involving the same allegations, and several of which are at the same stage of discovery, “share several common questions of fact that predominate and are significant to the litigation, and coordination will promote the convenience of the parties, witnesses, and counsel as well as the end of justice.” (Ex. 4).

2. Coordination will promote efficiency and convenience.

The *Russo* plaintiff and *Oatridge/Bunnell* plaintiffs contend that the coordination will not enhance efficiency given the procedural stages of the actions; however, a simple review of the docket is not indicative of the status of the pending actions or the reasons that centralization will promote efficiency of these actions.

There are currently only six cases in which fact discovery has closed. (*See* Dkt. 32 at 4, ¶ 1). However, expert discovery and motion practice have not concluded. Notably, in all six cases, the plaintiffs have utilized common experts (specifically, David Rondinone and Derek King) and

Future Motion has utilized common experts (Todd Hoover and Joel Cowells, among others). The Oatridge/Bunnell plaintiffs have retained these same experts (Rondinone and King), as have numerous other plaintiffs in the federal Onewheel-related cases.³ All of the plaintiffs in the six cases in which fact discovery have closed are in favor of, or at least do not oppose, centralization. All of these cases are currently stayed. Given that the subject plaintiffs in these six cases believe that their cases will benefit from coordination, the Oatridge/Bunnell plaintiffs' opinion of these cases is irrelevant.

Discovery has not closed in any of the other 24 cases. Moreover, three federal Onewheel-related cases have been served since Future Motion brought its Motion to Transfer and, given this trend, Future Motion anticipates that cases will continue to be initiated. Future Motion is currently subject to highly duplicative written discovery requests, redundant requests for expert discovery, and has recently fielded numerous requests for depositions of the same company witnesses. As the repetitive discovery demands of the exact same documents, company witnesses, and experts have increased and as the number of lawsuits continues to increase, the benefits of coordinated proceedings have become apparent, just as it did in the California state court proceedings.⁴

³ The *Oatridge/Bunnell* plaintiffs repeatedly emphasize that Future Motion “has not shown” that there will be any commonly used experts. Yet, their docket review of the other federal Onewheel-related cases would have demonstrated that the same experts are being utilized across cases. *See, for example, Koop v. Future Motion*, 3:22-cv-00134-BJD-PDB, Dkt. 92; *Haggerty v. Future Motion*, 1:22-cv-00322-SEG, Dkt. 43. *See also Ex. 2*, pp. 9-10 (acknowledging the considerable overlap in expert witnesses in the state court Onewheel-related cases and the considerable time, money, and energy that will be conserved with coordination).

⁴ After Future Motion moved to transfer, Future Motion was advised by a number of plaintiffs that they were intending to bring their own motion for the creation of an MDL in the Middle District of Florida.

Indeed, even in cases in which discovery was scheduled to close in the next few months, there is still significant outstanding discovery.⁵ This point is illustrated by the only three plaintiffs who object to the efficiency and convenience of coordinated proceedings. The Oatridge/Bunnell plaintiffs claim that fact discovery has been “largely completed” in their cases and that “[o]nly a small number of depositions and expert witness disclosure remains.” (Dkt. 32 at 10). In fact, not a single deposition has been conducted in either case. Notably, the Oatridge/Bunnell plaintiffs recently requested to conduct depositions of Future Motion’s corporate representative, its founder and Chief Executive Officer, Chief Operating Officer, Director of Control Systems, Director of Safety and Compliance, and the head of marketing of Future Motion. Such depositions are inherently burdensome in their own right, much less if these executives and engineers were subject to upwards of 30 depositions. Furthermore, the Oatridge/Bunnell plaintiffs have recently raised discovery disputes demanding that Future Motion conduct an expansive search of its emails and of a closed third-party hosted community forum, and demanding Future Motion produce all documents it has produced in all other lawsuits. If any such requests were deemed discoverable, it would be incredibly time consuming and prohibitively expensive for Future Motion. Therefore, Future Motion would benefit from engaging in such burdensome discovery in a coordinated fashion. In the *Russo* matter, the plaintiff has not yet conducted any depositions of Future Motion witnesses, but just recently sought to unilaterally notice a deposition of the founder and CEO of Future Motion via letter. Again, it will be more efficient and convenient to conduct depositions in a coordinated fashion.

Informal coordination is not feasible with cases pending in 15 different district courts and 24 law firms involved, and counting. The Oatridge/Bunnell plaintiffs presume that Future Motion

⁵ The majority of these cases are currently stayed.

has not tried to informally coordinate aspects of discovery, but that assumption is wrong. Just by way of example, Future Motion has asked various plaintiffs' counsel to agree to uniform protective orders or coordinate product inspections – and while some plaintiffs' counsel are more agreeable to forms of informal coordination, others are not; Future Motion has no recourse if an individual plaintiff's counsel is not considerate of pragmatic discovery concerns that span across cases in multiple districts.

The Oatridge/Bunnell plaintiffs claim that Future Motion has not argued, and that there is no risk of, different courts issuing inconsistent rulings. Future Motion specifically raised the concern of *inconsistent* discovery and pretrial rulings multiple times. (Dkt. 1-1 at 1, 7, 8, 9). Given the duplicative discovery requests and duplicative experts, there is a high likelihood of inconsistent discovery and pretrial rulings. Additionally, because the plaintiffs are utilizing the same experts and their experts have thus far issued nearly identical opinions across any given case, there will be a substantial overlap in the dispositive motions and *Daubert* motions.⁶

The Oatridge/Bunnell plaintiffs' counsel raised the exact issue of inconsistent rulings just one day ago, stating in a motion in state court coordinated proceedings:

Coordination will avoid the risk and disadvantages of duplicative and/or inconsistent rulings pertaining to discovery matters—specifically, for example, whether FM is required to produce internal and/or external communications regarding the safety of the Onewheel boards or documents reflecting the source code of the boards. Coordination will likewise avoid the risk and disadvantages of inconsistent rulings, orders, and judgments with respect to critical issues such as the presence of defect(s) and causation.

⁶The Oatridge/Bunnell plaintiffs' counsel certainly appreciate the “danger of inconsistent rulings” if Onewheel-related cases are not coordinated. (Ex. 3, p. 7).

(Ex. 4, p. 29).⁷ Absent coordination, different venues will decide essentially the same set of critical issues and may easily (and will perhaps likely) render different rulings thereon, which will ultimately lead to further litigation, including at the appellate level. (Ex. 4, p. 29). Similar to the federal court proceedings, the state court proceedings are at varying procedural stages.

Finally, the Oatridge/Bunnell plaintiffs' argument that coordination will not promote efficiency should be met with considerable skepticism. In addition to two federal actions, Plaintiffs' counsel has initiated dozens of Onewheel-related actions in state court in California. The Oatridge/Bunnell plaintiffs' counsel asserted that those Onewheel-related actions should be subject to a state court pre-trial coordinated proceeding because, among other reasons, the Onewheel-related actions share common questions of fact and/or law and coordination will promote the efficiency and convenience of the parties, counsel, and the court – notwithstanding the fact that the California state court cases were at varying procedural stages. (Ex. 1).

Just last month, the Oatridge/Bunnell plaintiffs' counsel argued for a stay of all state court Onewheel-related actions while the mechanics of pre-trial coordination are determined and that stay was granted. (Ex. 3). The Oatridge/Bunnell plaintiffs' counsel even argued that a complex pre-trial coordination is necessary because of their grave concern that, otherwise, some Onewheel-related cases might not be included in the coordinated proceeding. (Ex. 1; Ex. 3, p. 4). There is a “huge benefit” to one coordinated proceeding. (Ex. 3, p. 5). The efficiency and convenience that a centralized federal court proceeding will provide is no different.

⁷ Future Motion has attached the Petition for Coordination submitted to the California Chair of the Judicial Council one day ago by the Oatridge/Bunnell plaintiffs' counsel. The entire filing is 270 pages. Future Motion understands the document will be a publicly available Court filing, but will also provide the entire document at the Panel's request.

3. Disparate treatment of the *Oatridge* and *Bunnell* plaintiffs is not proper.

In the alternative, the *Oatridge/Bunnell* plaintiffs asked to be “carved out” from coordination. Yet, as discussed above, coordination is specifically needed in the *Oatridge* and *Bunnell* cases because of the broad scope of duplicative discovery sought. The parties have only exchanged initial written discovery and the *Oatridge/Bunnell* plaintiffs have recently raised disputes with Future Motion’s discovery responses that are highly burdensome. The plaintiffs in *Oatridge* brought a motion to compel and the plaintiffs in *Bunnell* have indicated they also intend to bring a motion to compel. Thus, in the *Oatridge/Bunnell* cases alone, two separate district courts will be asked to issue separate discovery rulings on identical issues. Further, if any additional production is necessary, it should only occur in the most efficient manner possible in conjunction with other cases and not on a piecemeal basis. Similarly, the *Oatridge/Bunnell* plaintiffs are seeking burdensome depositions of Future Motion witnesses that should be coordinated with other plaintiffs’ deposition requests of Future Motion witnesses. No expert reports or expert discovery has been completed, but the *Oatridge/Bunnell* plaintiffs have retained David Rondinone and Derek King just like the other plaintiffs and, therefore, it will be most efficient to collectively proceed with expert discovery.

The *Oatridge/Bunnell* plaintiffs’ counsel has previously conceded the considerable amount of time and resources that can be saved through coordination under these exact circumstances: written discovery exchanged, but no depositions, expert witness discovery, or motion practice conducted. (Ex. 2, p. 10). That is, the *Oatridge/Bunnell* plaintiffs’ counsel have advocated for coordinated proceedings of all of their other cases at the exact same procedural stage as *Oatridge* and *Bunnell*. Therefore, coordination with all other plaintiffs will promote convenience and efficiency, and disparate treatment of the *Oatridge/Bunnell* plaintiffs is unwarranted.

b. The Middle District of Florida is the appropriate venue for coordination or consolidation.

Of the 30 federal Onewheel-related actions for which coordination is sought, 25 of the plaintiffs agree that the Middle District of Florida is the appropriate venue for coordination or consolidation. There are just five plaintiffs who argue that if coordination or consolidation is ordered, it should occur in the Northern District of California.

The Middle District of Florida is the most apposite venue as the greatest quantity of cases are venued there, by a significant margin: there are 11 cases pending the Middle District of Florida and only two cases pending in the Northern District of California. The Middle District of Florida has the most familiarity with Future Motion cases, given the stages of the Middle District of Florida cases and one case has already resolved in the Middle District of Florida. The same is not true of the Northern District of California.

It must further be noted that the capacity of the Northern District of California to hear these cases is uncertain. When Future Motion filed a motion in the *Oatridge* matter, it was advised the Court's next available hearing was in five months. In contrast, Future Motion has encountered no scheduling issues in the Middle District of Florida.

The fact that the greatest number of parties, witnesses, and counsel reside in Florida is not overstated. The largest plurality of plaintiffs and firms representing the plaintiffs reside in Florida. The largest number of incidents occurred in Florida. There is no comparison to any other district. There are only two cases venued in California; only one of those plaintiffs resides in California and that plaintiff supports transfer to the Middle District of Florida. (Dkt. 40). For those outside of the Middle District of Florida, travel can easily be accommodated with the Orlando International

Airport, which services more than 44 airlines and serves as a hub/operating base/focus city for six different airlines.⁸

The location of Future Motion does not hold the same value. Future Motion's documents are not stored in paper boxes in Santa Cruz; they are stored and produced electronically. Future Motion witnesses can appear via Zoom, and Future Motion supports transfer to the Middle District of Florida.

It must also be noted that the Oatridge/Bunnell plaintiffs' representations about Future Motion's counsel's statements about location preferences are misleading. Future Motion sought to consolidate California state court cases near Santa Cruz; counsel made no statements regarding its preferences for nationwide litigation.

There is no other location that offers convenience for the same quantity of parties, witnesses, and counsel as the Middle District of Florida, and no district that has more experience with federal Onewheel-related cases. Therefore, all actions should be transferred to the Middle District of Florida for coordinated or consolidated pretrial proceedings.

III. CONCLUSION

For all the reasons herein, Future Motion respectfully requests the Panel order coordinated or consolidated pretrial proceedings for the Actions and transfer all pending and future related actions to the Middle District of Florida.

⁸ https://en.wikipedia.org/wiki/Orlando_International_Airport

Dated: October 6, 2023

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14 MYLES ALLINGHAM,

15 Plaintiff,

16 v.

17 FUTURE MOTION, INC., and DOES 1-100,

18 Defendant.

Case No.: 22CV00518

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF’S MOTION FOR ORDER
GRANTING PLAINTIFF PERMISSION TO
SUBMIT A PETITION TO THE JUDICIAL
COUNCIL SEEKING C.C.P. § 404
COORDINATION OF THIS ACTION WITH
116 OTHER ACTIONS FILED IN
DIFFERENT VENUES¹**

[C.C.P. §§ 404, 404.1; Cal. Rules of Court, Rules
3.520, 3.400 *et seq.* and 3.501 *et seq.*]

Date: September 12, 2023
Time: 8:30 a.m.
Dept.: 5

28 ¹ Plaintiff requests a hearing on this motion. (Cal. Rules of Court, Rules 3.520(a) & 3.521(a).)

TABLE OF CONTENTS

1

2 I. Introduction and Summary of Argument..... 1

3 II. Statement of Facts Relevant to the Included Actions 2

4 A. The Included Actions 2

5 i. The 117 included actions satisfy the section 404.1 criteria 3

6 ii. The 117 included actions are pending in at least two different counties..... 4

7 iii. The included actions require exceptional judicial management, as this court and
other courts..... 6

8 III. Legal Discussion..... 7

9 A. The Presiding Judge May Grant Permission to a Party to Submit a Petition for a JCCP to
the Chairperson of the Judicial Council: Section 404 and Rule 3.520 Provide the “Indirect
Petition Route.” 7

10 B. The Included Actions Satisfy the Section 404.1 Criteria, are Otherwise JCCP Amenable,
and are “Complex” Under California Law. 8

11 i. The included actions satisfy Rule 3.400(b) and should be designated “complex.”
10

12 ii. “Complex” designations of the included actions and this and other Court’s
previous acknowledgment that the actions are or could be “complex.” 10

13 C. A JCCP is the Appropriate Form of Coordination of the Included Actions: A JCCP Will
Best Promote the Ends of Justice and Will Ensure That There Will be Only One Coordinated
14 Proceeding for the Product Liability / Personal Injury Actions Filed Against FM in California
State Court, Something that Cannot be Ensured Should the Parties Endeavor to Proceed via this
15 this Court’s Section 403 Coordination..... 11

16 i. Treating a section 403 coordination as an *ad hoc* JCCP will pose severe risks to
the integrity and intentions of the coordinated proceeding that neither this Court nor the
17 parties can preclude with any certainty..... 12

18 ii. Section 3.500(g) will not preclude another section 403 coordinated proceeding of
the “Onewheel litigation.” 14

19 IV. Conclusion 14

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

Cases

McKendrick v. Western Zinc Mining Co.
 (1913) 165 Cal. 24..... 13

Sunrise Financial, LLV v. Superior Court of San Diego County
 (2019) 32 Cal.App.5th 114..... 12

Thayer v. Wells Fargo Bank
 92 Cal.App.4th 819 9

Traffic Truck Sales Co. of Cal. V. Justice’s Court of Red Bluff TP., Tehama County
 (1923) 192 Cal. 377..... 13

Statutes

California Code of Civil Procedure § 128(a)(3) 12

California Code of Civil Procedure § 128(a)(8) 12

California Code of Civil Procedure § 404.1..... 1

California Code of Civil Procedure §404..... 1

California Rules of Court 3.400 *et seq.*..... 1

California Rules of Court 3.501 *et seq.*..... 1

California Rules of Court 3.520(a)..... 1

California Rules of Court 3.520(b) 1

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2
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1 **I. INTRODUCTION and SUMMARY OF ARGUMENT**

2 Plaintiff seeks this Court’s permission to submit a petition to the Chairperson of the Judicial
 3 Council asking her to assign a judge to determine the propriety of coordinating this action with 116
 4 other actions (117 actions in total, hereafter collectively referred to as “the included actions”) that are
 5 currently pending in at least two different venues.^{2,3} Plaintiff seeks his Honor’s permission to submit
 6 that petition pursuant to Code of Civil Procedure sections 404 and 404.1, California Rules of Court,
 7 Rules 3.520(a) and (b), as well as Rules 3.400 *et seq.* and Rules 3.501 *et seq.*⁴ That petition, if
 8 granted, will result in a Judicial Council Coordinating Proceeding (“JCCP”) of the included actions. A
 9 JCCP, coordination pursuant to section 404, is the appropriate form of coordination of the included
 10 actions.

11 At the time Plaintiff’s counsel confirmed its approval of what became this Court’s June 15th
 12 section 403 order of many (but, again, no longer *all*) of the included actions, they were misguided in
 13 their understanding that said order would ultimately generate a “JCCP Number” that would, in turn,
 14 permit the application of the “complex” coordination rules embodied in Rules 3.501 *et seq.* and
 15 thereby secure the parties’ stated collective aims of creating one and only coordinated proceeding of
 16 the entirety of (current and future) personal injury / product liability actions against FM in California
 17 State court. It will do neither.

18 A JCCP of the included actions will preclude any chance that multiple coordinated
 19 proceedings of the “Onewheel litigation” in California State court could be created, a very real
 20 possibility should the parties endeavor to continue with the section 403 coordination this Court
 21 ordered two months ago,⁵ a circumstance from which inconsistent procedures and rulings could and

22 _____
 23 ² The named Defendant in each of the included actions is Future Motion, Inc. and/or Future Motion MFG, LLC
 (collectively referred to as “FM”).

24 ³ The included actions consist of several dozen actions that are subject to this Court’s June 15th section 403
 25 coordination order as well as some two dozen actions (included in another county) filed *after* that order was
 issued and which are thus not governed thereby. It is likely that the included actions are pending in *more* than
 just two venues, but Plaintiff here provides the absolute minimum number that is guaranteed. (See, *infra*, for
 detailed information specific to the status of the section 403 transferee actions still pending in other venues.)

26 ⁴ All references made to “section(s)” shall hereafter refer to one or more sections of the California Code of
 Civil Procedure and all references to “Rule(s)” shall refer to the California Rules of Court.

27 ⁵ As this Court of course knows, while his Honor’s section 403 coordination order was issued some two months
 ago, no substantive litigation therein has begun; indeed, FM’s counsel has yet even to successfully cause the
 28 transfer of most of the 19 transferee actions. (See, Declaration of Anya Fuchs (“Fuchs Decl.”), ¶¶ 7, 10 and
Exhibit A-3.)

1 likely would easily flow. Further, multiple coordinated proceedings would be at its core both
2 irrefutably inefficient as well as unnecessarily costly and time consuming for the judiciary and the
3 litigants—indeed, the very antithesis of the recognized legislative intent behind the construct of
4 coordination.

5 Thus, the included actions are not merely appropriate or better suited for a JCCP under
6 sections 404 and 404.1, they *require* the framework of the Rules specific to the coordination of
7 complex matters in order to achieve the greatest efficiency in this litigation and to avoid the
8 possibility that multiple coordinated OW proceedings in various counties could be created.

9 Plaintiff’s resolve to seek permission to submit a petition to the Judicial Council is borne
10 respect for his Honor’s section 403 coordination order. In asking that permission, Plaintiff asks his
11 Honor to: (1) re-confirm that the included actions satisfy the section 404.1 criteria for coordination
12 and are otherwise amenable to a JCCP; and (2) are “complex” as that term is defined by the Judicial
13 Council, something his Honor has the express continuing power to declare at any time pursuant to
14 Rule 3.403(b). As this and other courts have previously acknowledged, these actions require
15 exceptional judicial management that more than satisfy the definition of “complex” in Rule 3.400(b).

16 Should his Honor grant Plaintiff the permission here sought, Plaintiff is committed to
17 proposing to the Judicial Council in a petition that the JCCP be assigned to Santa Cruz County. The
18 significant number of included actions originally filed in this County and the considerable time and
19 attention this County, and his Honor in particular, has already given this litigation and the counsel
20 involved warrants that request.

21 **II. STATEMENT OF FACTS RELEVANT TO THE INCLUDED ACTIONS**

22 **A. The Included Actions**

23 This Court is familiar with the substantive nature of the included actions. In sum: the included
24 actions assert the same set of core product liability and failure to warn negligence and strict liability
25 claims and theories of liability arising out of severe personal injuries sustained and arising from
26 several manufacturing, design, and warning defects of a self-balancing, battery-powered, one-wheel
27 electric transport (often described as an electric skateboard): to wit, the “Onewheel” (of which there
28 are a few slightly different models). (See, Declaration of Anya Fuchs (“Fuchs Decl.”), ¶ 4.) The

1 included actions seek the same relief in the form of monetary compensation for general damages,
2 special damages, and punitive damages; the Answers filed in the included actions plead the same set
3 of defenses by FM. (See, Fuchs Decl., ¶ 5.)⁶

4 The majority of the included actions are either at or are extremely close to inception and/or
5 engaged in the written discovery process, although with respect to the latter, there has been a
6 considerable amount of discord between counsel that has resulted in significant delay rather than an
7 efficient exchange of information and documents. Extremely few depositions have been taken in any
8 of the included actions. The amount of time and resources that could be saved by the parties pursuant
9 to coordinated proceedings whereby such depositions could be used for all or even groups of the
10 included actions will be significant. There have been a few discovery motions. There have been even
11 fewer dispositive motions filed, none of which, to counsel's knowledge, were ultimately decided
12 before the lengthy and numerous stays thereof were ordered by various Judges and for various reasons
13 over the past 12 months. (See, Fuchs Decl., ¶ 14.)

14 **i. The 117 included actions satisfy the section 404.1 criteria.**

15 When this Court granted section 403 coordination of many but not all of the included actions
16 two months ago, it determined that the product liability / personal injury actions against FM satisfied
17 the section 404.1 coordination criteria. (See, **Exhibit B** to the Fuchs Decl. at 3:5-19.) Nothing has
18 changed in that regard. As the accompanying Fuchs Declaration reiterates in detail, the included
19 actions involve and/or share several significant common questions of fact and/or law that
20 predominate. The Fuchs Declaration additionally provides facts and information that this Court (and
21 FM) already agreed demonstrate that the remaining section 404.1 criteria are met: Coordination will
22 promote the ends of justice based upon considerations of convenience of the parties, witnesses, and
23 counsel and because the development of the actions and the work product of counsel will proceed
24 more proficiently; judicial facilities, resources, and manpower will be more efficiently utilized and
25 the calendars of several courts will be lessened; duplicative and inconsistent rulings, orders, or
26

27
28 ⁶ Rule 3.502(a), requiring this motion to satisfy Rule 3.521(a), with respect to how to specifically identify the included actions—is satisfied by way of **Exhibits A (A1-A4)** and paragraphs 4-14 to the Fuchs Declaration.

1 judgments will be avoided or at the very least minimized; and settlement, and specifically global
2 settlement, will be encouraged. (See, Fuchs Decl., ¶¶ 20, 21.)

3 **ii. The 117 included actions are pending in at least two different counties.**

4 As of the date Plaintiff filed the motion to which this memorandum offers support, there are a
5 total of 117 included actions. (See, Fuchs Decl., ¶¶ 4-14.)^{7,8} A simplistic break-down of the 117
6 included actions Plaintiff seeks permission to have coordinated under section 404 is as follows:

7 • Sixty-nine (69) actions filed in Santa Cruz County which have been ordered coordinated
8 under section 403 by this Court pursuant to his Honor's June 15th order (See, **Exhibit A-1**);

9 • Twenty-seven (27) actions filed in Santa Cruz County which are not subject to or governed
10 by his Honor's section 403 order, either because they were not identified by FM's section 403 motion
11 or because they not filed until after June 15th (See, **Exhibit A-2**);

12 • Nineteen (19) actions originally filed in counties *other than* Santa Cruz (Ventura, Santa
13 Clara, Los Angeles, San Diego, Nevada, Orange, Alameda, Riverside, and Sacramento) which have
14 been ordered transferred to Santa Cruz County for section 403 coordination by this Court pursuant to
15 his Honor's June 15th order⁹ (See, **Exhibit A-3**);

16 • Two (2) actions filed in Santa Clara County *after* June 15th and which are thus not subject to
17 or governed by his Honor's section 403 order. (See, **Exhibit A-4**)¹⁰

18 The section 403 order thus does not serve to coordinate the entirety of actions pending against
19 FM in California State Court, including those pending in different counties. (See, Fuchs Decl., ¶ 9a-f.)

22 ⁷ The identifying details of each of those 117 actions as required by Rules 3.520(a) and 3.521(a) are provided in
23 **Exhibit A** to the concurrently filed Fuchs Declaration: by case name, case number, legal counsel (name and
24 address), original filing date, original filing venue, and, as may be appropriate, venue transfer date and new
25 case number if any, and/or its status as a section 403 transferee action (to the best of Plaintiffs' counsel
26 knowledge as of August 15th, one day prior to the filing deadline for the motion for permission). (See, Fuchs
27 Decl., ¶ 10 and **Exhibit A (A1 through A4)** inclusive).

28 ⁸ Additional actions appropriate for coordination with those identified in **Exhibit A** could be filed during the
interim period between the date his Honor issues an order granting Plaintiff the permission sought and the date
that Plaintiffs submits a petition to the Judicial Council; in that event, Plaintiff requests the ability to include
such additional actions amongst those identified in the petition. (See, Fuchs Decl., ¶ 8.)

⁹ His Honor's section 403 order included 20 non-Santa Cruz actions, but one has resolved. (See, Fuchs Decl.,
FN 4.)

¹⁰ Neither case was filed by either of the laws firm that are signatories to the motion for permission. (See, Fuchs
Decl., FN 5.)

1 **1. Status of section 403 transferee actions**

2 As of the morning of August 15th, one day prior to the filing deadline for Plaintiff’s motion
3 for permission, the online register of actions maintained by the originating courts for each of the 19
4 transferee actions identified on his Honor’s section 403 order, and the online register of actions of the
5 above-entitled title court, collectively reflects the following transfer status summary¹¹:

6 • Four (4) actions have been transferred to Santa Cruz County and received brand new Santa
7 Cruz case numbers rather than “into” or “under” the *Allingham* case number and thus do not appear to
8 be tied in any way to *Allingham*, or at least not obviously so;

9 • Four (4) actions appear to have been transferred from their original venues, but have not yet
10 “arrived” in Santa Cruz County and as such the transfer is not complete;

11 • Eleven (11) actions appear to continue to live in their original venues with no indication
12 whatsoever of imminent transfer, i.e., no indication of transfer fees. (See, Fuchs Decl., ¶ 10.)

13 The status of the section 403 transferee actions *is relevant to the instant motion* only for the
14 purpose of attempting to identify to this Court, with the requisite specificity, the venues of the
15 included actions.¹² (See, Fuchs Decl., ¶¶ 10-12.) Regardless of what venues the section 403 transferee
16 actions may be pending in today, or where they may be pending at the time of the hearing on
17 Plaintiff’s motion, or even on the date Plaintiff ultimately submits his petition, ***the two actions filed in***
18 ***Santa Clara County after this Court’s section 403 order will not be moving. Those actions are not***
19 ***subject to the June 15th order. Those actions alone, and without more, satisfy the requisite diversity***
20 ***of counties needed for section 404 coordination.*** (See, Fuchs Decl., ¶ 13.)

21
22
23
24 ¹¹ For additional, specific details pertaining to the status of the section 403 transferee actions, based upon those
online sources, please refer to **Exhibit A-3**. (See, Fuchs Decl., FN 6.)

25 ¹² Despite the passage of eight weeks between the date his Honor signed the section 403 order on June 15th, it
26 appears FM has considerable further work to do before satisfying its Rule 3.500(f) obligation to “promptly
27 take all appropriate action necessary to assure that the transfer takes place and that proceedings are initiated in
the other court or courts to complete consolidation with the case pending in that court.” In any event, the
28 venues in which the 19 transferee actions are living at the time Plaintiff submits his petition to the Judicial
Council, should this Court grant permission, are the venues that will be identified therein. The “uncertain”
transfer status of the section 403 transferee actions is not an impediment to Plaintiff’s ability to submit the
petition he now seeks permission to submit. (See, Fuchs Decl., ¶ 11.)

1 **iii. The included actions require exceptional judicial management, as this court and**
 2 **other courts have previously acknowledged.**

3 Several of the included actions were filed with a civil case cover sheet designating them as
 4 provisionally “complex,” including several of the section 403 transferee actions, some of which still
 5 retained that “complex” status when this Court issued its section 403 order, (See, Fuchs Decl., ¶ 15.)¹³

6 As this Court surely recalls, his Honor on several if not many occasions expressed at case
 7 management hearings, for many of the included actions that were originally filed in Santa Cruz
 8 County, that he may likely designate the cases as “complex” in the future, should they become
 9 coordinated. (See, Fuchs Decl., ¶ 16.)

10 In December of 2022, the Honorable Judge McKinney of the Alameda County Superior
 11 Court, who at the time presided over the *Lim/Hong* action, Case No. 22CV010495 (which is amongst
 12 the included actions here), issued a ruling denying without prejudice *Plaintiff’s* section 403
 13 coordination of many of the included actions on the basis that, collectively, the actions sought to be
 14 coordinated “inevitably raise[] questions for complex determination” and that the “matter is more
 15 appropriately suited for consideration as a petition for coordination brought before the Judicial
 16 Council under section 404.” (See, Fuchs Decl., ¶ 17, and **Exhibit C.**)¹⁴

17 Regardless of designations made on civil case cover sheets, and any action (including by
 18 “inaction”) the courts presiding over the included actions may or may not have taken, the included
 19 actions are “complex” because they require exceptional judicial management to avoid placing
 20 unnecessary burdens on the court and the litigants, and also to expedite their progress, keep costs
 21 reasonable, and promote effective decision-making by the court, the parties, and counsel. (See, Fuchs
 22 Decl., ¶ 18.)

23

 24 ¹³ Those actions include: *Backstrom*, *Gomez*, *Medina*, and *Reed*. While FM filed counterdesignations in most if
 25 not all of those actions, the Courts never ruled thereon and allowed the actions to continue to live in their
 26 “complex” departments, never declaring them to be “noncomplex”. (See, Rule 3.402 requiring a court to
 27 decide, with or without a hearing, whether the action is a complex case within 30 days after the filing of a
 28 counterdesignation.) (See, Fuchs Decl., FN 7.)

29 ¹⁴ Almost immediately after this ruling was issued, and before Plaintiff could submit a petition to the Judicial
 30 Council, FM filed its own section 403 motion in Santa Cruz County Superior Court. Plaintiff’s counsel
 31 ultimately did not oppose FM’s section 403 motion because of his counsel’s previously identified
 32 misunderstanding that a section 403 order would cause the application of the “complex” coordination rules
 33 embodied in Rules 3.501 *et seq.* and thereby provide the framework of rules, process, and procedure that
 34 would be appropriately applied to the included actions. (See, Fuchs Decl., FN 8.)

1 The included actions will likely involve difficult and novel legal and factual issues pertaining
 2 to issues of defect and causation that are likely to be disputed via challenging multifaceted pre-trial
 3 motions involving several experts on each side that will be time-consuming for the Court to resolve
 4 as well as discovery disputes pertaining to the production of documents pertaining to the technology
 5 of the Onewheel boards (firmware and software). The included actions will also necessitate the
 6 management of a significant number of experts and a substantial amount of documentary and
 7 technological evidence. (See, Fuchs Decl., ¶ 18a.)

8 It is expected that FM will pursue a myriad of varied substantive and procedural defenses
 9 (again, with respect to presence of defect and the element of causation) that will further necessitate
 10 the need for exceptional judicial management. The sheer number of included actions, combined with
 11 at minimum several dozen additional cases that are expected to be filed in the foreseeable future in
 12 potentially any number of Superior Court Counties support the resolve that the actions sought to be
 13 coordinated involve exceptional judicial management. (See, Fuchs Decl., ¶ 18b.)

14 III. LEGAL DISCUSSION

15 A. **The Presiding Judge May Grant Permission to a Party to Submit a Petition for a JCCP** 16 **to the Chairperson of the Judicial Council: Section 404 and Rule 3.520 Provide the** 17 **“Indirect Petition Route.”**

18 Section 404 provides:

19 When civil actions sharing a common question of fact or law are pending
 20 in different courts, a petition for coordination may be submitted to the
 21 Chairperson of the Judicial Council, by the presiding judge of any such
 22 court, **or by any party to one of the actions after obtaining permission**
 23 **from the presiding judge**, or by all of the parties plaintiff or defendant in
 24 any such action. A petition for coordination, **or a motion for permission**
 25 **to submit a petition**, shall be supported by a declaration stating facts
 26 showing that the actions are complex, as defined by the Judicial Council
 27 and that the actions meet the standards specified in Section 404.1. On
 28 receipt of a petition for coordination, the Chairperson of the Judicial
 Council may assign a judge to determine whether the actions are complex,
 and if so, whether coordination of the actions is appropriate, or the
 Chairperson of the Judicial Council may authorize the presiding judge of a
 court to assign the matter to judicial officers of the court to make the
 determination in the same manner as assignments are made in other civil
 cases. (emphasis added.)

Rule 3.520 provides:

[A] party may request permission from the presiding judge of the court in
 which one of the included actions is pending to submit a petition for
 coordination to the Chair of the Judicial Council. The request must be
 made by noticed motion accompanied by a proposed order. The proposed

1 order must state that the moving party has permission to submit a petition
2 for coordination to the Chair of the Judicial Council under rules 3.521-
3.523.

3 Here, a direct petition to the Judicial Council would here not be *per se* improper given that: (1)
4 Myles Allingham is the sole Plaintiff in the above-captioned action and agreeable to submitting a
5 petition, (2) a Petitioner can always argue in his petition to the Judicial Council that the included
6 actions are “complex,” regardless of their initial designations, and (3) the included actions are
7 currently pending in at least two but perhaps several counties and satisfy the section 404.1 criteria.

8 The indirect petition route Plaintiff here takes is, however, the *more appropriate* route of the
9 two in light of the procedural posture of the majority of the included actions that ultimately
10 culminated in this Court’s section 403 coordination order of most but no longer all of the included
11 actions, wherein his Honor finds the actions to be “noncomplex.”

12 In seeking his Honor’s permission to submit the petition, Plaintiff wishes to demonstrate
13 respect for his attention and rulings given thus far, and to also respectfully ask this Court’s
14 acknowledgment that the “Onewheel litigation” in California State court is best and properly suited as
15 a JCCP; in doing so, Plaintiff asks this Court to find (which it already has) that the included actions
16 satisfy the section 404.1 criteria for coordination and, in addition, that the included actions are
17 collectively “complex” pursuant to his continuing authority (explicitly found via Rule 3.403(b)) to at
18 any time, and on his own motion, declare the included cases pending before him “complex” as that
19 term is defined by Rule 3.400 *et seq.* (See, Fuchs Decl., ¶¶ 19-22.)

20 **B. The Included Actions Satisfy the Section 404.1 Criteria, are Otherwise JCCP Amenable,**
21 **and are “Complex” Under California Law.**

22 When this Court granted a section 403 coordination of many but not all of the included
23 actions two months ago, it determined that the product liability / personal injury actions against FM
24 satisfied the section 404.1 coordination criteria. (See, **Exhibit B** to the Fuchs Decl. at 3:5-19.)
25 Nothing has changed in that regard. As the accompanying Fuchs Declaration reiterates in detail, the
26 included actions satisfy the requisite section 404.1 criteria for a JCCP. (See, Fuchs Decl., ¶¶ 20, 21.)

27 ///

28 ///

1 The concurrently filed supporting Fuchs Declaration also sets forth facts showing that the
2 included actions are “complex” as that term is defined by the Judicial Council pursuant to Rule 3.400
3 *et seq.* (See, Fuchs Decl., ¶¶ 14-18b, and **Exhibit C** thereto.)

4 Rule 3.400(b) sets for the following criteria for determining whether a case is “complex”:

5 Courts shall consider whether the action is likely to involve (1) numerous
6 pretrial motions raising difficult or novel legal issues that will be time-
7 consuming to resolve; (2) management of a large number of witnesses or a
8 substantial amount of documentary evidence; (3) management of a large
9 number of separately represented parties; (4) coordination with related
10 actions pending in one or more courts in other counties, states or countries,
11 or in a federal court; or (5) substantial post-judgment judicial supervision.

12 The enumerated considerations set forth in Rule 3.400(b) are disjunctive, meaning that a case
13 may be considered complex if it satisfies only one of the criteria listed there. (See, *Thayer v. Wells*
14 *Fargo Bank*, 92 Cal.App.4th 819, 835 (2001).)¹⁵

15 Rule 3.403 entitled “Action by court” provides:

16 Except as provided in rule 3.402, if a Civil Case Cover Sheet (form CM-
17 010) that has been filed and served designates an action as a complex case
18 or checks a case type described as provisionally complex civil litigation,
19 the court must decide as soon as reasonably practicable, with or without a
20 hearing, whether the action is a complex case.

21 Rule 3.402, in turn, provides that if a *Civil Case Cover Sheet* designates an action as a
22 complex case, and the court has not previously declared the action to be a complex case, a defendant
23 may file and serve no later than its first appearance a counterdesignation reflecting that the action as
24 not a complex case and that the “court must decide, with or without a hearing, whether the action is a
25 complex case within 30 days after the filing of the counterdesignation.”

26 In any event, *Rule 3.403(b) expressly grants this Court the authority to declare the included*
27 *actions “complex” at this time.* To wit, that Rule provides: “With or without a hearing, the court may
28 decide on its own motion, or on a noticed motion by any party, that a civil action is a complex case or
that an action previously declared to be a complex case is not a complex case.”

¹⁵ See, also, § 186, California Jurisprudence 3d (May 2023 Update) reiterating that a “complex” action is one that requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel.

1 **i. The included actions satisfy Rule 3.400(b) and should be designated “complex.”**

2 The included actions will involve difficult and novel legal and factual issues pertaining to
3 issues of defect and causation that are likely to be disputed via challenging multifaceted pre-trial
4 motions involving several experts on each side that will be time-consuming for the Court to resolve as
5 well as discovery disputes pertaining to the production of documents pertaining to the technology of
6 the Onewheel boards (firmware and software). The included actions will also necessitate the
7 management of a significant number of experts and a substantial amount of documentary and
8 technological evidence. (See, Fuchs Decl., ¶ 18a.)

9 It is expected that FM will pursue a myriad of varied substantive and procedural defenses
10 (again, with respect to presence of defect and the element of causation) that will further necessitate the
11 need for exceptional judicial management. The sheer number of included actions, combined with at
12 minimum several dozen additional cases that are expected to be filed in the foreseeable future in
13 potentially any number of Superior Court Counties support the resolve that the actions sought to be
14 coordinated involve exceptional judicial management. (See, Fuchs Decl., ¶ 18b.)

15 The above more than satisfy the criteria of 3.400(b).

16 **ii. “Complex” designations of the included actions and this and other Court’s**
17 **previous acknowledgment that the actions are or could be “complex.”**

18 It is worth noting that several of the included actions were filed with a civil case cover sheet
19 designating them as provisionally “complex,” including several of the section 403 transferee actions
20 which retained their “complex” status at the time the section 403 order was issued. (See, Fuchs Decl.,
21 ¶ 15 and FN7 identifying *Backstrom, Gomez, Medina, and Reed* as amongst those actions.) While
22 FM filed counterdesignations in most if not all of those actions, the Courts never ruled thereon and
23 allowed the actions to continue to live in their “complex” departments, never declaring them to be
24 “noncomplex”. (See, Rule 3.402 requiring a court to decide, with or without a hearing, whether the
25 action is a complex case within 30 days after the filing of a counterdesignation.) (See, Fuchs Decl.,
26 FN 7.)

27 Furthermore, and as this Court surely recalls, his Honor on several if not many occasions
28 expressed at case management hearings, for many of the included actions that were originally filed in

1 Santa Cruz County, that he may likely designate the cases as “complex” in the future, should they
2 become coordinated. (See, Fuchs Decl., ¶ 16.)

3 In addition, in December of 2022, the Honorable Judge McKinney of the Alameda County
4 Superior Court, who at the time presided over the *Lim/Hong* action, Case No. 22CV010495 (which is
5 amongst the included actions here), issued a ruling denying without prejudice *Plaintiff’s* section 403
6 coordination of many of the included actions on the basis that, collectively, the actions sought to be
7 coordinated “inevitably raise[] questions for complex determination” and that the “matter is more
8 appropriately suited for consideration as a petition for coordination brought before the Judicial
9 Council under section 404.” (See, Fuchs Decl., ¶ 17, and **Exhibit C.**)

10 **C. A JCCP is the Appropriate Form of Coordination of the Included Actions: A JCCP Will**
11 **Best Promote the Ends of Justice and Will Ensure That There Will be Only One**
12 **Coordinated Proceeding for the Product Liability / Personal Injury Actions Filed**
13 **Against FM in California State Court, Something that Cannot be Ensured Should the**
14 **Parties Endeavor to Proceed via this this Court’s Section 403 Coordination.**

15 Allowing the included actions to proceed under a JCCP framework will best promote the ends
16 of justice and achieve the greatest judicial efficiency. The Rules applicable to coordination of
17 “complex” actions that will be triggered by a JCCP reflect an established protocol approved by the
18 Judicial Council that permits the creation of a master docket that is intended to be used for filing
19 master pleadings and necessary case management orders that serve to organize leadership as well
20 delineate streamlined processes through which judicial economy and preservation of resources of all
21 is achieved.

22 Those Rules also anticipate global *pro hac vice* admissions, direct filings, and easeful
23 streamlined transfer of future actions via add-on petitions without the need for successive
24 coordination motions (see Rule 3.532); those Rules also preclude the potential for multiple
25 coordinated proceedings of the cases against FM in different counties and/or even within the same
26 county on account of section 170.6 peremptory challenges which *each Plaintiff* in a section 403
27 coordination maintains, which is unlike in actions included in a JCCP. (See Rule 3.516¹⁶; See also,

28 ¹⁶ Rule 3.516 applicable to a JCCP entitled “Motions under Code of Civil Procedure section 170.6” provides:
A party making a peremptory challenge by motion or affidavit of prejudice regarding an assigned
judge must submit it in writing to the assigned judge within 20 days after service of the order
assigning the judge to the coordination proceeding. All plaintiffs or similar parties in the included

1 *Sunrise Financial, LLV v. Superior Court of San Diego County* (2019) 32 Cal.App.5th 114
2 confirming the statutory framework governing section 403 and that a transferee action maintains its
3 right to assert a peremptory challenge in the Court to which it is transferred.)¹⁷

4 Accordingly, only a JCCP can ensure that there will be one and only one coordinated
5 proceeding of the “Onewheel litigation” in California State Court – something that should be in not
6 just Plaintiffs’ counsel’s interest, but in the interest of all counsel as well as the California judiciary.

7 **i. Treating a section 403 coordination as an *ad hoc* JCCP will pose severe risks to**
8 **the integrity and intentions of the coordinated proceeding that neither this Court**
9 **nor the parties can preclude with any certainty.**

10 Plaintiff anticipates that defense counsel will argue, in opposition to the instant motion, that
11 the Onewheel litigation in State court can easily proceed via the section 403 coordination because of:
12 (1) the broad inherent power of his Honor to adopt procedures and process to provide for the orderly
13 conduct of proceedings before it and to otherwise control and effectuate progress of his docket (see,
14 Cal. Civ. Proc. § 128(a)(3) & (8)); and (2) because Section 3.500(g) will preclude the creation of
15 multiple coordinated proceedings. **Such a position will be misguided.**

16 As explained above, neither this Court nor any of the parties to the section 403 coordination
17 can bind litigants in actions not yet filed. Neither counsel for the included actions, nor this Court, can
18 agree that future litigants will waive the need for successive section 403 motions. Neither, too, can
19 they agree that such future litigants will waive their section 170.6 preemptory challenge as a section
20 403 transferee. Accordingly, we lack, collectively, the tools to preclude the possibility of multiple
21 coordinated proceedings of the “Onewheel litigation” in California State court if we endeavor to
22 proceed via section 403.

23 Indeed, this Court’s inherent powers, while broad, are not limitless: its power extends to: (1)
24 those actions already filed and/or pending before his Honor; (2) when there is an absence of statutory

25 or coordinated actions **constitute a side** and all defendants or similar parties in such actions
26 constitute a side for purposes of applying Code of Civil Procedure section 170.6. (emphasis
27 added).

28 ¹⁷ Adding / including additional actions to the section 403 coordination would require successive section 403
motions (or waivers thereof) and presumes an ongoing and absolute waiver of future litigant’s section 170.6
preemptory challenge, something that is not capable of accurate or reliable prediction or enforceable agreement
given that the law firms that are signatories to the motion for permission are not the only legal counsel capable
of filing product liability / personal injury actions on behalf of Plaintiffs.

1 authority of how to proceed. (Id.; See also, *Traffic Truck Sales Co. of Cal. V. Justice's Court of Red*
2 *Bluff TP., Tehama County* (1923) 192 Cal. 377 confirming that when jurisdiction by the Constitution
3 or statutes is conferred on a court, and the course of proceeding is not specifically pointed out, any
4 suitable mode of proceeding may be adopted which may appear most conformable to the spirit of the
5 Code and that if a law as written provides none, it is permissible to adopt any suitable procedure
6 which will achieve the desired result, provided there is some constitutional or statutory jurisdiction to
7 make the section applicable; See also, *Ex parte Garner* (1918) 179 Cal. 409 holding that in the
8 absence of statute or where the statute is inadequate, a constitutional court, by virtue of its inherent
9 power, may itself prescribe appropriate provision for acquiring jurisdiction and adopt the procedure
10 to be followed; See also, *McKendrick v. Western Zinc Mining Co.* (1913) 165 Cal. 24 confirming,
11 with respect to California Code of Civil Procedure section 128, the court's power to provide suitable
12 process for carrying out jurisdiction conferred where the course of proceeding is not specifically
13 pointed out by statute, should not be exercised where the existing statute may reasonably be
14 construed to provide for process.)

15 Here, there exist actions pending against FM in California Superior Court counties *other* than
16 Santa Cruz County that are not part of the June 15th order and also dozens if not hundreds of actions
17 not yet filed against FM, that are appropriate for coordination, none of which are *pending* before his
18 Honor. What is more, his Honor may only create process and procedure applicable to the coordination
19 of cases against FM in the absence of statutory authority that so provides. There exists no absence of
20 authority here – the authority is found in section 404 of the Code of Civil Procedure and the Rules of
21 Court specific to complex coordination (Rules 3.501 *et seq.*). The process by which to ensure the
22 coordination of the entirety of cases against FM that satisfy the standards set forth in section 404.1
23 including those that are pending in different counties, and including those which have yet to be filed,
24 is thus statutorily provided for.

25 ///

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28

1 petition to the Judicial Council pursuant to sections 404 and 404.1 so that the included actions can
2 proceed in coordination where they belong: in a JCCP governed by the process and procedure set
3 forth in the Rules applicable to the coordination of “complex” actions and where there will be no
4 chance that multiple coordinated proceedings of the “Onewheel litigation” California State court will
5 be created. (See, Rule. 3.501 *et seq.* (Title 3, Division 4, Chapter 7, Articles 1-5 inclusive).)
6

7 Date: August 16, 2023

Respectfully Submitted,

8 **PEARCE LEWIS LLP**

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10 

11 _____
12 Anya Fuchs, Esq.
13 Attorneys for Plaintiff
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PROOF OF SERVICE

I certify that I am over the age of 18 years and not a party to the within action; that my business address is 423 Washington Street, Suite 510, San Francisco, CA 94111; and that on this date I served a true copy of the document(s) entitled:

- **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF’S MOTION FOR ORDER GRANTING PLAINTIFF PERMISSION TO SUBMIT A PETITION TO THE JUDICIAL COUNCIL SEEKING C.C.P. § 404 COORDINATION OF THIS ACTION WITH 116 OTHER ACTIONS FILED IN DIFFERENT VENUES**

Service was effectuated by forwarding the above-noted document in the following manner:

- [] By USPS Mail: I deposited the sealed envelope with the United States Postal Service with the postage fully prepaid addressed to:

See below service list

- [] By Personal Service: I emailed the documents identified above to a courier service, Nationwide Legal, to be delivered by personal service to the parties at the addresses listed below:

- [] By Facsimile to the numbers as noted below by placing it for facsimile transmittal following the ordinary business practices of PEARCE LEWIS LLP.

- [] By Overnight Courier in a sealed envelope, addressed as noted below, through services provided by (Federal Express, UPS,) and billed to PEARCE LEWIS LLP.

- [] On the date executed below, I electronically served the document(s) **via File & ServeXpress** on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

- [] VIA CASE ANYWHERE. I served the above-listed documents electronically to Case Anywhere pursuant to Case Management Order No. 2, [The document will be deemed served on the date that it was uploaded to the website as indicated by the Case Anywhere system].

- [] By Electronic Service via Nationwide Legal on the recipients designated on the Transaction Receipt.

- [XX] By Electronic Service via e-mail to: **See below service list.**

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

Executed on August 16, 2023, at Pacifica, CA.



Deborah Tran

Myles Allingham v. Future Motion, Inc.
Santa Cruz County Superior Court Case No. 22CV00518

SERVICE LIST

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12
13 SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA – UNLIMITED CIVIL

14 JAMES S. LIM and FAITH HONG

Case No.: 22CV010495

15 Plaintiffs,

16 v.

17 FUTURE MOTION, INC., and DOES 1-100,

18 Defendants.

**DECLARATION OF ANYA FUCHS, ESQ. IN
SUPPORT OF PLAINTIFFS’ MOTION FOR
TRANSFER OF ACTIONS TO ALAMEDA
COUNTY SUPERIOR COURT FOR
COORDINATED PRE-TRIAL
PROCEEDINGS AND REQUEST FOR
IMMEDIATE STAY OF PROCEEDINGS OF
INCLUDED ACTIONS PENDING
DETERMINATION OF MOTION**

19 Cal. Civ. Proc. §§ 403, 404, 404.1, 404.5, *et seq.*
20 Cal. Rule of Court, Rules 3.500, 3.515, *et seq.*

21 Res. ID.: 507101693090
22 Date: December 1, 2022
23 Time: 1:30 PM
24 Dept.: 15

1 I, Anya Fuchs, declare as follows:

2 1. I am an attorney at law, licensed to practice before all courts of the State of California. I
3 am “of counsel” with the law firm of PEARCE LEWIS LLP in San Francisco, California which
4 serves as co-counsel with the law firm of BAILEY COWAN HECKAMAN PLLC in Houston, Texas,
5 as the attorneys of record for Plaintiffs James Lim and Faith Hong in the above-captioned action.

6 Except for those facts hereinafter stated that I specifically identify to be not within my personal
7 knowledge, the following facts are within my personal knowledge and, if called as a witness, I can
8 and will competently testify thereto:

9 2. I provide this Declaration in support of the concurrently filed Motion for Transfer of
10 Actions to Alameda County Superior Court for Coordinated Pre-Trial Proceedings and Request for
11 Immediate Stay of Proceedings of Included Actions Pending Determination of Motion made pursuant
12 to the authority embodied in California Code of Civil Procedure §§ 403, 404, 404.1, 404.5 and
13 California Rules of Court, Rule¹ 3.500 *et seq.*, specifically including Rule 3.515. The relief herein
14 sought is done so specifically via § 403, i.e., via direct Motion to the court rather than submission of a
15 Petition to the Judicial Council.

16 **Orders Sought by Plaintiffs’ Motion: Included Actions, Excluded Actions, and Potential**
17 **Included / Add-On Actions as Proposed by the Motion**

18 3. Plaintiffs’ Motion requests an Order transferring 63 product liability actions filed in six
19 other California Superior Courts to the Alameda County Superior Court for coordinated pre-trial
20 proceedings with the within *Lim/Hong* action on the ground that the actions involve significant
21 common questions of fact and/or law that predominate and that doing so will promote the ends of
22 justice pursuant to the specific factors of consideration and standards set forth in Code of Civil
23 Procedure §§ 403 (and, hence, those identified in § 404 and 404.1) and Rule 3.500 *et seq.*

24 (Hereinafter, the phrase “included actions” shall refer to those actions specifically identified as those
25 which Plaintiffs submit, based on their knowledge of the litigation status thereof, are appropriate for
26 transfer and coordinated pre-trial proceedings by way of Plaintiffs’ Motion.)

27 _____
28 ¹ Hereinafter all references to “Rule” and/or “Rules” shall refer to the California Rules of Court.

1 4. The break-down of the included actions is as follows:

2 (a) Two are filed in the Orange County Superior Court

3 (b) One is filed in the Riverside County Superior Court

4 (c) One is filed in the San Diego County Superior Court

5 (d) One is filed in the Ventura County Superior Court

6 (e) One is filed in the Los Angeles County Superior Court

7 (f) Fifty-seven are filed in the Santa Cruz County Superior Court

8 5. To date, the one action sought to be coordinated that is filed in the Alameda County
9 Superior Court is the instant *Lim/Hong* action.

10 6. As of today's date, service of the summons and Complaint is complete for all of the 63
11 included actions.

12 7. Plaintiffs' Motion further requests an Order causing the immediate Stay of all
13 proceedings of the included actions sought to be transferred and coordinated (including the *Lim/Hong*
14 action) pursuant to Code of Civil Procedure § 404.5 and Rule 3.515 for the period of time prior to
15 when the Court is able to render its determination as to whether transfer and coordination is
16 appropriate. If the Court is for any reason disinclined to issue the requested Stay pursuant to the cited
17 authority and argument proffered in support of said request as set forth in Plaintiffs' Motion, Plaintiffs
18 respectfully request a hearing be set thereon. (See, Rule 3.515(e).)

19 8. Attached hereto as **Exhibit A** is a true and correct copy of a document that was created
20 by my office and at my direction that reflects the included actions Plaintiffs' Motion seeks to have
21 transferred for coordinated pre-trial proceedings with the within action; the included actions set forth
22 therein are identified by case name, case number (to the extent available), original venue, filing date,
23 and the names and addresses of counsel of record for the parties. Case numbers for some of those
24 cases remain forthcoming and will be provided to the Court as soon as they are issued.

25 9. Attached hereto as **Exhibit B** is a true and correct copy of a document that was created
26 by my office and at my direction that reflects the case name, case number, venue, filing date, and the
27 names and addresses of counsel of record for the parties in an action that Plaintiffs' counsel submits
28

1 would be appropriate for transfer and coordination with the within action *but for* having a trial date set
2 within the four (4) month period following the filing date of Plaintiffs’ Motion. Plaintiffs’ counsel
3 proffers that submission on the ground that to list such an action amongst the included actions would
4 run contrary to the legislative intent guiding the transfer and coordination statutes, i.e., to preserve and
5 economize the resources of the Court, counsel, and parties, in a manner that efficiently provokes
6 resolution of the same. It is Plaintiffs’ counsel’s position that it is reasonable to presume that with
7 respect to actions with a trial date set within four (4) months of the date Plaintiffs’ Motion is filed,
8 significant work-up and law and motion practice has already been achieved by and/or engaged in by
9 the parties, as well as considerable resources expended by both counsel and the Court, such that to
10 cause a Stay and/or the transfer and coordination of such actions would serve to stagnate the
11 resolution process thereof. Plaintiffs’ Motion proposes said “trial date within four (4) months”
12 exclusion to apply globally, meaning as to all actions which meet its definition, regardless of the
13 venue or counsel of record those actions may currently reside. Plaintiffs’ counsel has personal
14 knowledge of only one such action that they co-represent and thus identify only one such action in
15 **Exhibit B**. Plaintiffs’ counsel acknowledge that other such actions may exist.

16 (a) The one case Plaintiffs’ counsel has personal knowledge of that would fall subject
17 to the here proposed four (4) month exclusion is *Anderson v. Future Motion, Inc. and Does 1-*
18 *100*, Santa Cruz County Superior Court, Case No. 20CV00909. The Anderson case has a trial
19 date this coming January, the majority of discovery has been achieved, half a dozen depositions
20 have been taken, a dispositive motion has already been adjudicated in Plaintiffs’ favor,
21 stipulations and protective orders have been negotiated and entered into, and a substantial set of
22 pre-trial deadlines are set within the next four weeks.

23 (b) Transferring *Anderson*, and other similarly situated cases, for coordination would
24 not serve the legislative intent behind Code of Civil Procedure § 403.

25 10. If the Court is disinclined to carve out cases with a “trial date within four months,”
26 Plaintiffs’ counsel respectfully requests a hearing be set on that narrow issue, at the convenience of
27 the coordinating judge, prior to the hearing on the Motion

1 11. The office of PEARCE LEWIS LLP has attempted to account for all other actions that
2 are in active litigation status against Future Motion, Inc. within the California Superior Court system
3 wherein the Plaintiff is *not* co-represented by PEARCE LEWIS LLP and BAILEY COWAN
4 HECKAMAN PLLC that could be, potentially, appropriate for transfer and coordination with the
5 above-captioned matter along with the included actions. Plaintiffs’ Motion refers to said other actions
6 as “potential included or add-on actions.” Plaintiffs’ counsel does not know the status of the litigation
7 of those cases with respect discovery or law and motion practice, and indeed knows not even the
8 causes of action alleged on those cases, and as such, cannot with integrity submit to this honorable
9 Court that those other cases should be amongst the included actions. The accounting performed by the
10 office of PEARCE LEWIS LLP reflects that there are at least twenty-two (22) cases in active
11 litigation status against Future Motion, Inc. within this State (filed in six different counties, some but
12 not all of which the included actions likewise span) which are represented by counsel other than
13 PEARCE LEWIS LLP and BAILEY COWAN HECKAMAN PLLC. Plaintiffs’ counsel submits to
14 this Court that those actions may assert product liability causes of action that share common questions
15 of fact and law with the included actions that predominate such that there may be, with respect to said
16 twenty-two (22), either a significant number of cases to be added to the list of included actions and/or
17 a significant number of potential “add-on” actions at a later date. I do not have personal knowledge
18 and do not purport to have personal knowledge that any of said twenty-two (22) cases, with certainty,
19 share common questions of fact and law with the included actions. I therefore do not at this time
20 identify any of those cases amongst the included actions sought to be transferred for coordinated pre-
21 trial proceedings.

22 (a) Plaintiffs encourage the Court to add to the list of “included actions” *all actions*
23 that it determines are appropriate for transfer and coordination, pursuant to the governing coordination
24 statutes, which are in active litigation status a California Superior Court that are represented by other
25 legal counsel, the identification of which they cannot provide with certainty. Plaintiffs’ counsel has
26 gathered a list of cases which they reasonably believe to be potential included or add-on actions. (See,
27 **Exhibit C** to the Fuchs Decl., *infra.*) Plaintiffs’ counsel reasonably anticipates that counsel for
28

1 Defendant Future Motion, Inc. may provide insight here, as they are in a far better position to supply
2 information regarding pending lawsuits against their client that is instructive in this regard. In a
3 similar vein, Plaintiffs’ counsel further anticipates that other cases may exist that could be appropriate
4 for transfer and coordination that Plaintiffs’ counsel are unaware of and are thus not identified on
5 **Exhibit C** and that defense counsel’s input, again, will be helpful here.

6 12. Attached hereto as **Exhibit C** is a true and correct copy of a document that was created
7 by my office and at my direction that reflects the results of an accounting performed by the office of
8 PEARCE LEWIS LLP; that list reflects the case names, case numbers, and venue of the twenty-two
9 (22) cases that Plaintiffs’ Motion submits to this Court they believe may be potential included or add-
10 on actions.

11 13. I am aware of an action pending in federal court in the State of California that shares
12 common questions of fact and law with the included actions (entitled *Darryl Martin John Oatridge*
13 *and Bridget Oatridge v. Future Motion, Inc. and DOES 1-100*, Case No. 5:21-cv-9906, United States
14 District Court, Northern District of California, San Jose Division). The *Oatridge* action is not listed
15 among the included actions sought to be coordinated because it is proceeding in federal court.

16 **Background: The Above-Captioned Lim/Hong Action**

17 14. On April 26, 2022, Plaintiff James Lim filed the instant action alleging several causes of
18 action / theories of liability based upon severe injuries sustained and arising from the manufacturing,
19 design, and warning defects of a self-balancing, battery-powered, one-wheel electric transport (often
20 described as an electric skateboard): to wit, the “Onewheel” (of which there are a few slightly
21 different models). Mr. Lim’s Complaint alleges causes of action for Negligence, Strict Liability,
22 Failure to Warn, Negligent Design, and Negligent Recall/Retrofit; also alleged are causes of action
23 based upon violations of California Business & Professions Code §§ 17200 and 17500 as well as
24 violations of the California Consumer Legal Remedies Act – California Civil Code §1750, *et seq.*
25 General, special, and punitive damages are sought in that Complaint. Attached hereto as **Exhibit D** is
26 a true and correct copy of the original Complaint filed in the above-captioned action.

1 15. Mr. Lim’s Complaint, originally filed with a Civil Case Cover Sheet provisionally
2 designating it as “complex,” was initially assigned to the Honorable Judge Grillo of Department 21 of
3 the Alameda County Superior Court. On May 31, 2022, Judge Grillo issued an Order finding the *Lim*
4 action to be not “complex,” and the action was thereafter re-assigned to the Honorable Judge
5 McKinney of Department 15. Attached hereto as **Exhibit E** is a true and correct copy of Judge
6 Grillo’s May 31, 2022 Order. Attached as **Exhibit F** is a true and correct copy of the August 1, 2022
7 Order confirming the reassignment of the *Lim* action to Department 15 to be heard by the Honorable
8 Judge McKinney.

9 16. On September 2, 2022, after obtaining leave to amend the Complaint, Plaintiffs’ counsel
10 in the *Lim* action filed and thereafter served a First Amended Complaint adding Faith Hong, Mr.
11 Lim’s wife, as co-Plaintiff in the action as well as a claim for Loss of Consortium on her behalf.
12 Plaintiffs Lim and Hong are collectively represented by PEARCE LEWIS LLP and BAILEY
13 COWAN HECKAMAN PLLC. Attached hereto as **Exhibit G** is a true and correct copy of the First
14 Amended Complaint filed and served in the instant *Lim/Hong* action.

15 **Basis for Seeking Motion for Transfer for Pre-Trial Coordinated Proceedings**

16 17. In addition to the above-captioned *Lim/Hong* action, Plaintiffs’ counsel as previously
17 herein identified, to date, also collectively co-represent single-party Plaintiffs in 63 separately filed
18 product liability actions against solely named Defendant Future Motion, Inc. arising out of injuries
19 sustained from the several manufacturing and design defects of the Onewheel and other failures of
20 Future Motion, Inc.; the Complaints filed in those actions allege the same set of core product liability
21 causes of action and theories of liability as does the *Lim/Hong* Complaint. The number of product
22 liability actions filed against Defendant Future Motion Inc. wherein Plaintiffs’ counsel serve as
23 counsel has steadily multiplied over the last four (4) months and is expected to continue to increase at
24 the same pace going forward.

25 18. As previously noted, Plaintiffs’ counsel acknowledges that it appears that additional
26 product liability actions against Defendant Future Motion, Inc. are currently being litigated in various
27 California Superior Courts by Plaintiffs’ counsel other than PEARCE LEWIS LLP and BAILEY

1 COWAN HECKAMAN PLLC and that those actions may or could be potential included actions or
2 add-on actions. (See, **Exhibit C** previously referenced and attached hereto, *infra*.)

3 19. It is conceded, for purposes of Plaintiffs' Motion, that the included actions sought to be
4 transferred and coordinated (including the above-captioned *Lim/Hong* action wherein it has been
5 adjudicated by Judge Grillo) are not "complex" as that term is defined by Rule 3.400.

6 (a) It is Plaintiffs' counsel's approximation that 1/3 of the included actions were
7 provisionally designated as "complex" via the Civil Case Cover Sheet concurrently filed with
8 their respective Complaints, almost all if not all to which defense counsel has responded with
9 written objection. Determinations with respect to said designations by the various Courts in
10 which the included actions are filed continue to be unilaterally issued on a rolling basis, but all
11 but perhaps two (2) of those cases await a determination on the complex issue. One or two may,
12 at this stage, still carry the complex status but that status appears to have been placed on hold
13 pending a determination on coordination. At this stage in the litigation of the included actions,
14 the above-captioned *Lim/Hong* action amongst them, Plaintiffs' counsel confirms to this Court
15 by way of proceeding towards coordination via direct Motion pursuant to Code of Civil
16 Procedure § 403, that they concede the included actions are not "complex" and that they do not
17 intend to use more time of any of the Courts in which the included actions are pending to argue
18 this issue. (With all respect, because coordination of non-complex matters is entirely proper via
19 direct § 403 Motion, and given that Plaintiffs' counsel concede the included actions are not
20 complex and that defense counsel certainly takes the position that they are not complex, this is
21 issue is of no particular matter at this juncture.

22 20. Plaintiffs' Motion for transfer of actions for coordinated pre-trial proceedings is made on
23 the ground that Plaintiffs' counsel know of 63 now concededly non-complex included actions that are
24 pending in six different counties of the California Superior Court (other than and separate and apart
25 from Alameda County in which the instant *Lim/Hong* action is pending) that involve and/or share
26 several significant common questions of fact and/or law that predominate, such that transfer and
27 coordination pursuant to Code of Civil Procedure § 403 thereof is proper in that it will promote the
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1 ends of justice pursuant to the factors of consideration and standard identified in Code of Civil
2 Procedure § 404.1 and Rule 3.500 *et seq.*, i.e., the convenience of the parties, witnesses, and counsel
3 will be served; the development of the actions and the work product of counsel will proceed with
4 more proficiency; judicial facilities, resources, and manpower will be more efficiently utilized; the
5 calendars of several courts will be lessened; the disadvantage of likely duplicative and inconsistent
6 rulings, orders, or judgments will be avoided; and settlement, specifically global or group settlement,
7 will be encouraged. (See, Code Civ. Proc., §§ 403, 404, 404.1; See also, Rule 3.500.)

8 21. More specifically, pursuant to Code of Civil Procedure § 403, the facts relied upon to
9 show that transfer of each of the included actions for pre-trial coordinated proceedings meet the
10 standards specified in Code of Civil Procedure § 404.1 are as follows:

11 (a) It is conceded, for purposes of Plaintiffs' Motion, that the included actions sought
12 to be transferred and coordinated (including the above-captioned *Lim/Hong* action) are not
13 "complex" as that term is defined by Rule 3.400. Defense counsel has repeatedly confirmed to
14 the Courts that it supports said concession.

15 (b) The included actions share several predominate common questions of fact and
16 common questions of law such that having one Judge of the California Superior Court hearing all
17 of the actions for all purposes within a selected site will promote the ends of justice.

18 (c) The included actions assert the same set of core product liability and failure to
19 warn claims and theories of liability arising out of severe personal injuries sustained and arising
20 from several manufacturing, design, and warning defects of the Onewheel (including: (1)
21 Negligence, (2) Strict Liability, (3) Failure to Warn, (4) Negligent Design, and (5) Negligent
22 Recall/Retrofit), and also seek the same relief in the form of monetary compensation for general
23 damages, special damages, and punitive damages (based upon the Defendant's conscious
24 disregard for the public's safety and particularly the safety of the riders of the Onewheel).

25 (d) In each of included actions, to the extent the time for a responsive pleading has
26 transpired, Defendant Future Motion, Inc.'s Answer pleads the same set of defenses to each of
27 the Complaints of the included actions.

1 (e) The fact that each of the included actions assert the same five product liability and
2 failure to warn causes of actions and theories of liability, and that the Defendant Future Motion,
3 Inc. has pleaded the same set of defenses thereto, automatically lends itself to a propensity that
4 the included actions will share common questions of law and fact and, furthermore, that they
5 predominate.

6 (f) And, indeed they do; some of those common questions of law and fact include:
7 (1) whether the Onewheel boards have a defect (or, multiple defects); (2) whether that / those
8 defect(s) caused the injuries sustained by the rider and thus the damages which serve as the basis
9 for each action; (3) whether the Onewheel boards have a footpad sensor with a “dead zone”; (4)
10 whether the Onewheel boards unilaterally shut-off while in motion; (5) whether the “pushback”
11 feature of the Onewheel boards provide a sufficient warning to the rider; (6) whether the injured
12 riders / Plaintiffs were thrown from the Onewheel in an inverted pendulum trajectory; (7)
13 whether the Onewheel boards “nosedive” without warning, causing the riders / Plaintiffs to be
14 thrown off; (8) whether the Defendant could have made the Onewheel boards less dangerous,
15 and how, and at what monetary cost, but resolved to not do so; and (9) the application of any of
16 Defendant’s affirmative defenses or other defenses as pleaded in the Answers filed and served in
17 each of the included actions.

18 (g) The shared common questions of law and fact herein identified are neither trivial
19 nor of minimal consequence to the included actions; quite to the contrary, they are of utmost
20 significance to the outcome of the litigation of each.

21 (h) Coordination will further the convenience of the parties, witnesses, experts, and
22 counsel; streamlined discovery procedures including for what will likely involve significant
23 document and data production and compilation and review of technological evidence (data
24 specific to the electronically stored firmware and software associated with each Onewheel board
25 at issue), as well as expert inspections and testing of the boards, and, perhaps, stipulations
26 regarding the use of depositions of Defendant and its various key employee(s) and/or contractors,
27 will save the persons here referenced considerable time, money, and energy. The included
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1 actions have considerable if not identical overlap with respect to written discovery, as well
2 overlap with respect to several witnesses (corporate, expert, and third party among them). The
3 same persons should not be deposed in each action if there is a more efficient way to proceed.
4 Several of Plaintiffs' experts and anticipated experts reside either within Alameda County or live
5 out of State; Alameda County is significantly close proximity to legal counsel for both the
6 Plaintiffs and the Defendant (San Francisco and Walnut Creek, respectively) in the vast majority
7 of the included actions.

8 (i) Approximately 70% of the included actions are either at or are extremely close to
9 inception and/or have just recently engaged in the written discovery process, although with
10 respect to the latter, there has been already a considerable amount of discord between counsel
11 that has resulted in significant delay rather than an efficient exchange of information and
12 documents. With respect to the other approximately 30% of the included actions, the parties in
13 those actions are more significantly engaged in written discovery, several seemingly in the midst
14 of discovery disputes pertaining to critical issues which could resolve either through a stipulation
15 or agreement after extensive back-and-forth discussions in each case, or by the Court(s) via
16 discovery motion practice. No depositions have been taken in any of the included actions. The
17 amount of time and resources that could be saved by the parties pursuant to coordinated
18 proceedings whereby such depositions could be used for all or even groups of the included
19 actions will be significant. There have been no discovery motions nor dispositive motions filed
20 in any of the included actions.

21 i. I note here that several depositions have been take in the Anderson action
22 identified in **Exhibit B** hereto, i.e., an action subject to Plaintiffs' counsel proposed "trial
23 date set within four (4) months" exclusion; I furth-er note that in that same action, a
24 dispositive motion was filed by Defendant Future Motion Inc. that was ruled upon by the
25 Santa Cruz Superior Court. (There, the Motion for Summary Judgment was denied, with
26 the Court finding that a triable issue of material exists as to the presence of a defect of
27 the Onewheel board at issue as well as with respect to the element of causation; the
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1 alternative Motion for Summary Adjudication was granted as to the causes of action for
2 “Negligence per se” as well as to the claims alleging violations of Cal. Bus. & Prof. Code
3 §§17200 and 17500 and violations of Civ. Code §1750 *et seq.*, but denied as to the claim
4 for punitive damages. Attached hereto as **Exhibit I** is a true and correct copy of the Order
5 (signed June 29, 2022) on Defendant Future Motion, Inc.’s Motion for Summary
6 Judgement / Adjudication in *Anderson v. Future Motion, Inc. and Does 1-100*, Santa
7 Cruz County Superior Court, Case No. 20CV00909.)

8 (j) None of the included actions have a trial date set within the four (4) month period
9 from the date upon which Plaintiffs’ Motion was filed. The status of the litigation of the included
10 actions, despite the time that has transpired between the various filing dates thereof, is not
11 particularly dissimilar and, absent coordination, is likely to continue to move slowly, disparately,
12 and with costly and time-consuming duplicative efforts by counsel, the parties, and several
13 different Courts within the State.

14 (k) Coordination is likely to produce valuable streamlined processes with respect to
15 written discovery, depositions, dispositive motions, expert inspections and reports, and the like,
16 all of which will greatly reduce the time, labor, work product, and financial resources of all legal
17 counsel involved and, critically, will surely serve to move the litigation of the included actions in
18 a more swift, uniform and non-duplicative and thus productive pace that will absorb the labor
19 and other resources of just one able Judge and courtroom, instead of many. Coordination will
20 further the efficient use of judicial resources and thus simultaneously avoid the unnecessary
21 duplication of those resources particularly with respect to managing the resolution of a myriad of
22 ongoing discovery disputes the parties appear to be inclined to consistently engage in several of
23 the included actions, e.g., disputes pertaining to the production of Defendant’s “confidential”
24 internal documents, technological evidence, electronic data, insurance documents, as well as the
25 scheduling of experts (for both Plaintiffs and Defendant) for the purpose of testing and
26 inspecting the Onewheel boards. Judicial resources will also be saved by precluding half a dozen
27 Judges from determining duplicative time-consuming discovery motions which are more than
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1 likely on the horizon as well as extensive dispositive motions that are almost sure to be filed that
2 will raise the same issues repetitively, e.g., the presence of defect as well as causation, issues
3 which will require significant engagement and use of expert opinion, testing, and which will
4 necessitate the significant expenditure of analysis and thus time and resources from the Courts.
5 The issues in the included actions are not as simplistic as they may at first blush appear to be—
6 importantly, there exist strikingly similar allegations of warning, design, and manufacturing
7 defect and injury or death in each of the cases—and such issues warrant the focused attention of
8 one learned Judge and should not be litigated so as to unnecessarily consume the valuable time
9 and resources of half a dozen different Superior Court systems within this State.

10 (l) Coordination will secure efficient use of judicial facilities and labor such that it
11 will allow the venue with the location, calendar, availability, and other resources most able to
12 absorb the cost of adjudicating the significant number of herein identified included actions to
13 most appropriately do so. Alameda County Superior Court is an appropriate site for coordinated
14 proceedings. Not only is it the venue Plaintiffs' counsel has within its discretion to choose to file
15 the Motion for Transfer, Alameda County, in any event, irrefutably has abundant experience
16 managing coordinated proceedings and thus has a vetted and highly respected administrative
17 structure already in place capable of bringing the included actions to an efficient and timely
18 resolution. Alameda County Superior Court maintains substantial judicial facilities and carries a
19 well-deserved reputation for maintaining substantial staff resources that results in moving its
20 dockets with great efficiency. Alameda County Superior Court is in significantly close proximity
21 to legal counsel for both the Plaintiffs and the Defendant (San Francisco and Walnut Creek,
22 respectively) in the vast majority of the included actions. Several of Plaintiffs' experts and
23 anticipated experts reside in Alameda County (while others live out of State).

24 (m) Coordination will avoid the risk and disadvantages of duplicative and/or
25 inconsistent rulings pertaining to discovery matters and evidentiary objections, and will likewise
26 avoid the risk and disadvantages of inconsistent rulings, orders, and judgments with respect to
27 critical issues such as, by way of example only, the presence of defect(s), causation, protective
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1 orders, production of Defendant's documents and electronically stored data, production of
2 insurance records, production of internal communications, and production of documents
3 pertaining to the firmware and software of the Onewheel boards.

4 (n) Coordination will increase the possibility of settlement and resolution of the
5 included matters. To date, all endeavors towards moving any much less all of the included
6 actions to a settlement posture have gained no meaningful traction. Should coordination be
7 denied, settlement without further significant and costly litigation does not appear likely.
8 Coordination of the cases will allow them to proceed at a similar pace, including the discovery of
9 relevant facts and information. Ensuring the cases develop along the same timeline will help the
10 parties continue to consider and discuss the cases collectively, potentially resulting in a global or
11 group settlement.

12 (o) The attorneys of PEARCE LEWIS LLP and BAILEY COWAN HECKAMAN
13 PLLC (individual names reflected in the caption of this Declaration) are co-counsel in their
14 capacity as legal counsel of record for each of the Plaintiffs in each of the included actions. The
15 address of PEARCE LEWIS LLP is: 423 Washington Street, Suite 510 in San Francisco, CA
16 94111. The address of BAILEY COWAN HECKAMAN PLLC is: 1360 Post Oak Boulevard,
17 Suite 2300 in Houston, TX 77056.

18 (p) Defendant Future Motion, Inc. is represented by the same defense counsel in each
19 of the included actions to the extent Defendant has filed and served a responsive pleading.
20 Defendant's counsel is NILAN JOHNSON LEWIS PA located at 250 Marquette Avenue South,
21 Suite 800 Minneapolis, Minnesota 55401. (It is reasonable to assume that Defendant will
22 continue to be represented by said defense counsel in those actions in which a responsive initial
23 pleading has not yet been filed.) Defendant is also represented by various sets of local counsel,
24 including LIVINGSTON LAW FIRM, A Professional Corporation, located at 1600 South Main
25 Street, Suite 280 Walnut Creek, California 94596; SUTTON & MURPHY located at 26056
26 Acero in Mission Viejo, California, 92691; WILSON TURNER KOSMO LLP located at 402
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1 West Broadway, Suite 1600 in San Diego, California 92101; and SKANE MILLS LLP located at
2 1055 West 7th St., Suite 1700 in Los Angeles, California 90017.

3 **Basis for Requesting Order of Stay of the Included Actions Pending Determination of Motion**

4 22. Plaintiffs' request for an immediate Stay of the included actions until a determination of
5 coordination can be rendered is made on the ground that it will promote the ends of justice and is both
6 necessary and appropriate to effectuate the purposes of coordination. (See, Code Civ. Proc. § 404.5;
7 See also, Rule 3.515.) The requested Stay will significantly reduce unnecessary burdens on half a
8 dozen Superior Courts given that, absent a Stay, the included actions will proceed in their respective
9 forums with their various and several Case Management Hearings and, potentially, discovery motions
10 and the like. The requested Stay will preclude the parties from continuing to expend their resources
11 engaging in what has thus far been in a large part an unproductive back-and-forth discovery process
12 that will be, should coordination be granted, supplanted by a streamlined, standardized and thus less
13 litigious, and more expeditious discovery process with respect to the production of documents and
14 electronic data as well as with respect to expert inspection and testing of the Onewheel boards.
15 Without a Stay, it is more than likely that discovery motion practice will ensue over any one of
16 several disputes currently in play between the parties to the included actions which will cause the
17 parties and Courts to expend resources of time and money that are likely to either be unnecessary, or
18 duplicated, or superseded, should coordination be granted.

19 23. It is more than likely that the resources of the parties, counsel, and several Courts, will be
20 unnecessarily and inefficiently used if an immediate Stay of the included actions is not Ordered, and
21 Plaintiffs' counsel perceives no prejudice will arise therefrom. As such, the requested Stay will
22 effectuate the purposes of coordination, specifically including the efficient utilization of judicial
23 facilities and manpower, the avoidance of inconsistent rulings, practice, agreements, and orders, and
24 most certainly serves in the interests of convenience of the parties and counsel.

25 **Plaintiffs' Counsel's Satisfaction of Rule 3.500**

26 24. In anticipation of filing Plaintiffs' Motion, on October 18, 2022, Plaintiffs' counsel made
27 a good faith effort pursuant to Rule 3.500(b) to obtain agreement from Defendant Future Motion, Inc.
28

1 to the proposed transfer, coordination, and interim immediate Stay that Plaintiffs intended to seek by
2 way of Motion with respect to each of the included actions. Attached hereto as **Exhibit H**, is a true
3 and correct copy of my October 18, 2022 letter to defense counsel reflecting that good faith effort.
4 The substance of that October 18th letter to defense counsel also serves to satisfy the requirements of
5 Rule 3.500(c)(2) and (c)(3); in that letter, I informed defense counsel that Plaintiffs' counsel intended
6 to file the relevant transfer and coordination Motion, that said Motion requested an interim Stay,
7 expressed an invitation for defense counsel to express any responsive sentiment to that intention, and
8 further informed defense counsel of their obligation to disclose to the Court any information it may
9 have concerning any other Motions requesting transfer of any case that would be affected by the
10 granting of the Motion that would be soon be placed at issue before the Court.

11 25. On October 19, 2022, counsel for Defendant Future Motion, Inc. communicated to
12 counsel for the purpose of indicating their position that transfer and coordination is appropriate
13 provided: (1) all pending product liability cases against Future Motion are made part of the
14 transferred/coordinated action; (2) the transfer and coordination occurs in Santa Clara County or Santa
15 Cruz County, and (3) there is a stay of all actions against Future Motion pending a decision on
16 transfer and coordination. Attached hereto as **Exhibit J**, is a true and correct copy of defense
17 counsel's October 19, 2022 letter to Plaintiffs' counsel memorializing its response to Plaintiffs'
18 counsel letter providing notice of its intent to file the Motion here at issue. Plaintiffs, pursuant to the
19 substance of the moving papers, disagree with first two criteria listed by defense counsel.

20 **Notice of Motion in All Included Actions Shall be Given; Co-Liaison Counsel Appointment**

21 **Request Anticipated**

22 26. Plaintiffs' Motion respectfully acknowledges that as counsel for the moving party,
23 Plaintiffs' counsel as identified herein will fulfill all obligations pertaining to giving Notice stemming
24 from the filing of Plaintiffs' Motion, as may be appropriate, with respect to the parties, counsel of
25 record, and Clerks of Court of the included actions until a determination on coordination is rendered.
26 Plaintiffs' Motion also respectfully notes that at the appropriate time, should transfer and coordination
27
28

1 be Ordered, counsel for PEARCE LEWIS LLP and BAILEY COWAN HECKAMAN PLLC intend to
2 file a request in the coordinated proceeding for appointment as Plaintiffs' Co-Liaison Counsel.

3 27. Concurrent with the filing and service of Plaintiffs' Motion for Transfer for Coordinated
4 Pre-Trial Proceedings and Request for Stay, I will direct my office to file and serve Notice thereof
5 with an attached copy of the Motion in its entirety upon the parties, counsel to the extent known, and
6 the Clerks of Court with respect to each of the included actions. Plaintiffs' counsel shall file proofs of
7 service and proofs of filing thereof with this Court posthaste. (As a courtesy, Plaintiffs' counsel will
8 provide copies of the moving/opposing/reply papers associated with their Motion to counsel who is
9 representing cases identified as potential included or add-on actions.)

10 **The Motion is Properly Before this Court: Permission from "all parties plaintiff" is provided**

11 28. Plaintiffs' counsel submits Declarations from "all parties plaintiff" in the above-
12 captioned *Lim/Hong* action memorializing and confirming express permission is had from both James
13 Lim and Faith Hong to have their counsel of record seek., via direct § 403 Motion, transfer of the
14 included actions for coordination with their action in the Alameda County Superior Court. Attached
15 hereto as **Exhibit K** are true and correct copies of the Declaration of James Lim and the Declaration
16 of Faith Hong that are signed under penalty of perjury of this State.

17 **Request to be Heard Should the Court for Any Reason be Inclined to Vacate the Hearing Set**
18 **for Plaintiffs' Motion**

19 29. If the Court is for any reason inclined to vacate the hearing date upon which Plaintiffs'
20 Motion is set to be heard, Plaintiffs' counsel respectfully requests a hearing be had so that counsel be
21 afforded the opportunity to appear and be heard.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is
23 true and correct and that this declaration was executed on October 20, 2022, at Emeryville, California.

24
25 
26 Anya Fuchs, Esq.

EXHIBIT A

EXHIBIT A – Included Actions

	Case Name	Case Number	Venue	Filing Date	Plaintiffs' Counsel	Defendant's Counsel
1.	Christopher Ryder v. Future Motion Inc., and Does 1-100	21CV01295	Santa Cruz	5/20/21	Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111 Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77057	Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401 Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94597
2.	Helen Jang-Sterett, individually and as personal representative of the estate of Anthony Jang, deceased, Choong Soo Jang, and Choon OK Jang v. Future Motion, Inc., and Does 1-100	21CV01296	Santa Cruz	5/20/21	Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111 Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77058	Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401 Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94598
3.	Ryan Smith v. Future Motion, Inc., and Does 1-100	21CV01320	Santa Cruz	5/24/21	Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111 Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC	Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401 Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94599

					<p>1360 Post Oak Blvd., Ste 2300 Houston, TX 77059</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77060</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94600</p>
<p>4. Sha Cohen v. Future Motion, Inc., and Does 1-100</p>	<p>21CV01879</p>	<p>Santa Cruz</p>	<p>8/4/21</p>		<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77060</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94600</p>
<p>5. Sondr Engvaldsen v. Future Motion, Inc., and Does 1-100</p>	<p>21CV02808</p>	<p>Santa Cruz</p>	<p>11/17/21</p>		<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77061</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94600</p>
<p>6. James Raposa v. Future Motion, Inc., and Does 1-100</p>	<p>21CV03030</p>	<p>Santa Cruz</p>	<p>12/17/21</p>		<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77062</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94600</p>

7.	Spencer Bringhurst v. Future Motion, Inc., and Does 1-100	21CV03080	Santa Cruz	12/28/21	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77063</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94603</p>
8.	Albert Rubin v. Future Motion, Inc., and Does 1-100	21CV03081	Santa Cruz	12/28/21	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77064</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94604</p>
9.	Corey Jaggi v. Future Motion, Inc., and Does 1-100	22CV00255	Santa Cruz	2/4/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77065</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94605</p>
10.	Tyler Bradshaw v. Future Motion Inc., and Does 1-100	22CV00423	Santa Cruz	2/28/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800</p>

11.	Myles Allingham v. Future Motion, Inc., and Does 1-100	22CV00518	Santa Cruz	3/1/22	<p>Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77066</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77067</p>	<p>Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94606</p>
12.	Jason Arens v. Future Motion, Inc. and Does 1-100	22CV00520	Santa Cruz	3/11/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77068</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94607</p>
13.	William Holleman v. Future Motion, Inc., and Does 1-100	22CV00693	Santa Cruz	4/6/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston</p>

					<p>San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77069</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77070</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77071</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77071</p>	<p>J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94609</p> <p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94610</p> <p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94611</p> <p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm</p>
14.	James Burnstein v. Future Motion, Inc., and Does 1-100	22CV00789	Santa Cruz	4/19/22		
15.	Mariano Nieto Garcia v. Future Motion, Inc. and Does 1-100	22CV00794	Santa Cruz	4/19/22		
16.	Sean Murphy v. Future Motion, Inc. and Does 1-100	22CV00790	Santa Cruz	4/19/22		

17.	Todd Reed v. Future Motion, Inc., and Does 1-100	30-2022-01255632-CU-PO-CXC	Orange	4/20/22	<p>Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77072</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77073</p>	<p>1600 South Main St., Ste 280 Walnut Creek, CA 94612</p> <p>Michael S. Sutton Sutton & Murphy 26056 Acero Mission Viejo, CA 92691</p> <p>Kathleen K. Curtos Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p>
18.	John Godwin vs Future Motion, Inc., and Does 1-100	22CV00828	Santa Cruz	4/25/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77075</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94613</p>
19.	Teresa Conlan v. Future Motion, Inc. and Does 1-100	22CV00913	Santa Cruz	5/6/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94614</p>

		Alex Lafoe v. Future Motion, Inc., and Does 1-100	22CV00998	Santa Cruz	5/18/22	<p>1360 Post Oak Blvd., Ste 2300 Houston, TX 77076</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77077</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94615</p>
21.		Michael Shafer v. Future Motion, Inc., and Does 1-100	22CV01017	Santa Cruz	5/20/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77078</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94616</p>
22.		John Archer vs Future Motion, Inc., and Does 1-100	22CV01018	Santa Cruz	5/20/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77079</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94617</p>

23.	Spencer Hays, v. Future Motion, Inc., and Does 1-100	22CV01113	Santa Cruz	5/31/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77080</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94618</p>
24.	Jamison Wilson, v. Future Motion, Inc., and Does 1-100	22CV01160	Santa Cruz	6/3/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77081</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94619</p>
25.	David Larro vs Future Motion, Inc., and Does 1-100	22CV01231	Santa Cruz	6/10/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77082</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94620</p>
26.	Philippe Haible vs Future Motion, Inc., and Does 1-100	22CV01246	Santa Cruz	6/13/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800</p>

27.	Trevor Hunt vs Future Motion, Inc., and Does 1-100	22CV01305	Santa Cruz	6/17/22	<p>Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77083</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77084</p>	<p>Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94621</p>
28.	Luis Gomez, vs Future Motion, Inc., and Does 1-100	30-2022-01266437-CU-PO-CXC	Orange	6/21/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77084</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94622</p> <p>Heather L. Mills Johnathan E. Tarkowski Skane Mills LLP 1055 West 7th St., Ste 1700 Los Angeles, CA 90017</p> <p>Tammy M. Reno Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p>
29.	Timothy Loggiovino v. Future Motion, Inc., and Does 1-100	22CV01347	Santa Cruz	6/21/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston</p>

30.	Anthony Scott Gandolf, v. Future Motion, Inc., and Does 1-100	22CV01334	Santa Cruz	6/21/22	<p>San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77086</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77087</p>	<p>J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94622</p> <p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94623</p>
31.	Maxx Evan v. Future Motion, Inc. and Does 1-100	22CV01433	Santa Cruz	7/6/22	<p>San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77088</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94624</p>
32.	Nicolas Miller v. Future Motion, Inc., and Does 1-100	CVRI2202812	Riverside	7/8/22	<p>San Francisco, CA 94111</p> <p>Aaron M. Heckaman</p>	<p>Heather L. Mills Johnathan E. Tarkowski Skane Mills LLP 1055 West 7th St., Ste 1700 Los Angeles, CA 90017</p> <p>Tammy M. Reno Nilan Johnson Lewis PA</p>

33.	Melvyn Medina v. Future Motion, Inc. and Does 1-100	37-2022-00026878-CU-PO-CTL	San Diego	7/8/22	<p>Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77089</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77090</p>	<p>250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Robert A. Shields Jason M. Avelar Wilson Turner Kosmo LLP 402 West Broadway, Ste 1600 San Diego, CA 92101</p>
34.	Garrett Backstrom v. Future Motion, Inc. and Does 1-100	56-2022-00567659-CU-PO-VTA	Ventura	7/8/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77091</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Heather L. Mills Johnathan E. Tarkowski Skane Mills LLP 1055 West 7th St., Ste 1700 Los Angeles, CA 90017</p>
35.	Justin Deyo v. Future Motion, Inc. and Does 1-100	22CV01454	Santa Cruz	7/8/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94624</p>

						<p>1360 Post Oak Blvd., Ste 2300 Houston, TX 77092</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77093</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94625</p>
36.	Gabriela Curtis v. Future Motion, Inc. and Does 1-100	22CV01453	Santa Cruz	7/8/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77094</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94626</p>	
37.	Kyle Young v. Future Motion, Inc. and Does 1-100	22CV01623	Santa Cruz	7/28/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77094</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94627</p>	
		22CV01455	Santa Cruz	8/3/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77095</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94627</p>	
38.	Steven Powell v. Future Motion, Inc. and Does 1-100	22CV01455	Santa Cruz	8/3/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77095</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94627</p>	

39.	Scott Fine v. Future Motion, Inc. and Does 1-100	22CV01727	Santa Cruz	8/12/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77096</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94628</p>
40.	Jon Patti v. Future Motion, Inc. and Does 1-100	22CV01728	Santa Cruz	8/12/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77097</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94629</p>
41.	London Lazarov, a minor, by and through his Guardian ad Litem, Teresa Lazarov v. Future Motion, Inc. and Does 1-100	22CV01809	Santa Cruz	8/22/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77098</p>	TBD
42.	Edgar Vanegas v. Future Motion, Inc. and Does 1-100	22CV01933	Santa Cruz	9/8/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800</p>

43.	Jonah Fisher v. Future Motion, Inc. and Does 1-100	22CV01934	Santa Cruz	9/8/22	<p>Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77099</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77100</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77101</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77101</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p>	<p>Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94629</p>
44.	Tyler D'Spain v. Future Motion, Inc. and Does 1-100	22CV01935	Santa Cruz	9/8/22	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94629</p> <p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94629</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94629</p>
45.	Christopher Warren v. Future Motion, Inc. and Does 1-100	22CV01987	Santa Cruz	9/15/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510</p>	<p>TBD</p>

					<p>San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77102</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77112</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77113</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman</p>	<p>TBD</p>
46.	Jonathan Van Wickle v. Future Motion, Inc. and Does 1-100	22CV01985	Santa Cruz	9/15/22	<p>TBD</p>	
47.	Jesse Blodgett v. Future Motion, Inc. and Does 1-100	22CV02054	Santa Cruz	9/22/22	<p>TBD</p>	
48.	Martin Ceperley v. Future Motion, Inc. and Does 1-100	22CV02055	Santa Cruz	9/22/22	<p>TBD</p>	

49.	<p>Mohammad Etminan v. Future Motion, Inc. and Does 1-100</p>	<p>22CV02056</p>	<p>Santa Cruz</p>	<p>9/22/22</p>	<p>Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77114</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77115</p>	<p>TBD</p>
50.	<p>Amir Evan v. Future Motion, Inc. and Does 1-100</p>	<p>22CV02058</p>	<p>Santa Cruz</p>	<p>9/22/22</p>	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77116</p>	<p>TBD</p>
51.	<p>Robert Kosha v. Future Motion, Inc. and Does 1-100</p>	<p>22CV02059</p>	<p>Santa Cruz</p>	<p>9/22/22</p>	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC</p>	<p>TBD</p>

52.	Victor Lisle v. Future Motion, Inc. and Does 1-100	22CV02061	Santa Cruz	9/22/22		1360 Post Oak Blvd., Ste 2300 Houston, TX 77117 Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111 TBD Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77118				
53.	Piriya Vongmanobkum v. Future Motion, Inc. and Does 1-100	22CV02062	Santa Cruz	9/22/22		Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111 TBD Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77119				
54.	Zackery Wood v. Future Motion, Inc. and Does 1-100	22CV02063	Santa Cruz	9/22/22		Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111 TBD Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77120				

55.	James Applegate v. Future Motion, Inc. and Does 1-100	22CV02067	Santa Cruz	9/26/22	Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111	TBD
56.	Michael Briskman v. Future Motion, Inc. and Does 1-100	22STCV31420	Los Angeles	9/26/22	Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111	TBD
57.	Raymond Coburn v. Future Motion, Inc. and Does 1-100	22CV02068	Santa Cruz	9/26/22	Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77104	TBD
58.	Evelyn Cushing v. Future Motion, Inc. and Does 1-100	22CV02069	Santa Cruz	9/26/22	Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111	TBD

59.	Remington Gaspard v. Future Motion, Inc. and Does 1-100	22CV02070	Santa Cruz	9/26/22	<p>Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77106</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77107</p>	TBD
60.	Scott McGowan v. Future Motion, Inc. and Does 1-100	22CV02071	Santa Cruz	9/26/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77108</p>	TBD
61.	Talon Torenetta-Kline v. Future Motion, Inc. and Does 1-100	22CV02072	Santa Cruz	9/26/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510</p>	TBD

					<p>San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77109</p>	
62.	Seth Holster v. Future Motion, Inc. and Does 1-100	22CV02073	Santa Cruz	9/26/22	<p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>TBD</p>	
63.	Garry Warble v. Future Motion, Inc. and Does 1-100	22CV02074	Santa Cruz	9/26/22	<p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77110</p> <p>Timothy F. Pearce Stuart B. Lewis Anya Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>TBD</p>	

EXHIBIT B

EXHIBIT B – Cases Known to Plaintiffs’ Counsel to have Trial Dates Set Within Four (4) Months of October 20, 2022

	Case Name	Case Number	Venue	Filing Date	Trial Call	Plaintiffs’ Counsel	Defendant’s Counsel
1.	Sandra Anderson, individually and on behalf of the estate of Eric Anderson, deceased, and Jacob Anderson v. Future Motion, Inc.	20cv00909	Santa Cruz	3/13/20	1/5/23	<p>Timothy F. Pearce Stuart B. Lewis Anyia Fuchs Hannah B. Oxley Pearce Lewis LLP 423 Washington St., Ste 510 San Francisco, CA 94111</p> <p>Aaron M. Heckaman Robert W. Cowan Bailey Cowan Heckaman PLLC 1360 Post Oak Blvd., Ste 2300 Houston, TX 77057</p>	<p>Pablo Orozco Nilan Johnson Lewis PA 250 Marquette Ave. South, Ste 800 Minneapolis, MN 55401</p> <p>Craig A. Livingston J. Jasmine Jenkins Livingston Law Firm 1600 South Main St., Ste 280 Walnut Creek, CA 94597</p>

EXHIBIT C

EXHIBIT C

	Case Name	Case Number	Venue
1	Jason Bailey v. Future Motion, Inc.	22CV01222	Santa Cruz
2	Johnn Betts v. Future Motion, Inc.	MSC21-00133	Contra Costa
3	Brian Blietz v. Future Motion, Inc.	21CV389464	Santa Clara
4	Ellen Broers, et al. v. Future Motion, Inc.	37-2021-00051589-CU-PL-NC	San Diego
5	Lauren Castro v. Future Motion, Inc.	22STCV04194	Los Angeles
6	Grant Cofer v. Future Motion, Inc., et al.	21STCV36469	Los Angeles
7	Steven Collman v. Future Motion, Inc.	21CV00050	Santa Cruz
8	Frank Congine v. Future Motion, Inc.	37-2021-00032113-CU-PL-CTL	San Diego
9	Brandon Greer v. Future Motion, Inc.	22CV01320	Santa Cruz
10	Clayton Harrison v. Future Motion, Inc.	22CV01281	Santa Cruz
11	Christopher Kaczmarek v. Future Motion, Inc.	21CV379027	Santa Clara
12	Jared Katzenbarger v. Future Motion	22CV00768	Santa Cruz
13	Kaveh Kavian v. Moseley, et al.	22STCV15959	Los Angeles
14	Christopher Mattson v. Future Motion, Inc.	22CV01325	Santa Cruz
15	Tony Miles v. Future Motion, Inc.	21CV02425	Santa Cruz
16	Jeremy Moran v. Future Motion, Inc.	21CV01492	Santa Cruz
17	Ashley Murphy, et al. v. Future Motion, Inc.	22CV01883	Santa Cruz
18	Chad Norris v. Future Motion, Inc.	21STCV07171	Los Angeles
19	Bill Osborne v. Future Motion, Inc.	21CV01824	Santa Cruz
20	Matthew Salvo v. Future Motion, Inc.	2022-00322883	Sacramento
21	Jeffrey Vazquez v. Future Motion, Inc.	30-2021-01237390	Orange
22	Gantry Wilson v. Future Motion, inc.	30-2022-01264044	Orange

EXHIBIT D

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15 *Pro Hac Vice Admission to be Requested*

16 *Attorneys for Plaintiff*

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF ALAMEDA**

19 JAMES S. LIM,

20 Plaintiff,

21 vs.

22 FUTURE MOTION, INC., and DOES 1-100,

23 Defendants.

Case No.: **22CV010495**

COMPLAINT FOR DAMAGES FOR PERSONAL INJURY

1. Negligence
2. Strict Liability
3. Failure to Warn
4. Negligent Design
5. Negligent Recall/Retrofit
6. Violations of California Business & Professions Code § 17200
7. Violation of the Consumer Legal Remedies Act – California Civil Code § 1750, *et seq.*
8. Punitive Damages

Demand for Jury Trial

1 Plaintiff JAMES S. LIM (hereinafter “Plaintiff” or “Mr. Lim”) alleges as follows:

2 **NATURE OF ACTION**

3 This is a products liability case arising out of the severe personal injuries suffered by Mr. Lim as
4 a result of the negligence and serious, numerous defects of Defendant Future Motion, Inc. (hereinafter
5 “FM” or “Defendant FM”) and its product, “Onewheel,” a one-wheeled self-balancing electric transporter
6 manufactured and marketed by FM which caused Mr. Lim’s severe injuries.

7 **PARTIES**

8 1. The Plaintiff in this matter is James S. Lim (“Plaintiff” or “Mr. Lim”). He is a resident of
9 Dublin, California.

10 2. Future Motion, Inc. (“FM” or “Defendant”) is a corporation organized and existing under
11 the laws of the State of Delaware with its principal place of business in the State of California. FM may
12 be served with process through its agent for service of process, Paracorp Incorporated, 2804 Gateway
13 Oaks Dr. #100, Sacramento, CA 95833.

14 3. The true names and capacities, whether individual, corporate, associate, governmental or
15 otherwise, of DOES 1 through 100, inclusive, are unknown to Plaintiff at this time. Plaintiff therefore
16 sues said Defendants by such fictitious names. When the true names and capacities of the DOE Defendants
17 have been ascertained, Plaintiff will amend this Complaint accordingly. Plaintiff is informed and believes
18 that each DOE Defendant designated herein is responsible, negligently or in some other actionable
19 manner, for the events and happenings that caused injuries and damages to the Plaintiff.

20 4. Defendant FM’s founder and current CEO, Kyle Doerksen, founded Defendant FM and
21 designed FM’s Onewheel product here at issue in California’s Silicon Valley.

22 5. On information and belief, Plaintiff alleges that the majority of Defendant FM’s Executive
23 Team, including its CEO Kyle Doerksen, as well as its Chief Technology Officer and its Chief Marketing
24 Officer, all live in or reside near the County of Santa Cruz located in the State of California.

25 6. At all times hereinafter mentioned, Defendant FM was, and still is, a digital vehicle
26 company involved in research, development, testing, manufacture, production, promotion, distribution,
27 and marketing of Onewheel for distribution, sale, and use by the general public, throughout the United
28 States and the State of California.

1 7. FM is duly authorized to and does conduct business within the State of California and in
2 the County of Santa Cruz.

3 8. FM derives substantial revenues from products it sells in the State of California and in the
4 County of Santa Cruz.

5 9. FM designed, manufactured, marketed, distributed, and sold, and continues to design,
6 manufacture, market, distribute, and sell, its Onewheel products in California, including Santa Cruz. FM
7 designed, manufactured, marketed, distributed and sold Onewheel to third-parties in California,
8 specifically including to Plaintiff herein.

9 **VENUE AND JURISDICTION**

10 10. Plaintiff James S. Lim is an individual, and was at all relevant times, a resident of
11 California.

12 11. The California Superior Court has jurisdiction over all Defendants because, based on
13 information and belief, it is a corporation and/or entity organized under the laws of the State of California,
14 a foreign corporation or association authorized to do business in California and registered with the
15 California Secretary of State, or that has sufficient minimum contacts in California, is a citizen of
16 California, or otherwise intentionally avails itself of the California market so as to render the exercise of
17 jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial
18 justice.

19 12. Furthermore, Defendant FM has purposefully availed itself of the benefits and the
20 protections of the laws within the State of California. Defendant FM has its principal place of business
21 within the State of California. Defendant FM has had sufficient contact with the State of California such
22 that the exercise of jurisdiction would be consistent with the traditional notions of fair play and substantial
23 justice.

24 13. Venue is proper in the above-captioned Court as Plaintiff James S. Lim is and was at all
25 times relevant to the facts mentioned herein a resident of Alameda County, California.

26 14. This case is not removable to Federal Court pursuant to 28 U.S.C.A. section 1441, which
27 states that a civil action removable solely on the basis of diversity, may not be removed if any Defendant
28 in the matter is a citizen of the state in which the action is brought.

GENERAL ALLEGATIONS

1
2 18. FM's product "Onewheel" is a self-balancing, battery-powered, one-wheel electric
3 transport device that is often described as an electric skateboard. The product was and is advertised,
4 analyzed, assembled, compounded, designed, developed, distributed, formulated, inspected, labeled,
5 manufactured, marketed, packed, produced, promoted, processed, researched, sold, and tested by FM.
6 Upon information and belief, FM developed, designed, and manufactured not only the Onewheel product
7 line, but the entirety of the subsystems that power it, including its motors, power electronics, battery unit,
8 battery management system, controller unit or circuit board, and smartphone applications ("apps").

9 19. Upon information and belief, operation of FM's Onewheel is, or may be, controlled and/or
10 monitored, in part, by an "app" installed on the user's smartphone. The Onewheel app allows users to
11 view the board's total miles, battery life, speed, and other information. The speed indicator of the
12 Onewheel app is similar to a speedometer in a car. While FM lists the Onewheel's maximum speed as
13 26.1 miles per hour, the published maximum speed for the Onewheel is approximately just 19 miles per
14 hour.

15 20. FM promotes itself as being "IN THE BUSINESS OF MAKING THE FUTURE 'RAD'."
16 (<https://onewheel.com/pages/about-us>.) According to FM's website, the Onewheel is designed to make
17 the rider forget that "there are thousands of calculations happening per second to keep you perfect." FM
18 claims that the Onewheel can "really reignite the childhood" inside of riders. Videos on Onewheel's
19 website depict users riding the Onewheel device in a variety of settings — in concrete drainage basins,
20 through standing water, on the open highway (with cars approaching), on dirt paths, on the beach, through
21 wooded areas, across fallen logs, and on and off the sidewalk. Onewheel-sponsored videos show users
22 riding a Onewheel with and without helmets.

23 21. Upon information and belief, one of Onewheel's key features (and its most dangerous and
24 unpredictable feature) is that it will provide the rider with "pushback" when approaching the device's
25 limits during use. Often however, instead of, or in addition to, such "pushback" (which is allegedly
26 designed as a warning to riders to avoid a dangerous situation), the Onewheel will simply nosedive and
27 shut off, resulting in the rider being thrown forward off the device. The harder the device works to
28 maintain operations, the less the Onewheel is able to assist the rider in balancing. Once the motor's

1 resources reach a critical point, the motor's normal ability to help the rider balance disappears, and the
2 rider experiences an unexpected violent nosedive. Often, this will feel to the rider like the motor suddenly
3 cut out or shut down. Different factors create a variability as to when and what will cause the Onewheel
4 to shutdown and nosedive, including the rider's weight, tire pressure, wind direction, rider's stance, battery
5 level, grade of incline or decline, and other factors. Thus, predicting exactly when or what will cause a
6 nosedive is nearly impossible.

7 22. Upon information and belief, the leading cause of "pushback" nosediving is velocity.
8 When experiencing velocity pushback, the rider will purportedly feel the nose of the board rise to various
9 degrees when a certain velocity is reached. Often, velocity pushback occurs at a speed lower than that of
10 the maximum due to the above-mentioned factors.

11 23. Upon information and belief, pushback and nosedives also occur when ascending or
12 descending hills, purportedly to alert the rider, again, that the motor and/or the battery unit may be
13 becoming overworked. The problem with this form of pushback, however, is that it is difficult to discern
14 when the rider is feeling pushback, or whether it is the natural resistance caused by the incline/decline.
15 While ascending hills, riders are already pressing against the nose and the grade of the hill to ascend, and
16 therefore may not be able to discern pushback as pushback. While descending, a rider may not feel
17 pushback because his/her weight is likely already on the tail to control speed. Pushback in such situations
18 will likely result in a sudden nosedive or tailspin, especially if the rider is unaware that the board is giving
19 them pushback. Again, the result will be that the rider feels the board suddenly shut down during operation
20 resulting in violently throwing the rider forward and down off the board.

21 24. Upon information and belief, another form of pushback occurs when the Onewheel is
22 nearing battery depletion. This pushback purportedly alerts riders by elevating the nose dramatically.
23 When the Onewheel purportedly senses the battery unit is about to be damaged by over-depletion, the
24 board will shut off entirely, leaving the rider left to suddenly and unexpectedly recalibrate his/her balance,
25 often resulting in the rider being thrown off the board.

26 25. Upon information and belief, yet another form of pushback is referred to as regeneration
27 pushback. One way that the Onewheel recharges its battery is to collect kinetic energy when traveling
28 down a decline to reserve such power in the battery. However, this may result in the battery becoming

1 overcharged, which may damage the battery. Upon information and belief, FM “addressed” this problem
2 by designing the board to suddenly and unexpectedly shut down in order to prevent battery damage, at the
3 expense of rider safety. Instead of having the battery reach overcharge, prior to regeneration-related
4 damage to the battery, the Onewheel will shut down and violently throw the rider forward and down off
5 the board. The same problems in discerning pushback while ascending/descending also occur in this
6 situation.

7 26. Upon information and belief, another common cause of nosedives is due to acceleration.
8 If a rider attempts to accelerate quickly, the motor may not support the sudden weight and force on it and
9 the nose will suddenly drop. Yet, one of the features of the Onewheel is its ability to accelerate quickly,
10 even from a complete stop. Such acceleration nosedives can happen at any speed, even from a dead stop,
11 and the rider will feel as though the motor has suddenly cut out or shut off. Tail-slides occur when the
12 rider shifts his/her weight onto the back of the board and thereby overwhelms the motor. In that case, the
13 tail of the board will suddenly drop and slide on the ground, causing the rider to become instantly
14 unbalanced.

15 27. Upon information and belief, not only is it prohibitively difficult to determine when
16 nosedives/tailspins/shut-offs will occur, but the result of such unexpected, unpredictable and undiscernible
17 events almost invariably cause the rider to be ejected or fall from the board, resulting in severe injuries or
18 death. Onewheel’s defective design lacks a coasting mechanism and the device will stop suddenly with a
19 pushback or power failure, causing the rider to be ejected from the board. A Onewheel nosedive or shut-
20 off is not a small event as it might be with any other type of vehicle. The front of the board violently
21 slams into the ground and then the rider is inevitably thrown downward and forward, often leading with
22 their heads.

23 **PLAINTIFF’S INJURIES**

24 28. Plaintiff realleges and incorporates by reference the allegations contained in the preceding
25 paragraphs as if fully set forth herein.

26 29. On or about December 26, 2020, Mr. Lim was riding his Onewheel Pint board near his
27 home in Dublin, California. Mr. Lim was riding the Onewheel device on a flat, asphalt road in a residential
28 area. Upon information and belief, the path was smooth and imposed no obstructions or imperfections of

1 any kind. Upon information and belief, Mr. Lim was wearing wrist guards and elbow pads. Further, upon
2 information and belief, Mr. Lim's Onewheel device suddenly shut off and "nosedived" while he was riding
3 it on the road, causing the front of the board to violently and unexpectedly slam in the pavement of the
4 roadway and throwing him forward off the board and onto the paved roadway. As a result of being
5 unexpectedly thrown off the Onewheel device, Mr. Lim suffered severe injuries including skull fractures,
6 concussion, and internal bleeding, which directly and proximately resulted from his forward ejection from
7 the Onewheel and contact with the pavement.

8 30. Shortly thereafter, Mr. Lim was taken to Stanford Hospital in Pleasanton, California. After
9 a few hours, he was transferred by ambulance to Eden Medical Center in Castro Valley, California, where
10 he was admitted for his injuries. He remained hospitalized for about five days.

11 **CAUSES OF ACTION**

12 31. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated
13 in full here.

14 32. Plaintiff brings this action as a personal injury action pursuant to Code of Civil Procedure
15 § 335.1.

16 **FIRST CAUSE OF ACTION**

17 (Negligence)

18 33. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated
19 in full here.

20 34. Defendants FM and Does 1 to 100, inclusive, and each of them, owed Plaintiff and the
21 consumer public a duty of due care in designing, manufacturing, marketing, selling, and distributing the
22 Onewheel device used by Plaintiff such that the device could be operated in a normal, safe, and non-
23 dangerous manner.

24 35. Defendants breached their duties to Plaintiff by failing to exercise ordinary care and due
25 diligence in negligently designing, manufacturing, marketing, selling, and distributing the Onewheel
26 device used by Plaintiff such that the device could not be operated in a normal, safe, and non-dangerous
27 manner and proximately caused Plaintiff's injuries. Defendants' activities contributed in natural and/or
28 continuous sequence to the Plaintiff's severe injuries, and their actions, as alleged herein, were a

1 substantial contributing factor to Plaintiff's injuries. At all times mentioned herein, Defendants, through
2 their negligence as alleged herein, ignored their responsibilities to Plaintiff and unreasonably jeopardized
3 the health and well-being of Plaintiff and caused his injuries.

4 36. Defendants' acts and omissions, (i.e., negligence) as alleged herein, was a substantial factor
5 in causing Mr. Lim's injuries, and Plaintiff is entitled to recover compensatory damages in an amount
6 according to proof. Plaintiff has been generally damaged in an amount within the jurisdictional limits of
7 this court.

8 37. The Defendants are liable to the Plaintiff for all general, special and punitive damages, as
9 well as delay damages, and other relief to which they are entitled to by law.

10 **SECOND CAUSE OF ACTION**

11 (Strict Liability)

12 38. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated
13 in full here.

14 39. Defendants FM and Does 1 to 100, inclusive, and each of them, is the designer,
15 manufacturer, and/or marketer/seller of the Onewheel device and each is strictly liable to Plaintiff for
16 designing, creating, manufacturing, marketing, labeling, distributing, selling, and placing into the stream
17 of commerce the product Onewheel.

18 40. The Onewheel device that was designed, manufactured, distributed and/or sold by
19 Defendants was defective in design or construction in that when it left the hands of the Defendants, it was
20 unreasonably dangerous. It was more dangerous than an ordinary consumer would expect and more
21 dangerous than other similar devices.

22 41. The Onewheel device that was designed, manufactured, distributed and/or sold by
23 Defendants was defective due to its unreasonably dangerous and unpredictable propensity to shut-off
24 suddenly, nosedive, and/or tailspin while in operation, without warning, as described above, and because
25 it contained inadequate warnings or instructions because the manufacturer, supplier and/or distributor
26 knew or should have known that the product was intrinsically defective and that users were likely to suffer
27 severe injury and/or death while using the Onewheel.

1 42. The Onewheel device that was designed, manufactured, marketed, and/or sold by
2 Defendants was defective due to inadequate testing.

3 43. The Onewheel device that was designed, manufactured, marketed, and/or sold by
4 Defendants was defective due to Defendants' failure to provide adequate warnings and instructions after
5 the Defendants knew or should have known of the increased risk of severe injury and/or death from using
6 the Onewheel.

7 44. The Onewheel device involved in the subject incident did not perform as safely as an
8 ordinary consumer would have expected it to perform when used or misused in an intended or reasonably
9 foreseeable way.

10 45. The Onewheel device involved in the subject incident was defective in its design because
11 the benefits of the Onewheel's design failed to outweigh the risks of the Onewheel's design in the
12 following manner:

- 13 a) The gravity of the potential harm resulting from the use, or foreseeable misuse, of
14 the Onewheel was enormous as evidenced by Mr. Lim's severe and life-altering
15 injuries;
- 16 b) There existed a high likelihood that severe harm would occur from a sudden and
17 unexpected nosedive of the Onewheel at a speed exceeding 15 mph that would
18 cause its rider to be violently thrown to the ground;
- 19 c) At the time of the Onewheel's manufacture, there existed numerous and
20 inexpensive alternative safer designs with few or no disadvantages to the existing
21 design.

22 46. The Onewheel device involved in the subject incident contained a manufacturing defect in
23 that the subject Onewheel differed from the manufacturer's design or specifications or from other typical
24 units of the same product line when it left the possession of Defendants.

25 47. Defendants' designing, manufacturing, marketing, and/or selling the defective Onewheel
26 device as alleged herein and placing it in the stream of commerce, likewise as alleged herein, was a
27 substantial factor in causing Mr. Lim's injuries, and he is entitled to recover compensatory damages in an
28

1 amount according to proof. Plaintiff has been generally damaged in an amount within the jurisdictional
2 limits of this court.

3 48. Defendants are liable to the Plaintiff for all general as well as special and punitive damages,
4 as well as delay damages, and other relief to which they are entitled to by law.

5 **THIRD CAUSE OF ACTION**

6 (Failure to Warn)

7 49. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated
8 in full here.

9 50. At all times herein mentioned, the subject Onewheel was unsafe for use by consumers,
10 including Mr. Lim, and Defendants knew or should have known that said product was unsafe and could
11 cause severe and even fatal injuries during its “normal” operation, as alleged herein; yet Defendants failed
12 to adequately warn users of the risk of serious injury or death.

13 51. Mr. Lim used the Onewheel device in the manner in which Defendants intended it to be
14 used.

15 52. Defendants FM and Does 1 to 100, inclusive, and each of them, promoted and sold the
16 Onewheel device on the open market with the knowledge of the device’s unreasonable risk to the public
17 in general and specifically to Plaintiff.

18 53. The Onewheel, as used by Mr. Lim, was defective and unreasonably dangerous when sold
19 by Defendants, who are liable for the injuries arising from the Onewheel’s design, manufacture,
20 marketing, sale, and use without adequate warning of the device’s serious dangers.

21 54. The Onewheel, as used by Mr. Lim, had potential risks that were known or knowable by
22 Defendants in light of the scientific knowledge that was generally accepted in the scientific community at
23 the time of the Onewheel’s manufacture, distribution or sale.

24 55. The potential risks of the Onewheel, including but not limited to its propensity to nosedive
25 suddenly and without warning under various conditions presented a substantial danger when the Onewheel
26 was used or misused in an intended or reasonably foreseeable way.

27
28

1 56. Ordinary consumers would not have recognized the potential risks of the Onewheel,
2 including but not limited to its propensity to nosedive suddenly and without warning under various
3 conditions.

4 57. Defendants failed to adequately warn or instruct of the above-described potential risks of
5 the Onewheel, including but not limited to its propensity to nosedive suddenly and without warning under
6 various conditions.

7 58. Defendants further breached their duty to provide timely and adequate warnings,
8 instructions, and information, at least in the following particulars:

- 9 a) failing to ensure Onewheel warnings were accurate, conspicuous, and adequate
10 despite having extensive knowledge of the risks associated with Onewheel use;
- 11 b) failing to conduct adequate pre- and post-market safety surveillance and testing
12 such that adequate warning could have been issued to users;
- 13 c) failing to include adequate conspicuous warnings that would alert users to the
14 dangerous risks of the Onewheel, including but not limited to, among other things,
15 sudden and unexpected nose dives;
- 16 d) representing that Onewheel was safe for use, when in fact, Defendants knew or
17 should have known that Onewheel was unsafe for this use and that it was actually
18 unreasonably dangerous to use when operated as intended by Defendants.

19 59. Defendants continued and continues, to date, to aggressively manufacture, market,
20 promote, distribute, and sell the Onewheel, even after they knew or should have known of the
21 unreasonable risks of serious injury or death caused by use of the Onewheel. The lack of sufficient
22 instructions and/or warnings was a substantial factor in causing Plaintiff's harm in that Defendants'
23 designing, manufacturing, marketing, and/or selling the Onewheel device and placing it in the stream of
24 commerce without adequate warnings of the risk of serious injury or death, as alleged herein, caused Mr.
25 Lim's severe injuries; and Plaintiff is entitled to recover compensatory damages in an amount according
26 to proof. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this court.

1 60. For the reasons described hereinabove, Defendants are liable to the Plaintiff for all general,
2 special and punitive damages, as well as delay damages, and other relief to which Plaintiff is entitled to
3 by law.

4 **FOURTH CAUSE OF ACTION**

5 (Negligent Design)

6 61. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated
7 in full here.

8 62. Defendants FM and Does 1 to 100, inclusive, and each of them, was the designer,
9 manufacturer, seller, distributor, marketer and/or seller of Onewheel, which was negligently designed.

10 63. Defendants were negligent in developing, designing, processing, manufacturing,
11 inspecting, testing, packaging, selling, distributing, supplying, marketing, and promoting Onewheel,
12 which was defective and presented an unreasonable risk of harm to consumers. Onewheel was negligently
13 designed in ways that include, but are not limited to, one or more of the following:

14 (a) When placed in the stream of commerce, Onewheel expressed unreasonably
15 dangerous design defects and was not reasonably safe and fit for its intended or
16 reasonably foreseeable purpose or as intended to be used, thereby subjecting users,
17 including Plaintiff, to unreasonable risks of serious injury or death.

18 (b) Onewheel was insufficiently tested.

19 (c) Onewheel causes serious injury and/or death that outweighs any potential utility.

20 (d) Onewheel was not accompanied by adequate labeling, instructions for use and/or
21 warnings to fully apprise the users, including Plaintiff, of the potential risks of
22 serious injury and/or death associated with its use.

23 (e) In light of the potential and actual risk of harm associated with Onewheel's use, a
24 reasonable person who had actual knowledge of this potential and actual risk of
25 harm and/or death would have concluded that Onewheel should not have been
26 marketed in that condition.

27 (f) Defendants were under a duty of due care to act for the protection of consumers,
28 such as Plaintiff. The Defendants owed a duty to consumers to exercise reasonable

1 care in developing, designing, processing, manufacturing, inspecting, testing,
2 packaging, selling distributing, supplying, marketing, and promoting Onewheel,
3 and Defendants breached that duty by the conduct as alleged herein.

4 (g) Defendants knew or should have known that use of Onewheel as intended imposed
5 unreasonable risks to the health and safety of consumers. Defendants knew of the
6 grave risks caused by their product from investigation and testing performed by
7 themselves or others or, to the extent Defendants did not fully know of those risks,
8 it was because Defendants unreasonably failed to perform appropriate, adequate
9 and proper investigations and tests that would have disclosed those risks.

10 (h) Defendants' conduct described above was grossly negligent in that their actions and
11 omissions involved willful and reckless conduct and were carried out with
12 conscious disregard for the unreasonable risk of Onewheel and its potential harm
13 to consumers.

14 64. Defendants' negligent designing, manufacturing, marketing, and/or selling the Onewheel
15 device and placing it in the stream of commerce without adequate warnings of the risk of serious injury
16 or death, as alleged herein, were substantial factors in bringing about harm to Plaintiff herein in that Mr.
17 Lim sustained severe injuries when his Onewheel suddenly and unexpectedly nosedived; and Plaintiff is
18 entitled to recover compensatory damages in an amount according to proof. Plaintiff has been generally
19 damaged in an amount within the jurisdictional limits of this court.

20 65. Defendants are liable to the Plaintiff for all general, special and punitive damages, as well
21 as delay damages, and other relief to which Plaintiff is entitled to by law.

22 **FIFTH CAUSE OF ACTION**

23 (Negligent Recall/Retrofit)

24 66. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated
25 in full here.

26 67. Defendants FM and Does 1 to 100, inclusive, and each of them, was the designer,
27 manufacturer, seller, distributor, marketer and/or seller of Onewheel, which was negligently designed.
28

1 68. Defendants knew, or reasonably should have known, that the Onewheel was dangerous or
2 was likely to be dangerous when used in a reasonably foreseeable manner.

3 69. Defendants became aware of this defect before or after the Onewheel was sold.

4 70. After Defendants learned that the Onewheel was dangerous or was likely to be dangerous
5 when used in a reasonably foreseeable manner, Defendants failed to recall or retrofit or warn of the danger
6 of the Onewheel.

7 71. Plaintiff contends and hereupon alleged that a reasonable manufacturer, distributor or seller
8 under the same or similar circumstances would have recalled or retrofitted or provided adequate warnings
9 about the Onewheel.

10 72. Defendants' failure to recall, to retrofit or to provide adequate warnings about the
11 Onewheel's dangerous propensities under foreseeable use were substantial factors in causing Plaintiff's
12 injuries.

13 **SIXTH CAUSE OF ACTION**

14 (Violations of California Business & Professions Code § 17200)

15 73. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated
16 in full here.

17 74. Plaintiff is informed and believe and thereon allege that Defendants, by the acts and
18 misconduct alleged herein, violated Business & Professions Code § 17200.

19 75. On behalf of the general public, Plaintiff hereby seeks injunctive, restitutionary and other
20 equitable relief as appropriate against Defendants for their violations of § 17200.

21 76. California Business & Professions Code § 17200 provides that unfair competition shall
22 mean and include "all unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or
23 misleading advertising."

24 77. The acts and practices described in the preceding paragraphs were and are likely to mislead
25 the general public and, therefore, constitute unfair business practices within the meaning of Business &
26 Professions Code § 17200. The acts of untrue and misleading advertising set forth in the preceding
27 paragraphs are incorporated by reference and are, by definition, violations of Business & Professions Code
28 § 17200. This conduct includes, but is not limited to:

1 (a) Representing to Plaintiff and the general public that Onewheel was safe for ordinary
2 use, knowing that these representations were false, and concealing from Plaintiff
3 and the general public that Onewheel had a serious propensity to cause serious or
4 even fatal injuries during normal operation;

5 (b) Engaging in advertising programs designed to create the image, impression and
6 belief by consumers, including Plaintiff, that Onewheel was safe for ordinary,
7 recreational use, even though Defendants knew that to be false, and even though
8 Defendants had no reasonable grounds to believe that to be true; and

9 (c) Purposely downplaying and understating the safety hazards and risks associated
10 with Onewheel use.

11 78. These practices constitute unlawful, unfair and fraudulent business acts or practices, within
12 the meaning of California Business & Professions Code § 17200, as well as unfair, deceptive, untrue and
13 misleading advertising as prohibited by California Business & Professions Code § 17500.

14 79. The unlawful, unfair and fraudulent business practices of Defendants described above
15 present a continuing threat to members of the public in that Defendants continue to engage in the conduct
16 described therein.

17 80. As a result of the conduct described above, Defendants have been and will be unjustly
18 enriched. Specifically, Defendants have been unjustly enriched by receipt of millions of dollars in ill-
19 gotten gains from the sale of Onewheel in California and throughout the United States, sold in large part
20 as a result of the acts and omissions described herein.

21 81. Because of the fraudulent misrepresentations made by Defendants, as detailed above, and
22 the inherently unfair practice of committing a fraud against the public by intentionally misrepresenting
23 and concealing material information, the acts of Defendants described herein constitute unfair or
24 fraudulent business practices.

25 82. Plaintiff, pursuant to California Business & Professions Code § 17203, seeks an order of
26 this court compelling Defendants to provide restitution and to disgorge all monies collected and profits
27 realized by Defendants as a result of their unfair business practices, and injunctive relief calling for
28 Defendants to cease such unfair business practices in the future.

SEVENTH CAUSE OF ACTION

(Violation of the Consumer Legal Remedies Act – California Civil Code § 1750, *et seq.*)

83. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated in full here.

84. Plaintiff is informed and believe and thereon allege that Defendants FM and Does 1 to 100, inclusive, and each of them, by the acts and misconduct alleged, violated the Consumer Legal Remedies Act, California Civil Code § 1750, *et seq.* (“CLRA”).

85. Plaintiff hereby seeks injunctive relief as appropriate against Defendants for their violations of Civil Code § 1750, *et seq.*

86. The CLRA applies to Defendants’ actions and conduct described herein because it extends the transactions which are intended to result, of which have resulted, in the sale of goods to consumers.

87. Plaintiff is a “consumer” within the meaning of California Civil Code §1761(d).

88. Defendants have violated and continue to violate the CLRA in representing that goods have characteristics and benefits which they do not have, in violation of Civil Code § 1770(a)(5).

89. At all times relevant, Defendants committed acts of disseminating untrue and misleading statements, as defined by Civil Code § 1770, by engaging in the following acts and practices with intent to induce members of the public to purchase and use Onewheel:

- (a) Representing to Plaintiff and the general public that Onewheel was safe for ordinary use, knowing that these representations were false, and concealing from Plaintiff and the general public that Onewheel had a serious propensity to cause serious or even fatal injuries during normal operation;
- (b) Engaging in advertising programs designed to create the image, impression and belief by consumers, including Plaintiff, that Onewheel was safe for ordinary, recreational use, even though Defendants knew that to be false, and even though Defendants had no reasonable grounds to believe that to be true; and
- (c) Purposely downplaying and understating the safety hazards and risks associated with Onewheel use.

1 90. The foregoing practices constitute false and misleading advertising and representations
2 within the meaning of Civil Code § 1770.

3 91. The acts of untrue and misleading statements by Defendants described hereinabove present
4 a continuing threat to members of the public and individual consumers in that the acts alleged herein are
5 continuous and ongoing, and the public and individual consumers will continue to suffer harm.

6 92. Unless Defendants are enjoined from continuing to engage in these violations of the CLRA,
7 Plaintiff and consumers will continue to be harmed by the wrongful actions and conduct of Defendants.

8 93. Pursuant to Civil Code § 1780, Plaintiff seeks an order of this court for injunctive relief
9 calling for Defendants to cease such deceptive business practices in the future.

10 **PUNITIVE DAMAGES ALLEGATION**

11 94. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated
12 in full here.

13 95. Plaintiff is entitled to punitive damages because Defendants FM and Does 1 to 100,
14 inclusive, and each of them, failed to warn and other actions as described herein were malicious, wanton,
15 willful or oppressive or were done with reckless indifference to the Plaintiff and the public's safety and
16 welfare. Defendants misled Onewheel users and purchasers, as well as the public at large, including
17 Plaintiff herein, by making false representations about the safety and risks associated with their product.
18 Defendants downplayed, understated and/or disregarded their knowledge of the serious and potentially
19 deadly risks associated with the foreseeable use of their product.

20 96. Defendants were, or should have been, in possession of evidence demonstrating the serious
21 risk of injury or death associated with Onewheel. Nonetheless, Defendants continued to market the
22 product by providing false and misleading information, or by omitting to disclose vital information,
23 including but not limited to, the Onewheel's propensity to suddenly and unexpectedly nosedive without
24 prior warning under various conditions.

25 97. At the time the Onewheel involved in the subject incident was designed, manufactured, or
26 sold to Plaintiff, Onewheel was aware of safer practical and inexpensive alternate designs for the
27 Onewheel that could have either prevented the above-described nosedive under certain conditions or in
28 the event of a nosedive, could have mitigated the risk of rider ejection from the Onewheel. Despite this

1 knowledge, Defendants consciously and purposefully decided against the above-described measures and
2 chose to gamble with the safety of the public. In addition, once Defendants became aware of the inherent
3 dangers of the Onewheel and learned of safer practical and inexpensive alternate designs for the Onewheel,
4 Defendants failed to recall and to retrofit the Onewheel with these safer alternate designs or to adequately
5 warn the public about the Onewheel's propensity to suddenly and unexpectedly nosedive without prior
6 warning under various conditions.

7 98. Defendants' actions described above were performed willfully, intentionally and with a
8 conscious disregard for the rights of Plaintiff and the public.

9 99. Accordingly, Plaintiff seeks and is entitled to punitive damages in an amount to be
10 determined at trial.

11 **PRAYER**

12 WHEREFORE, Plaintiff prays for judgment against Defendants FUTURE MOTION, INC. and
13 Does 1 to 100, and as appropriate to each cause of action alleged and as appropriate to the particular
14 standing of Plaintiff as follows:

- 15 1. Past and future general damages, the exact amount of which has yet to be ascertained, in
16 an amount which will conform to proof at time of trial;
- 17 2. Past and future economic and special damages according to proof at the time of trial;
- 18 3. Loss of earnings and impaired earning capacity according to proof at the time of trial;
- 19 4. Medical expenses, past and future, according to proof at the time of trial;
- 20 5. For past and future mental and emotional distress, according to proof;
- 21 6. Punitive or exemplary damages according to proof at the time of trial;
- 22 7. Restitution, disgorgement of profits, and other equitable relief;
- 23 8. Injunctive relief;
- 24 9. Attorney's fees;
- 25 10. For costs of suit incurred herein;
- 26 11. For pre-judgment interest as provided by law; and

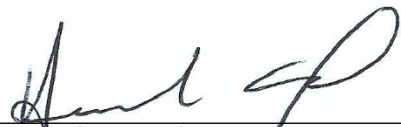
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1 12. For such other and further relief as the Court may deem just and proper.

2 Dated: April 25, 2022

Respectfully Submitted,

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5 _____
6 Hannah B. Oxley, Esq.
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

7 Plaintiff, by his undersigned counsel, hereby demand a jury trial on all counts in this Complaint.

8
9 Dated: April 25, 2022

Respectfully Submitted,

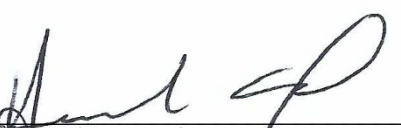
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13 Hannah B. Oxley, Esq.
14 Attorneys for Plaintiff
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EXHIBIT E

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

<p>James S. Lim Plaintiff/Petitioner(s) VS. Future Motion, Inc. et al Defendant/Respondent(s)</p>	<p>No. 22CV010495 Date: 05/31/2022 Time: 10:00 AM Dept: 21 Judge: Evelio Grillo ORDER re: Complex Determination Hearing</p>
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The Court does not designate this case as complex. The parties will receive notice of a case management conference in another civil department. Any complex fees paid for or by the parties prior to the order shall be reimbursed in the amount paid pursuant to Government Code Section 70616(c).

The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated: 05/31/2022



Evelio Grillo / Judge

EXHIBIT F

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

<p>James S. Lim Plaintiff/Petitioner(s) VS. Future Motion, Inc. et al Defendant/Respondent(s)</p>	<p>No. 22CV010495 Date: 08/01/2022 Time: 2:45 PM Dept: 15 Judge: Patrick McKinney ORDER re: Court Order</p>
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The matter has been assigned to department 15 and the court has continued the hearings previously scheduled.

The Initial Case Management Conference scheduled for 08/24/2022 is continued to 08/25/2022 at 01:30 PM in Department 15 at Rene C. Davidson Courthouse.

The Hearing on Motion for Leave to Amend to add Additional Plaintiff and Additional Cause of Action scheduled for 08/16/2022 is continued to 08/25/2022 at 01:30 PM in Department 15 at Rene C. Davidson Courthouse.

Clerk is directed to serve endorsed-filed copies of this order, with proof of service, to counsel and to self-represented parties of record by mail.

Dated: 08/01/2022



Patrick McKinney / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 08/03/2022
PLAINTIFF/PETITIONER: James S. Lim	Chad Finke, Executive Officer / Clerk of the Court By: <u><i>Nicole Hall</i></u> Deputy N. Hall
DEFENDANT/RESPONDENT: Future Motion, Inc. et al	
CERTIFICATE OF MAILING	CASE NUMBER: 22CV010495

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Dated: 08/03/2022

By:

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N. Hall, Deputy Clerk

CERTIFICATE OF MAILING

EXHIBIT G

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FILED
Superior Court of California
County of Alameda
09/02/2022
Clerk of the Court, Executive Officer / Clerk of the Court
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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF ALAMEDA**

17 JAMES S. LIM and FAITH HONG,
18 Plaintiff,
19 vs.
20 FUTURE MOTION, INC., and DOES 1-100,
21 Defendants.

Case No.: 22CV010495

FIRST AMENDED COMPLAINT FOR DAMAGES

- 1. Negligence
- 2. Strict Liability
- 3. Failure to Warn
- 4. Negligent Design
- 5. Negligent Recall/Retrofit
- 6. Violations of California Business & Professions Code § 17200
- 7. Violation of the Consumer Legal Remedies Act – California Civil Code § 1750, *et seq.*
- 8. Loss of Consortium
- 9. Punitive Damages

Demand for Jury Trial

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1 The Plaintiffs in this matter are JAMES S. LIM (“Mr. Lim”) and his spouse, FAITH HONG
2 (“Ms. Hong”) (collectively “Plaintiffs”). At all times referenced herein, Plaintiffs Mr. Lim and Faith
3 Hong are and remain legally married.

4 **NATURE OF ACTION**

5 This is a products liability case arising out of the severe personal injuries suffered by Mr. Lim as
6 a result of the negligence and serious, numerous defects of Defendant Future Motion, Inc. (“FM”) and
7 its product, “Onewheel,” a one-wheeled self-balancing electric transporter manufactured and marketed
8 by FM which caused Mr. Lim’s severe injuries.

9 **PARTIES**

10 1. The Plaintiffs in this matter are James S. Lim and his spouse Faith Hong. At the time of
11 the subject incident, both Plaintiffs were residents of Dublin, California; the subject incident likewise
12 occurred in Dublin, California.

13 2. Future Motion, Inc. (“FM” or “Defendant”) is a corporation organized and existing under
14 the laws of the State of Delaware with its principal place of business in the State of California. FM may
15 be served with process through its agent for service of process, Paracorp Incorporated, 2804 Gateway
16 Oaks Dr. #100, Sacramento, CA 95833.

17 3. The true names and capacities, whether individual, corporate, associate, governmental or
18 otherwise, of DOES 1 through 100, inclusive, are unknown to Plaintiff at this time. Plaintiff therefore
19 sues said Defendants by such fictitious names. When the true names and capacities of the DOE
20 Defendants have been ascertained, Plaintiff will amend this Complaint accordingly. Plaintiff is
21 informed and believes that each DOE Defendant designated herein is responsible, negligently or in some
22 other actionable manner, for the events and happenings that caused injuries and damages to the Plaintiff.

23 4. Defendant FM’s founder and current CEO, Kyle Doerksen, founded Defendant FM and
24 designed FM’s Onewheel product here at issue in California’s Silicon Valley.

25 5. On information and belief, Plaintiff alleges that the majority of Defendant FM’s
26 Executive Team, including its CEO Kyle Doerksen, as well as its Chief Technology Officer and its
27 Chief Marketing Officer, all live in or reside near the County of Santa Cruz located in the State of
28 California.

1 13. Venue is proper in the above-captioned Court as Plaintiffs were at all times relevant to
2 the facts mentioned herein residents of Alameda County, California.

3 14. This case is not removable to Federal Court pursuant to 28 U.S.C.A. section 1441, which
4 states that a civil action removable solely on the basis of diversity, may not be removed if any Defendant
5 in the matter is a citizen of the state in which the action is brought.

6 **GENERAL ALLEGATIONS**

7 18. FM’s product “Onewheel” is a self-balancing, battery-powered, one-wheel electric
8 transport device that is often described as an electric skateboard. The product was and is advertised,
9 analyzed, assembled, compounded, designed, developed, distributed, formulated, inspected, labeled,
10 manufactured, marketed, packed, produced, promoted, processed, researched, sold, and tested by FM.
11 Upon information and belief, FM developed, designed, and manufactured not only the Onewheel
12 product line, but the entirety of the subsystems that power it, including its motors, power electronics,
13 battery unit, battery management system, controller unit or circuit board, and smartphone applications
14 (“apps”).

15 19. Upon information and belief, operation of FM’s Onewheel is, or may be, controlled
16 and/or monitored, in part, by an “app” installed on the user’s smartphone. The Onewheel app allows
17 users to view the board’s total miles, battery life, speed, and other information. The speed indicator of
18 the Onewheel app is similar to a speedometer in a car. While FM lists the Onewheel’s maximum speed
19 as 26.1 miles per hour, the published maximum speed for the Onewheel is approximately just 19 miles
20 per hour.

21 20. FM promotes itself as being “IN THE BUSINESS OF MAKING THE FUTURE
22 ‘RAD’.” (<https://onewheel.com/pages/about-us>.) According to FM’s website, the Onewheel is
23 designed to make the rider forget that “there are thousands of calculations happening per second to keep
24 you perfect.” FM claims that the Onewheel can “really reignite the childhood” inside of riders. Videos
25 on Onewheel’s website depict users riding the Onewheel device in a variety of settings — in concrete
26 drainage basins, through standing water, on the open highway (with cars approaching), on dirt paths, on
27 the beach, through wooded areas, across fallen logs, and on and off the sidewalk. Onewheel-sponsored
28 videos show users riding a Onewheel with and without helmets.

1 Upon information and belief, one of Onewheel's key features (and its most dangerous and unpredictable
2 feature) is that it will provide the rider with "pushback" when approaching the device's limits during
3 use. Often however, instead of, or in addition to, such "pushback" (which is allegedly designed as a
4 warning to riders to avoid a dangerous situation), the Onewheel will simply nosedive and shut off,
5 resulting in the rider being thrown forward off the device. The harder the device works to maintain
6 operations, the less the Onewheel is able to assist the rider in balancing. Once the motor's resources
7 reach a critical point, the motor's normal ability to help the rider balance disappears, and the rider
8 experiences an unexpected violent nosedive. Often, this will feel to the rider like the motor suddenly cut
9 out or shut down. Different factors create a variability as to when and what will cause the Onewheel to
10 shutdown and nosedive, including the rider's weight, tire pressure, wind direction, rider's stance, battery
11 level, grade of incline or decline, and other factors. Thus, predicting exactly when or what will cause a
12 nosedive is nearly impossible.

13 21. Upon information and belief, the leading cause of "pushback" nosediving is velocity.
14 When experiencing velocity pushback, the rider will purportedly feel the nose of the board rise to
15 various degrees when a certain velocity is reached. Often, velocity pushback occurs at a speed lower
16 than that of the maximum due to the above-mentioned factors.

17 22. Upon information and belief, pushback and nosedives also occur when ascending or
18 descending hills, purportedly to alert the rider, again, that the motor and/or the battery unit may be
19 becoming overworked. The problem with this form of pushback, however, is that it is difficult to
20 discern when the rider is feeling pushback, or whether it is the natural resistance caused by the
21 incline/decline. While ascending hills, riders are already pressing against the nose and the grade of the
22 hill to ascend, and therefore may not be able to discern pushback as pushback. While descending, a
23 rider may not feel pushback because his/her weight is likely already on the tail to control speed.
24 Pushback in such situations will likely result in a sudden nosedive or tailspin, especially if the rider is
25 unaware that the board is giving them pushback. Again, the result will be that the rider feels the board
26 suddenly shut down during operation resulting in violently throwing the rider forward and down off the
27 board.

1 23. Upon information and belief, another form of pushback occurs when the Onewheel is
2 nearing battery depletion. This pushback purportedly alerts riders by elevating the nose dramatically.
3 When the Onewheel purportedly senses the battery unit is about to be damaged by over-depletion, the
4 board will shut off entirely, leaving the rider left to suddenly and unexpectedly recalibrate his/her
5 balance, often resulting in the rider being thrown off the board.

6 24. Upon information and belief, yet another form of pushback is referred to as regeneration
7 pushback. One way that the Onewheel recharges its battery is to collect kinetic energy when traveling
8 down a decline to reserve such power in the battery. However, this may result in the battery becoming
9 overcharged, which may damage the battery. Upon information and belief, FM “addressed” this
10 problem by designing the board to suddenly and unexpectedly shut down in order to prevent battery
11 damage, at the expense of rider safety. Instead of having the battery reach overcharge, prior to
12 regeneration-related damage to the battery, the Onewheel will shut down and violently throw the rider
13 forward and down off the board. The same problems in discerning pushback while
14 ascending/descending also occur in this situation.

15 25. Upon information and belief, another common cause of nosedives is due to acceleration.
16 If a rider attempts to accelerate quickly, the motor may not support the sudden weight and force on it
17 and the nose will suddenly drop. Yet, one of the features of the Onewheel is its ability to accelerate
18 quickly, even from a complete stop. Such acceleration nosedives can happen at any speed, even from a
19 dead stop, and the rider will feel as though the motor has suddenly cut out or shut off. Tail-slides occur
20 when the rider shifts his/her weight onto the back of the board and thereby overwhelms the motor. In
21 that case, the tail of the board will suddenly drop and slide on the ground, causing the rider to become
22 instantly unbalanced.

23 26. Upon information and belief, not only is it prohibitively difficult to determine when
24 nosedives/tailspins/shut-offs will occur, but the result of such unexpected, unpredictable and
25 indiscernible events almost invariably cause the rider to be ejected or fall from the board, resulting in
26 severe injuries or death. Onewheel’s defective design lacks a coasting mechanism and the device will
27 stop suddenly with a pushback or power failure, causing the rider to be ejected from the board. A
28 Onewheel nosedive or shut-off is not a small event as it might be with any other type of vehicle. The

1 front of the board violently slams into the ground and then the rider is inevitably thrown downward and
2 forward, often leading with their heads.

3 **PLAINTIFF JAMES LIM'S INJURIES**

4 27. Plaintiff realleges and incorporates by reference the allegations contained in the
5 preceding paragraphs as if fully set forth herein.

6 28. On or about December 26, 2020, Mr. Lim was riding his Onewheel Pint board near his
7 home in Dublin, California. Mr. Lim was riding the Onewheel device on a flat, asphalt road in a
8 residential area. Upon information and belief, the path was smooth and imposed no obstructions or
9 imperfections of any kind. Upon information and belief, Mr. Lim was wearing wrist guards and elbow
10 pads. Further, upon information and belief, Mr. Lim's Onewheel device suddenly shut off and
11 "nosedived" while he was riding it on the road, causing the front of the board to violently and
12 unexpectedly slam in the pavement of the roadway and throwing him forward off the board and onto the
13 paved roadway. As a result of being unexpectedly thrown off the Onewheel device, Mr. Lim suffered
14 severe injuries including skull fractures, concussion, and internal bleeding, which directly and
15 proximately resulted from his forward ejection from the Onewheel and contact with the pavement.

16 29. Shortly thereafter, Mr. Lim was taken to Stanford Hospital in Pleasanton, California.
17 After a few hours, he was transferred by ambulance to Eden Medical Center in Castro Valley,
18 California, where he was admitted for his injuries. He remained hospitalized for about five days.

19 **CAUSES OF ACTION**

20 30. Plaintiff realleges and incorporates by reference all the foregoing allegations as if
21 repeated in full here.

22 31. Plaintiff brings this action as a personal injury action pursuant to Code of Civil Procedure
23 § 335.1.

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FIRST CAUSE OF ACTION

(Negligence)

PLAINTIFF JAMES LIM COMPLAINS OF DEFENDANTS, AND EACH OF THEM AND FOR A CAUSE OF ACTION FOR NEGLIGENCE ALLEGES AS FOLLOWS:

32. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated in full here.

33. Defendants FM and Does 1 to 100, inclusive, and each of them, owed Plaintiff and the consumer public a duty of due care in designing, manufacturing, marketing, selling, and distributing the Onewheel device used by Plaintiff such that the device could be operated in a normal, safe, and non-dangerous manner.

34. Defendants breached their duties to Plaintiff by failing to exercise ordinary care and due diligence in negligently designing, manufacturing, marketing, selling, and distributing the Onewheel device used by Plaintiff such that the device could not be operated in a normal, safe, and non-dangerous manner and proximately caused Plaintiff's injuries. Defendants' activities contributed in natural and/or continuous sequence to the Plaintiff's severe injuries, and their actions, as alleged herein, were a substantial contributing factor to Plaintiff's injuries. At all times mentioned herein, Defendants, through their negligence as alleged herein, ignored their responsibilities to Plaintiff and unreasonably jeopardized the health and well-being of Plaintiff and caused his injuries.

35. Defendants' acts and omissions, (i.e., negligence) as alleged herein, was a substantial factor in causing Mr. Lim's injuries, and Plaintiff is entitled to recover compensatory damages in an amount according to proof. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this court.

36. The Defendants are liable to the Plaintiff for all general, special and punitive damages, as well as delay damages, and other relief to which they are entitled to by law.

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SECOND CAUSE OF ACTION

(Strict Liability)

AS AND FOR A SECOND, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION FOR STRICT LIABILITY, PLAINTIFF JAMES LIM COMPLAINS OF DEFENDANTS, AND EACH OF THEM, AND ALLEGES AS FOLLOWS:

37. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated in full here.

38. Defendants FM and Does 1 to 100, inclusive, and each of them, is the designer, manufacturer, and/or marketer/seller of the Onewheel device and each is strictly liable to Plaintiff for designing, creating, manufacturing, marketing, labeling, distributing, selling, and placing into the stream of commerce the product Onewheel.

39. The Onewheel device that was designed, manufactured, distributed and/or sold by Defendants was defective in design or construction in that when it left the hands of the Defendants, it was unreasonably dangerous. It was more dangerous than an ordinary consumer would expect and more dangerous than other similar devices.

40. The Onewheel device that was designed, manufactured, distributed and/or sold by Defendants was defective due to its unreasonably dangerous and unpredictable propensity to shut-off suddenly, nosedive, and/or tailspin while in operation, without warning, as described above, and because it contained inadequate warnings or instructions because the manufacturer, supplier and/or distributor knew or should have known that the product was intrinsically defective and that users were likely to suffer severe injury and/or death while using the Onewheel.

41. The Onewheel device that was designed, manufactured, marketed, and/or sold by Defendants was defective due to inadequate testing.

42. The Onewheel device that was designed, manufactured, marketed, and/or sold by Defendants was defective due to Defendants' failure to provide adequate warnings and instructions after the Defendants knew or should have known of the increased risk of severe injury and/or death from using the Onewheel.

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1 43. The Onewheel device involved in the subject incident did not perform as safely as an
2 ordinary consumer would have expected it to perform when used or misused in an intended or
3 reasonably foreseeable way.

4 44. The Onewheel device involved in the subject incident was defective in its design because
5 the benefits of the Onewheel’s design failed to outweigh the risks of the Onewheel’s design in the
6 following manner:

- 7 a) The gravity of the potential harm resulting from the use, or foreseeable misuse, of
8 the Onewheel was enormous as evidenced by Mr. Lim’s severe and life-altering
9 injuries;
- 10 b) There existed a high likelihood that severe harm would occur from a sudden and
11 unexpected nosedive of the Onewheel at a speed exceeding 15 mph that would
12 cause its rider to be violently thrown to the ground;
- 13 c) At the time of the Onewheel’s manufacture, there existed numerous and
14 inexpensive alternative safer designs with few or no disadvantages to the existing
15 design.

16 45. The Onewheel device involved in the subject incident contained a manufacturing defect
17 in that the subject Onewheel differed from the manufacturer’s design or specifications or from other
18 typical units of the same product line when it left the possession of Defendants.

19 46. Defendants’ designing, manufacturing, marketing, and/or selling the defective Onewheel
20 device as alleged herein and placing it in the stream of commerce, likewise as alleged herein, was a
21 substantial factor in causing Mr. Lim’s injuries, and he is entitled to recover compensatory damages in
22 an amount according to proof. Plaintiff has been generally damaged in an amount within the
23 jurisdictional limits of this court.

24 47. Defendants are liable to the Plaintiff for all general as well as special and punitive
25 damages, as well as delay damages, and other relief to which they are entitled to by law.

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THIRD CAUSE OF ACTION

(Failure to Warn)

AS AND FOR A THIRD, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION / THEORY OF LIABILITY FOR FAILURE TO WARN, PLAINTIFF JAMES LIM COMPLAINS OF DEFENDANTS, AND EACH OF THEM, AND ALLEGES AS FOLLOWS:

48. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated in full here.

49. At all times herein mentioned, the subject Onewheel was unsafe for use by consumers, including Mr. Lim, and Defendants knew or should have known that said product was unsafe and could cause severe and even fatal injuries during its “normal” operation, as alleged herein; yet Defendants failed to adequately warn users of the risk of serious injury or death.

50. Mr. Lim used the Onewheel device in the manner in which Defendants intended it to be used.

51. Defendants FM and Does 1 to 100, inclusive, and each of them, promoted and sold the Onewheel device on the open market with the knowledge of the device’s unreasonable risk to the public in general and specifically to Plaintiff.

52. The Onewheel, as used by Mr. Lim, was defective and unreasonably dangerous when sold by Defendants, who are liable for the injuries arising from the Onewheel’s design, manufacture, marketing, sale, and use without adequate warning of the device’s serious dangers.

53. The Onewheel, as used by Mr. Lim, had potential risks that were known or knowable by Defendants in light of the scientific knowledge that was generally accepted in the scientific community at the time of the Onewheel’s manufacture, distribution or sale.

54. The potential risks of the Onewheel, including but not limited to its propensity to nosedive suddenly and without warning under various conditions presented a substantial danger when the Onewheel was used or misused in an intended or reasonably foreseeable way.

55. Ordinary consumers would not have recognized the potential risks of the Onewheel, including but not limited to its propensity to nosedive suddenly and without warning under various conditions.

1 56. Defendants failed to adequately warn or instruct of the above-described potential risks of
2 the Onewheel, including but not limited to its propensity to nosedive suddenly and without warning
3 under various conditions.

4 57. Defendants further breached their duty to provide timely and adequate warnings,
5 instructions, and information, at least in the following particulars:

- 6 a) failing to ensure Onewheel warnings were accurate, conspicuous, and adequate
7 despite having extensive knowledge of the risks associated with Onewheel use;
- 8 b) failing to conduct adequate pre- and post-market safety surveillance and testing
9 such that adequate warning could have been issued to users;
- 10 c) failing to include adequate conspicuous warnings that would alert users to the
11 dangerous risks of the Onewheel, including but not limited to, among other
12 things, sudden and unexpected nose dives;
- 13 d) representing that Onewheel was safe for use, when in fact, Defendants knew or
14 should have known that Onewheel was unsafe for this use and that it was actually
15 unreasonably dangerous to use when operated as intended by Defendants.

16 58. Defendants continued and continues, to date, to aggressively manufacture, market,
17 promote, distribute, and sell the Onewheel, even after they knew or should have known of the
18 unreasonable risks of serious injury or death caused by use of the Onewheel. The lack of sufficient
19 instructions and/or warnings was a substantial factor in causing Plaintiff's harm in that Defendants'
20 designing, manufacturing, marketing, and/or selling the Onewheel device and placing it in the stream of
21 commerce without adequate warnings of the risk of serious injury or death, as alleged herein, caused Mr.
22 Lim's severe injuries; and Plaintiff is entitled to recover compensatory damages in an amount according
23 to proof. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this court.

24 59. For the reasons described hereinabove, Defendants are liable to the Plaintiff for all
25 general, special and punitive damages, as well as delay damages, and other relief to which Plaintiff is
26 entitled to by law.

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FOURTH CAUSE OF ACTION

(Negligent Design)

*AS AND FOR A FOURTH, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION FOR
NEGLIGENT DESIGN, PLAINTIFF JAMES LIM COMPLAINS OF DEFENDANTS, AND EACH OF
THEM, AND ALLEGES AS FOLLOWS:*

60. Plaintiff realleges and incorporates by reference all the foregoing allegations as if repeated in full here.

61. Defendants FM and Does 1 to 100, inclusive, and each of them, was the designer, manufacturer, seller, distributor, marketer and/or seller of Onewheel, which was negligently designed.

62. Defendants were negligent in developing, designing, processing, manufacturing, inspecting, testing, packaging, selling, distributing, supplying, marketing, and promoting Onewheel, which was defective and presented an unreasonable risk of harm to consumers. Onewheel was negligently designed in ways that include, but are not limited to, one or more of the following:

- (a) When placed in the stream of commerce, Onewheel expressed unreasonably dangerous design defects and was not reasonably safe and fit for its intended or reasonably foreseeable purpose or as intended to be used, thereby subjecting users, including Plaintiff, to unreasonable risks of serious injury or death.
- (b) Onewheel was insufficiently tested.
- (c) Onewheel causes serious injury and/or death that outweighs any potential utility.
- (d) Onewheel was not accompanied by adequate labeling, instructions for use and/or warnings to fully apprise the users, including Plaintiff, of the potential risks of serious injury and/or death associated with its use.
- (e) In light of the potential and actual risk of harm associated with Onewheel's use, a reasonable person who had actual knowledge of this potential and actual risk of harm and/or death would have concluded that Onewheel should not have been marketed in that condition.
- (f) Defendants were under a duty of due care to act for the protection of consumers, such as Plaintiff. The Defendants owed a duty to consumers to exercise reasonable care in developing, designing, processing, manufacturing, inspecting,

1 testing, packaging, selling distributing, supplying, marketing, and promoting
2 Onewheel, and Defendants breached that duty by the conduct as alleged herein.

3 (g) Defendants knew or should have known that use of Onewheel as intended
4 imposed unreasonable risks to the health and safety of consumers. Defendants
5 knew of the grave risks caused by their product from investigation and testing
6 performed by themselves or others or, to the extent Defendants did not fully know
7 of those risks, it was because Defendants unreasonably failed to perform
8 appropriate, adequate and proper investigations and tests that would have
9 disclosed those risks.

10 (h) Defendants' conduct described above was grossly negligent in that their actions
11 and omissions involved willful and reckless conduct and were carried out with
12 conscious disregard for the unreasonable risk of Onewheel and its potential harm
13 to consumers.

14 63. Defendants' negligent designing, manufacturing, marketing, and/or selling the Onewheel
15 device and placing it in the stream of commerce without adequate warnings of the risk of serious injury
16 or death, as alleged herein, were substantial factors in bringing about harm to Plaintiff herein in that Mr.
17 Lim sustained severe injuries when his Onewheel suddenly and unexpectedly nosedived; and Plaintiff is
18 entitled to recover compensatory damages in an amount according to proof. Plaintiff has been generally
19 damaged in an amount within the jurisdictional limits of this court.

20 64. Defendants are liable to the Plaintiff for all general, special and punitive damages, as well
21 as delay damages, and other relief to which Plaintiff is entitled to by law.

22 **FIFTH CAUSE OF ACTION**

23 (Negligent Recall/Retrofit)

24 *AS AND FOR A FIFTH, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION FOR*
25 *NELIGENT RECALL / RETROFIT, PLAINTIFF JAMES LIM COMPLAINS OF DEFENDANTS, AND*
EACH OF THEM, AND ALLEGES AS FOLLOWS:

26 65. Plaintiff realleges and incorporates by reference all the foregoing allegations as if
27 repeated in full here.

28

1 66. Defendants FM and Does 1 to 100, inclusive, and each of them, was the designer,
2 manufacturer, seller, distributor, marketer and/or seller of Onewheel, which was negligently designed.

3 67. Defendants knew, or reasonably should have known, that the Onewheel was dangerous or
4 was likely to be dangerous when used in a reasonably foreseeable manner.

5 68. Defendants became aware of this defect before or after the Onewheel was sold.

6 69. After Defendants learned that the Onewheel was dangerous or was likely to be dangerous
7 when used in a reasonably foreseeable manner, Defendants failed to recall or retrofit or warn of the
8 danger of the Onewheel.

9 70. Plaintiff contends and hereupon alleged that a reasonable manufacturer, distributor or
10 seller under the same or similar circumstances would have recalled or retrofitted or provided adequate
11 warnings about the Onewheel.

12 71. Defendants' failure to recall, to retrofit or to provide adequate warnings about the
13 Onewheel's dangerous propensities under foreseeable use were substantial factors in causing Plaintiff's
14 injuries.

15 **SIXTH CAUSE OF ACTION**

16 (Violations of California Business & Professions Code § 17200)

17 *AS AND FOR A SIXTH, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION FOR*
18 *VIOLATIONS OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200, PLAINTIFF*
19 *JAMES LIM COMPLAINS OF DEFENDANTS, AND EACH OF THEM, AND ALLEGES AS*
20 *FOLLOWS:*

21 72. Plaintiff realleges and incorporates by reference all the foregoing allegations as if
22 repeated in full here.

23 73. Plaintiff is informed and believe and thereon allege that Defendants, by the acts and
24 misconduct alleged herein, violated Business & Professions Code § 17200.

25 74. On behalf of the general public, Plaintiff hereby seeks injunctive, restitutionary and other
26 equitable relief as appropriate against Defendants for their violations of § 17200.

27 75. California Business & Professions Code § 17200 provides that unfair competition shall
28 mean and include "all unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or
misleading advertising."

1 76. The acts and practices described in the preceding paragraphs were and are likely to
2 mislead the general public and, therefore, constitute unfair business practices within the meaning of
3 Business & Professions Code § 17200. The acts of untrue and misleading advertising set forth in the
4 preceding paragraphs are incorporated by reference and are, by definition, violations of Business &
5 Professions Code § 17200. This conduct includes, but is not limited to:

- 6 (a) Representing to Plaintiff and the general public that Onewheel was safe for
7 ordinary
8 use, knowing that these representations were false, and concealing from Plaintiff and
9 the general public that Onewheel had a serious propensity to cause serious or even
10 fatal injuries during normal operation;
- 11 (b) Engaging in advertising programs designed to create the image, impression and
12 belief by consumers, including Plaintiff, that Onewheel was safe for ordinary,
13 recreational use, even though Defendants knew that to be false, and even though
14 Defendants had no reasonable grounds to believe that to be true; and
- 15 (c) Purposely downplaying and understating the safety hazards and risks associated
16 with Onewheel use.

17 77. These practices constitute unlawful, unfair and fraudulent business acts or practices,
18 within the meaning of California Business & Professions Code § 17200, as well as unfair, deceptive,
19 untrue and misleading advertising as prohibited by California Business & Professions Code § 17500.

20 78. The unlawful, unfair and fraudulent business practices of Defendants described above
21 present a continuing threat to members of the public in that Defendants continue to engage in the
22 conduct described therein.

23 79. As a result of the conduct described above, Defendants have been and will be unjustly
24 enriched. Specifically, Defendants have been unjustly enriched by receipt of millions of dollars in ill-
25 gotten gains from the sale of Onewheel in California and throughout the United States, sold in large part
26 as a result of the acts and omissions described herein.

27 80. Because of the fraudulent misrepresentations made by Defendants, as detailed above, and
28 the inherently unfair practice of committing a fraud against the public by intentionally misrepresenting

1 and concealing material information, the acts of Defendants described herein constitute unfair or
2 fraudulent business practices.

3 81. Plaintiff, pursuant to California Business & Professions Code § 17203, seeks an order of
4 this court compelling Defendants to provide restitution and to disgorge all monies collected and profits
5 realized by Defendants as a result of their unfair business practices, and injunctive relief calling for
6 Defendants to cease such unfair business practices in the future.

7 **SEVENTH CAUSE OF ACTION**

8 (Violation of the Consumer Legal Remedies Act – California Civil Code § 1750, *et seq.*)
9 *AS AND FOR A SEVENTH, SEPARATE, FURTHER AND DISTINCT CAUSE OF ACTION FOR*
10 *A VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACTION UNDER CIVIL CODE*
11 *SECTION 1750, PLAINTIFF JAMES LIM COMPLAINS OF DEFENDANTS, AND EACH OF THEM,*
12 *AND ALLEGES AS FOLLOWS:*

13 82. Plaintiff realleges and incorporates by reference all the foregoing allegations as if
14 repeated in full here.

15 83. Plaintiff is informed and believe and thereon allege that Defendants FM and Does 1 to
16 100, inclusive, and each of them, by the acts and misconduct alleged, violated the Consumer Legal
17 Remedies Act, California Civil Code § 1750, *et seq.* (“CLRA”).

18 84. Plaintiff hereby seeks injunctive relief as appropriate against Defendants for their
19 violations of Civil Code § 1750, *et seq.*

20 85. The CLRA applies to Defendants’ actions and conduct described herein because it
21 extends the transactions which are intended to result, of which have resulted, in the sale of goods to
22 consumers.

23 86. Plaintiff is a “consumer” within the meaning of California Civil Code §1761(d).

24 87. Defendants have violated and continue to violate the CLRA in representing that goods
25 have characteristics and benefits which they do not have, in violation of Civil Code § 1770(a)(5).

26 88. At all times relevant, Defendants committed acts of disseminating untrue and misleading
27 statements, as defined by Civil Code § 1770, by engaging in the following acts and practices with intent
28 to induce members of the public to purchase and use Onewheel:

- (a) Representing to Plaintiff and the general public that Onewheel was safe for
ordinary use, knowing that these representations were false, and concealing from

1 Plaintiff and the general public that Onewheel had a serious propensity to cause
2 serious or even fatal injuries during normal operation;

3 (b) Engaging in advertising programs designed to create the image, impression and
4 belief by consumers, including Plaintiff, that Onewheel was safe for ordinary,
5 recreational use, even though Defendants knew that to be false, and even though
6 Defendants had no reasonable grounds to believe that to be true; and

7 (c) Purposely downplaying and understating the safety hazards and risks associated
8 with Onewheel use.

9 89. The foregoing practices constitute false and misleading advertising and representations
10 within the meaning of Civil Code § 1770.

11 90. The acts of untrue and misleading statements by Defendants described hereinabove
12 present a continuing threat to members of the public and individual consumers in that the acts alleged
13 herein are continuous and ongoing, and the public and individual consumers will continue to suffer
14 harm.

15 91. Unless Defendants are enjoined from continuing to engage in these violations of the
16 CLRA, Plaintiff and consumers will continue to be harmed by the wrongful actions and conduct of
17 Defendants.

18 92. Pursuant to Civil Code § 1780, Plaintiff seeks an order of this court for injunctive relief
19 calling for Defendants to cease such deceptive business practices in the future.

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EIGHTH CAUSE OF ACTION

(Loss of Consortium)

AS AND FOR A FURTHER, EIGHTH SEPARATE AND DISTINCT CAUSE OF ACTION FOR LOSS OF CONSORTIUM, PLAINTIFF FAITH HONG COMPLAINS OF DEFENDANTS, AND EACH OF THEM, AND ALLEGES AS FOLLOWS:

93. Plaintiff Ms. Hong realleges and incorporates by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

94. Plaintiff Ms. Hong is now, and at times herein mentioned and relevant to the allegations of this Complaint, the lawfully wedded spouse of co-Plaintiff James Lim.

95. As a direct and proximate result of the acts of Defendants herein set forth and incorporated herein by reference, and the severe injuries caused thereby to James Lim as alleged in this Complaint, Plaintiff Ms. Hong has suffered, and for a long period of time will continue to suffer loss of consortium, including but not by way of limitation, loss of services, marital relations, society, comfort, companionship, love and affection of her said spouse, and has suffered severe mental and emotional distress and general nervousness as a result thereof.

96. Plaintiff Ms. Hong as a result of the foregoing described injuries to her spouse James Lim, has been generally damaged in a sum in excess of the jurisdictional limits of the Superior Court.

PUNITIVE DAMAGES ALLEGATION

97. Plaintiffs reallege and incorporates by reference all the foregoing allegations as if repeated in full here.

98. Plaintiffs are entitled to punitive damages because Defendants FM and Does 1 to 100, inclusive, and each of them, failed to warn and other actions as described herein were malicious, wanton, willful or oppressive or were done with reckless indifference to the Plaintiffs and the public's safety and welfare. Defendants misled Onewheel users and purchasers, as well as the public at large, including Plaintiffs herein, by making false representations about the safety and risks associated with their product. Defendants downplayed, understated and/or disregarded their knowledge of the serious and potentially deadly risks associated with the foreseeable use of their product.

99. Defendants were, or should have been, in possession of evidence demonstrating the serious risk of injury or death associated with Onewheel. Nonetheless, Defendants continued to market

1 the product by providing false and misleading information, or by omitting to disclose vital information,
2 including but not limited to, the Onewheel's propensity to suddenly and unexpectedly nosedive without
3 prior warning under various conditions.

4 100. At the time the Onewheel involved in the subject incident was designed, manufactured,
5 or sold to Plaintiff, Defendant was aware of safer practical and inexpensive alternate designs for the
6 Onewheel that could have either prevented the above-described nosedive under certain conditions or in
7 the event of a nosedive, could have mitigated the risk of rider ejection from the Onewheel. Despite this
8 knowledge, Defendants consciously and purposefully decided against the above-described measures
9 and chose to gamble with the safety of the public. In addition, once Defendants became aware of the
10 inherent dangers of the Onewheel and learned of safer practical and inexpensive alternate designs for
11 the Onewheel, Defendants failed to recall and to retrofit the Onewheel with these safer alternate designs
12 or to adequately warn the public about the Onewheel's propensity to suddenly and unexpectedly
13 nosedive without prior warning under various conditions.

14 101. Defendants' actions described above were performed willfully, intentionally and with a
15 conscious disregard for the rights of Plaintiff and the public.

16 102. Accordingly, Plaintiffs seek and are entitled to punitive damages in an amount to be
17 determined at trial.

18 **PRAYER**

19 WHEREFORE, Plaintiffs prays for judgment against Defendants FUTURE MOTION, INC. and
20 Does 1 to 100, and as appropriate to each cause of action alleged and as appropriate to the particular
21 standing of Plaintiff as follows:

- 22 1. Past and future general damages, the exact amount of which has yet to be ascertained, in
23 an amount which will conform to proof at time of trial;
- 24 2. Past and future economic and special damages according to proof at the time of trial;
- 25 3. Loss of earnings and impaired earning capacity according to proof at the time of trial;
- 26 4. Medical expenses, past and future, according to proof at the time of trial;
- 27 5. For past and future mental and emotional distress, according to proof;
- 28 6. Punitive or exemplary damages according to proof at the time of trial;

7. Restitution, disgorgement of profits, and other equitable relief;
8. Injunctive relief;
9. Attorney's fees;
10. For costs of suit incurred herein;
11. For pre-judgment interest as provided by law; and
12. For such other and further relief as the Court may deem just and proper.

Dated: July 25, 2022

Respectfully Submitted,



ANYA FUCHS, ESQ.
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiffs, by his undersigned counsel, hereby demand a jury trial on all counts in this Complaint.

Dated: July 25, 2022

Respectfully Submitted,



ANYA FUCHS, ESQ.
Attorneys for Plaintiff

PROOF OF SERVICE

I certify that I am over the age of 18 years and not a party to the within action; that my business address is 423 Washington Street, Suite 510, San Francisco, CA 94111; and that on this date I served a true copy of the document(s) entitled:

- **FIRST AMENDED COMPLAINT FOR DAMAGES**

Service was effectuated by forwarding the above-noted document in the following manner:

[] By USPS Mail: I deposited the sealed envelope with the United States Postal Service with the postage fully prepaid addressed to:

See below service list

[] By Personal Service: I emailed the documents identified above to a courier service, Nationwide Legal, to be delivered by personal service to the parties at the addresses listed below:

[] By Facsimile to the numbers as noted below by placing it for facsimile transmittal following the ordinary business practices of PEARCE LEWIS LLP.

[] By Overnight Courier in a sealed envelope, addressed as noted below, through services provided by (Federal Express, UPS,) and billed to PEARCE LEWIS LLP.

[] On the date executed below, I electronically served the document(s) **via File & ServeXpress** on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

[] VIA CASE ANYWHERE. I served the above-listed documents electronically to Case Anywhere pursuant to Case Management Order No. 2, [The document will be deemed served on the date that it was uploaded to the website as indicated by the Case Anywhere system].

[] By Electronic Service via Nationwide Legal on the recipients designated on the Transaction Receipt.

[XX] By Electronic Service via e-mail to: **See below service list.**

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

Executed on September 13, 2022, at Pacifica, CA.


Quyen (Nathalie) Luong

James S. Lim, et al. v. Future Motion, Inc.
Alameda County Superior Court Case No. 22CV010495

SERVICE LIST

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Attorneys for Defendant, Future Motion, Inc.

EXHIBIT H

October 18, 2022

Via E-Mail

John J. Wackman, Esq.
Pablo Orozco, Esq.
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Christy M. Mennen, Esq.
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Re: *James S. Lim and Faith Hong v. Future Motion, Inc.*
Alameda County Superior Court Case No. 22CV010495
Your Client: Future Motion, Inc.
CCP §403 Motion for Transfer and Coordination and Request for Stay

Dear Counsel,

By the end of this week, Plaintiffs' counsel in the above referenced action intend to file a *Code of Civil Procedure* §403 direct Motion to Transfer Actions for Coordinated Pre-Trial Proceedings over five dozen product liability actions, involving significant common questions of fact and/or law that predominate in those actions, in which your client Future Motion, Inc. is the solely named defendant. My office has reserved December 1, 2022 as the hearing date for that Motion.

Plaintiffs' Motion will seek to have transferred to Alameda County Superior Court all product liability actions filed against Future Motion, Inc. that are collectively represented by Pearce Lewis LLP and Bailey Cowan Heckaman PLLC for coordinated pre-trial proceedings, wherein to do so will promote the ends of justice in light of the applicable governing standards. Plaintiffs' Motion does not request transfer and coordination of any of our cases that have a trial date set within the four (4) month period immediately following the filing date of Plaintiffs' Motion; we submit that to do otherwise would run contrary to the legislative intent of the transfer and coordination statutes.

Plaintiffs' Motion in no way attempts to exclude other actions against your client which may be appropriate for transfer and coordination that are represented by counsel other than Pearce Lewis LLP and Bailey Cowan Heckaman PLLC. Plaintiffs' Motion will identify the entirety of actions which, to our knowledge, appear to be or could be potential included or add-on actions. Our office has no obligation nor ability to submit to the Court whether those actions ought to be transferred and coordinated (or not). We will, however, provide courtesy copies of Plaintiffs' Motion to counsel for

423 Washington Street, Suite 510, San Francisco, CA 94111
1095 Evergreen Circle, Suite 449, The Woodlands, TX 77380

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said identified potential included or add-actions; in pursuit of achieving absolute clarity, however, please know that Plaintiffs' Motion does not because it cannot seek to include said other actions for transfer and coordination at this time.

Pursuant to California *Code of Civil Procedure* §404.5 and California Rules of Court, Rule 3.515, Plaintiffs' Motion will further request the determining Court issue an Order causing an immediate Stay of all proceedings of the included actions sought to be coordinated pending the determination of whether coordination is appropriate and proper.

Please accept this communication as our good faith effort "to obtain agreement of all parties to each case to the proposed transfer" pursuant to California Rules of Court, Rule 3.500(b).

Please also accept this communication as Rule 3.500(c)(3) Notice to all parties that they are bound to disclose to the Court any information they may have concerning any other motions requesting transfer of any case that would be affected by the granting of the motion before the court.

If you wish to provide a response to this communication, whether to indicate an intent to oppose, not oppose, or stipulate to any or all parts of the relief sought by Plaintiffs' Motion, please do so no later than 5:00 p.m. tomorrow, Wednesday, October 19, 2022 so that I may include any such sentiment in Plaintiffs' moving papers. Given that this is our second go-round in filing this Motion and that we have communicated with your offices several if not many times before and after the filing of that first Motion regarding your client's position regarding the relief Plaintiffs' Motion seeks, asking you to memorialize that position in writing, if you so wish, by end of business tomorrow seems more than reasonable.

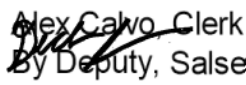
Thanks in advance.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Anya Fuchs".

Anya Fuchs, Esq.

EXHIBIT I

Electronically Filed
Superior Court of California
County of Santa Cruz
June 29, 2022
 Alex Calvo, Clerk
By Deputy, Salsedo, Declan
6/29/2022 1:38:07 PM

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22 *Attorneys for Plaintiffs*

23
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25
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28
**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ**

SANDRA ANDERSON, individually and
on behalf of the estate of ERIC
ANDERSON, deceased, and JACOB
ANDERSON,

Plaintiffs,

v.

FUTURE MOTION, INC.,

Defendant.

CASE NO. 20CV00909

**ORDER RE: DEFENDANT FUTURE MOTION,
INC.'S MOTION FOR SUMMARY
JUDGMENT OR, ALTERNATIVELY,
SUMMARY ADJUDICATION**

Date: June 17, 2022
Time: 8:30 a.m.
Dept.: 10
Judge: Hon. Paul Marigonda

Complaint Filed: March 13, 2020
Trial Date: January 5, 2023

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 On June 17, 2022, Defendant Future Motion, Inc.’s Motion for Summary Judgment or,
3 alternatively, Summary Adjudication, came on for hearing in Department 10 of the above-entitled
4 court before the Honorable Paul Marigonda, Superior Court Judge. Defendant Future Motion, Inc.
5 was represented by John J. Wackman of Nilan Johnson Lewis PA and J. Jasmine Jenkins of
6 Livingston Law Firm; Plaintiffs Sandra Anderson and Jacob Anderson were represented by Anya
7 Fuchs of Pearce Lewis LLP and Robert Cowan of Bailey Cowan Heckaman PLLC. Having
8 considered the moving papers, opposition papers, reply papers, and oral argument, the Court ruled
9 as follows:

10 **IT IS ORDERED THAT:**

11 This is a wrongful death action brought by the wife and son of Eric Anderson, who died
12 from injuries he sustained while riding a Onewheel XR electric skateboard (“XR”) designed,
13 manufactured and marketed by Defendant Future Motion (FM). Plaintiffs’ allege that Mr.
14 Anderson was thrown from the XR as the result of a design, manufacturing and/or warning defect
15 in the product, which caused it to violently and unexpectedly nosedive and slam into the
16 pavement.

17 Plaintiffs assert nine causes of action against FM, and a tenth claim/prayer for punitive
18 damages. The first five causes of action are predicated on Plaintiffs’ defective product claim
19 [negligence, negligence per se; strict liability; failure to warn; and negligent design], and are
20 referred to herein as the “negligence/product liability” causes of action. The 7th through 9th
21 causes of action are based on FM’s allegedly fraudulent and misleading representations and
22 advertising [violations of Bus. & Prof. Code §17200 (UCL); Bus. & Prof. Code §17500 (FAL);
23 and violations of the CLRA (Civ. Code §1750 et seq.)], and are referred to as the
24 “misrepresentation” causes of action. The 6th cause of action (survivor cause of action) is
25 predicated on and derivative of both the product liability and false representation claims.
26 Plaintiffs’ tenth claim, entitled “Punitive Damage Allegations”, is based on both a failure to warn
27 and false representations.

1 FM moves for summary judgment, or in the alternative, summary adjudication of each
 2 cause of action, as well as the claim/prayer for punitive damages. FM proffers the following
 3 evidence in support of the motion:

- 4 • Plaintiffs’ allegedly “factually devoid” discovery responses, which FM claims
 5 demonstrates that Plaintiffs have no evidence of either a defect in the XR product, or
 6 causation [Wackman decl., Ex. 9, 12]; and
- 7 • Affirmative evidence, consisting of:
 - 8 (1) FM’s answers to Plaintiff’s Special Interrogatories, which FM relies on as evidence of
 9 FM’s testing of the XR boards during the manufacturing and assembly process and prior to
 10 shipping, offered to show that the XR did not have a design or manufacturing defect; and
 as evidence that Mr. Anderson would have received an Owner’ Manual with his XR, to
 show that there was no failure to warn [Wackman decl., Ex 1, 7].
 - 11 (2) The declaration of FM employee Jack Mudd, who test rode the subject XR, and states that
 12 there were no issues with the board, and that its operation was consistent with the hundreds
 of XR boards that Mr. Mudd had previously ridden, offered to show that the subject XR
 13 did not have a design or manufacturing defect;
 - 14 (3) Deposition testimony of Plaintiff Sharon Anderson, who stated that she did not know if her
 15 husband used or read the FM app, Owner’s Manual or Quick Start Guide; and that he
 watched Onewheel videos, but she didn’t know which ones. [Wackman decl., Ex. 8];
 - 16 (4) Copies of the XR Owner’s Manual and Quickstart Guide, FM’s pre- and post-purchase
 17 emails to Mr. Anderson, and FM’s mobile application “intro” screen, offered to show that
 18 Mr. Anderson was provided with instructions on how to properly ride the XR, and warned
 to wear a helmet [Wackman decl., Exs. 2,3,4,5,6,9];
 - 19 (5) Voluntary statements of two witnesses (Christopher Blue and Daniel Will), who observed
 20 Mr. Anderson before he fell, offered to show a lack of causation [Wackman decl., Exs. 10,
 21 11];
 - 22 (6) Excerpts of Rules and Regulations for Parks in Harris County, Texas [Wackman decl., Ex.
 23 13];
 - 24 (7) The Full Unit Report on Mr. Andersons’ XR, offered to show the lack of a defect
 [Wackman decl., Ex 14].

25 Based on the following discussion and analysis, the motion for summary judgement is
 26 denied. The motion for summary adjudication is granted as to Plaintiffs’ 2d cause of action for
 27 negligence per se; and as to Plaintiffs’ causes of action for violations of the UCL, FAL and CRLA
 28

1 (7th , 8th and 9th c/as); and is denied as to Plaintiffs negligence/product liability causes of action (
2 1st, 3rd, 4th and 5th c/as), Plaintiffs’ survivor cause of action (6th c/a), and Plaintiffs’ claim for
3 punitive damages.

4
5 Standards and Burden of proof on motions for summary judgment/adjudication

6 The burden on a defendant moving for summary judgment or summary adjudication is to
7 show that there is either a complete defense to the claim, or that at least one of the elements of the
8 claim cannot be established. CCP §437c(p)(2). To meet this latter burden, the defendant may
9 either present affirmative evidence negating an essential element of the claim, or evidence that the
10 plaintiff “does not possess and cannot reasonably obtain needed evidence” to prove the claim.
11 *Aguilar v Atlantic Richfield Co.* (2001) 25 Cal 4th 826. Once the defendant meets this burden, the
12 burden shifts to plaintiff to prove the existence of a triable issue of fact regarding that element of
13 its cause of action or that defense.

14 Where the plaintiff has had an adequate opportunity for discovery, their factually devoid
15 responses to discovery will demonstrate that they do not have the evidence necessary to establish
16 an element of their claim. *Union Bank v Sup. Ct.* (1995) 31 Cal. App. 4th 573, 590. However, the
17 absence of evidence may only be inferred from factually devoid discovery responses if the
18 discovery requests were sufficiently comprehensive (e.g “state each fact supporting your
19 contention...”); and a defendant does not satisfy its burden of proof by producing discovery
20 responses that do not exclude the possibility that plaintiffs may possess or may reasonably obtain
21 evidence sufficient to establish their claim. *Weil & Brown, Civil Procedure Before Trial*, TRG
22 2021, §10:245.22.

23 The product liability causes of action (1st, 3rd , 4th, 5th c/as)

24 FM argues that it has met its threshold burden of proof, and has shifted the burden to
25 Plaintiff on the issues of whether the subject XR had a design, manufacturing or warning defect,
26 and whether such defect was the cause of Mr. Anderson’s fall, based on Plaintiffs’ “factually
27 devoid” responses to FM’s Special Interrogatories, Set One. [Wackman Decl. Ex. 9].

1 Plaintiff contends that these discovery requests were not sufficiently comprehensive to
2 satisfy Defendant’s burden of proof as to these issues, because they do not ask for “each fact”
3 supporting their response to these contention interrogatories. Regardless of whether the requests
4 were sufficiently comprehensive, Plaintiffs’ responses did not exclude the possibility that
5 Plaintiffs would reasonably obtain evidence sufficient to establish their claim; and Defendant
6 therefore does not meet its threshold burden of proof based on these responses.

7 In response to the interrogatories requesting that Plaintiffs provide information to support
8 their contentions (that they identify the Onewheel components they contend were defectively
9 manufactured or designed, describe how it was defective, how it was a substantial factor in
10 causing the incident or how warnings and instructions were inadequate, identify documents or
11 witnesses supporting their contentions, and provide facts to support the allegation that the incident
12 was caused by subject XR having “shut off and nosedived”, etc.,) Plaintiffs stated that they had
13 not yet received any documents from Defendants identifying the components of the Onewheel
14 XR; that they did not have the requested information “at this time”; but that they anticipated
15 relying upon opinions of experts for information responsive to the requests. Based on these
16 responses, and the fact that the requested information involves matters for expert opinion, it is
17 clear that Plaintiffs could reasonably obtain sufficient evidence to support their product liability
18 claims.

19 Moreover, Plaintiffs’ counsel declares that Plaintiffs served amended responses to these
20 interrogatories twice, “once before Future Motion filed and served its motion and once after”.
21 Fuchs decl., ¶6. The responses on which FM relies have therefore been superseded, and fail to
22 provide support for this motion.

23 To the extent that FM’s affirmative evidence meets its threshold burden of proof on the
24 issues of whether the subject XR had a defect, and causation, Plaintiffs have created a triable issue
25 of material fact as to both issues through the declarations of their experts, David Rondinone,
26 Ph.D., P.E., an expert in the field of Mechanic Engineering, and Mariusz Ziejewski Ph.D., an
27

1 expert in the fields of mechanical engineering, biomechanics, and accident/injury reconstruction
2 [PUMF 30-35, 50-54; Fuchs's Decl., Exs. C and D].

3 Mr. Rondinone declares as follows:

- 4 • Mr. Rondinone explains his review of materials related to electric vehicles and the XR, his
5 testing of exemplar XR boards for various cases over the course of 2020, and his testing of
6 the subject XR in February and October 2021. Mr. Rodinone states that a loss of control of
7 an XR is likely when there is excessive speed or a low battery, due to FM's use of
8 "pushback" (lifting of the forward board) as the only feedback to warn the rider that the
9 controller will cease to balance the rider in these situations. Mr. Rondine noted a defective
10 sensor zone in the subject XR (30% of the left footpad zone), and states that this increases
11 the probability that the board controller will determine that no rider is present; that the
12 board must recognize foot contact in at least one foot zone to continue balancing driving
13 above 1mph; and that if the rider's foot contact is reduced to only the dead zone on the left
14 side of the board, even temporarily, as when the rider shifts his balance or his foot
15 positioning on the front footpad, the board will cease balancing and cause an unintended
16 shutdown and nosedive. Mr. Rondinone noted significant striations and abrasions on the
17 underside of subject XR's leading edge, which would contact the ground during a
18 nosedive.
- 19 • Based on his experience, the materials he relied on, and his inspections of the exemplar
20 XRs and the subject XR, Mr. Rondinone opines, to a reasonable degree of scientific
21 certainty, that Mr. Anderson's XR had a significant defect in the footpad rider detection
22 sensor; that the result can be an unintended shutdown and nosedive of the front of the
23 board; that the abrasion on the front of Mr. Anderson's XR is consistent with a nosedive
24 event caused by an unintended shutdown; and that the defect found in the subject XR was
25 a substantial factor in causing it to nosedive and it is more likely than not that the board
26 suffered a nosedive because of the board's sensor defect.

17 Mr. Ziejewski declares as follows:

- 18 • He explains the materials he reviewed pertaining to electric vehicles and the XR, and the
19 computer generated data and biomechanical trauma analysis he used to confirm the
20 biomechanical consequences of Mr. Anderson's fall, and his conclusion that Mr. Anderson
21 fell on the left side of his body, but suffered brain trauma to the right side.
- 22 • Based on his experience, the materials he relied, the modalities used to determine the
23 kinematics and kinetics of Mr. Anderson's fall, and his inspection of the exemplar board,
24 Mr. Ziejewski opines, to a reasonable degree of scientific certainty, that the biomechanical
25 consequences of Mr. Anderson's head strike are consistent with primary linear head
26 acceleration, and the body kinematics are consistent with an inverted pendulum motion;
27 that the conditions for onset of the inverted pendulum type of motion include sudden,
28 friction-intense contact between the front of the board and the paved surface (i.e. a
nosedive); and that the foregoing is inconsistent with Mr. Anderson merely losing his
balance and falling, in which more diffuse and varied injuries would be expected.

1 FM's affirmative evidence on the issue of a failure to warn does not meet FM's threshold
2 burden of proof on this issue, as it is offered to show instructions on how to properly ride the XR,
3 and reminders to wear a helmet—not warnings regarding the alleged defect, or that the XR may
4 suddenly stop and nosedive when operated as intended by FM. In addition, FM has not negated
5 Plaintiffs' claim that Mr. Anderson viewed Onewheel sponsored videos depicting XR riders both
6 with and without helmets (Complaint. ¶20); and a triable issues of material fact exists as to this
7 issue based on the testimony of Mrs. Anderson. [SSUMF 31]

8 The Court is not persuaded by FM's arguments that Plaintiffs' claim is barred by the
9 assumption of the risk doctrine, under which no duty of care is owed to a party who voluntarily
10 participates in a sport with inherent risks. *Van Dyke v S.K.I. Ltd.* (1998) 67 Cal. App. 4th 1310,
11 1315. The alleged defect, which purportedly causes the XR to unexpectedly stop and nosedive into
12 the pavement, is not an "inherent risk" of the sport of riding an electric skateboard such as the
13 Onewheel XR.

14 Summary adjudication as to these causes of action is therefore denied.

15 Negligence per se (2d cause of action)

16 Plaintiffs' opposition does not address FM's argument that negligence per se is not a
17 separate cause of action, and is instead the application of an evidentiary presumption. *Johnson v*
18 *Honeywell Int'l Inc.* (2000) 179 Cal. App. 4th 549,555-556; *Quiroz v Seventh Avenue Center* 140
19 Cal. App.4th 1256, 1285-86. ["To apply negligence per se is not to state an independent cause of
20 action. The doctrine does not provide a private right of action for violation of a statute. Instead, it
21 operates to establish a presumption of negligence for which the statute serves the subsidiary
22 function of providing evidence of an element of a preexisting common law cause of action"].

23 Summary adjudication is therefore granted as to Plaintiffs' 2d cause of action, titled
24 "Negligence Per Se".

25 Misrepresentation causes of action (7th, 8th, 9th c/as)

26 Plaintiffs have offered no opposition to FM's assertion that Plaintiffs' claims of false
27 misrepresentation and misleading advertising constitute non-actionable "puffery", that the
28

1 representations would be extremely unlikely to induce consumer reliance, and that Plaintiff cannot
2 prove reliance.

3 In reviewing the statements which Plaintiffs have identified in ¶20 of their Complaint as
4 the allegedly false and misleading representations which support their UCL, FAL and CRLA
5 claims (that FM is “in the business of making the future rad”; that the XR is designed to make the
6 rider forget that there are “thousands of calculations happening per second keep you perfect”; and
7 that the XR can “really reignites the childhood” inside of riders”) the Court finds that these
8 statements are non-actionable puffery which do not support these causes of action.

9 Summary adjudication is therefore granted as to Plaintiffs’ 7th, 8th and 9th causes of
10 action for violations of Bus. & Prof. Code §§17200 and 17500, and for violation of the CRLA.

11 Survival cause of action (6th c/a)

12 FM asserts that this cause of action fails because it is derivative of the product liability and
13 misrepresentation causes of action; and there is no evidence to support those causes of action.

14 Summary adjudication is denied as to this cause of action on the same basis as the denial of
15 summary adjudication as to the product liability (1st, 3rd 4th and 5th) causes of action.

16 Punitive Damage Claim (10th claim)

17 A punitive damage claim is not a separate cause of action. *Grieves v Sup Ct.* (1984) 157
18 Cal. App. 3d 159, 163-64. The Court views and will treat Plaintiffs’ tenth claim, titled “Punitive
19 Damage Allegations”, as a claim for damages rather than a cause of action. A party may move for
20 summary adjudication of a claim of damage if the party contends that there is no merit to acclaim
21 of damage, “as specified in Section 3294 of the Civil Code”; and the motion shall be granted only
22 if it completely disposes of the clam of damage. CCP §437(c)(f)(1).

23 FM asserts that the claim for punitive damages fails because (a) it is derivative of the failed
24 product liability and misrepresentation causes of action; and (b) Plaintiffs are without clear and
25 convincing evidence of the fraud, oppression or malice necessary to support a punitive damage
26 claim under CCP 3294. Again, Plaintiffs have offered no argument in opposition to FM’s
27 assertions. However, while FM has negated this claim to the extent that it is based on fraud, it has
28

1 not negated this claim to the extent that it is based on a failure to warn of a defective product with
2 conclusive evidence demonstrating a lack malice (“despicable conduct carried on willful and
3 conscious disregard of the rights or safety of others”) or oppression (“despicable conduct that
4 subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights”)[Civ.
5 Code §3294(c)(1)(2)]; nor has FM demonstrated that neither malice or oppression can be
6 established. Instead, FM relies on the same evidence offered on the issues of product defect and
7 causation. [SSUMF 1-31]. A plaintiff has no evidentiary burden and need not put on any evidence
8 on a summary judgment/adjudication motion unless the moving defendant has met its initial
9 burden by negating an essential element or showing that such element “cannot be established”.
10 CCP §437c(p)(2).

11 Summary adjudication is therefore denied as to the claim for punitive damages.

12 Objections to Evidence

13 The court need only rule on the objections to evidence that it “deems material to its
14 disposition of the motion” CCP 437(q).

15 FM’s objections to the declarations of Mr. Rondine and Mr. Ziejewski as lacking in
16 foundation, speculative and not based on evidentiary support, are overruled.

17 The Court declines to rule on Plaintiffs’ objections, as they are directed to evidence that the
18 court does not deem material to its disposition of the motion.

19 IT IS SO ORDERED.

20 Dated: June 29, 2022

21 
22 Honorable Paul Marigonda
23 Judge of the Superior Court
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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 423 Washington Street, Suite 510, San Francisco, CA 94111.

On June 21, 2022, I served the foregoing document(s) described as:

- **ORDER RE: DEFENDANT FUTURE MOTION, INC.’S MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUDICATION**

on the interested parties in this action:

_____ by causing to be personally delivered to the person(s) at the address(es) set forth below:

_____ by USPS Certified mail as follows: I am readily familiar with the firm’s practice of collection and processing correspondence for mailing, which is deposited with U.S. Postal Service on that same day with postage thereon fully prepared at West Covina, CA in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. I placed the foregoing documents into a sealed envelope addressed as follows:

_____ by causing the documents listed above to be delivered via overnight delivery (Federal Express, UPS, etc.) to the person(s) at the address(es) set forth below, and billed to PEARCE LEWIS LLP:

_____ by facsimile transmittal following the ordinary business practices of PEARCE LEWIS LLP, to the number(s) listed as:

by electronic mail. The document(s) listed above was transmitted via e-mail to the e-mail address(es) as follows: [SEE ATTACHED SERVICE LIST]

_____ by electronic filing and service via the File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

_____ via Case Anywhere. I served the above-listed documents electronically to Case Anywhere pursuant to Case Management Order No. 2, [The document will be deemed served on the Date that it was uploaded to the website as indicated by the Case Anywhere system].

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

Executed on June 21, 2022, at West Covina, CA.



Scott Nguyen

SERVICE LIST

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John J. Wackman, Esq.
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Attorneys for Defendant, Future Motion, Inc.

EXHIBIT J

October 19, 2022

Via Electronic Mail

Timothy F. Pearce, Esq.
Anya Fuchs, Esq.
PEARCE LEWIS LLP
423 Washington Street, Suite 510
San Francisco, CA 94111

Aaron M. Heckaman, Esq.
Robert W. Cowan, Esq.
BAILEY COWAN HECKAMAN PLLC
5555 San Felipe Street, Suite 900
Houston, TX 77056

Re: *Lim v. Future Motion, Inc.*
Alameda County Superior Court Case No. 22CV010495
Our File No.: 3887-025

Dear Counsel:

We have received and reviewed Ms. Fuchs's letter of yesterday afternoon which followed our telephone conference to discuss transfer and coordination of product liability actions pending against Future Motion, Inc. Thank you again for participating in the call; we are pleased there is agreement on the merits of coordination.

Thank you also for agreeing to provide proper notice of your anticipated motion to all counsel in other Future Motion cases pending either in Santa Cruz County and other California counties so those counsel can weigh in on transfer/coordination if they choose. Based on our prior communications, as well as the letters we sent to counsel in those other matters following your last motion filing, it should be clear by now that we view those other cases as being similarly ripe for transfer and coordination. As we mentioned yesterday morning, coordination only makes sense for Future Motion if *all* currently pending product liability actions are part of the coordinated proceeding; that is, the 60+ cases your offices are handling, as well as the 20+ cases being handled by other plaintiffs' attorneys throughout the state.

We discussed, but did not reach agreement on, the proper venue for transfer/coordination. You are intent on filing again in Alameda County even though only one of your 60+ cases is filed there (*Lim v. Future Motion*). We respectfully disagree and believe the cases should be transferred to Santa Clara County, where Future Motion is a defendant in two pending cases (though not cases your office is handling). Santa Clara County also satisfies the applicable Code of Civil Procedure sections since Future Motion has a manufacturing facility in San Jose and likely witnesses and documents are located there. Also, for those Future Motion witnesses living in Santa Cruz, it is an easy trip to San Jose (unlike a trip all the way up to Oakland) should it be necessary. During our call yesterday, you mentioned the issue of convenience for your many out-of-state plaintiffs and noted that Oakland Airport is located Alameda County. As you know, San Jose has an international airport as well.

Timothy F. Pearce, Esq.
Anya Fuchs, Esq.
Aaron M. Heckaman, Esq.
Robert W. Cowan, Esq.
Re: *Lim v. Future Motion, Inc.*
October 19, 2022
Page 2

While Santa Clara County checks the most boxes for transfer and coordination, in our view Santa Cruz County is the only other realistic option because Future Motion's headquarters is located in that county and thus likely witnesses are located there as well. Moreover, your clients chose to file dozens of cases against Future Motion in Santa Cruz County and it therefore seems rather unreasonable for you to now ask Alameda County Superior Court Judge Patrick McKinney to order the transfer of dozens of cases you filed in Santa Cruz County to his court in Oakland.

Finally, while you expressed concern yesterday morning about the ability of Santa Cruz County to handle a coordinated proceeding like this one, you surely know that Judge Timothy Volkmann, the Presiding Judge and the Complex Litigation judge in that county, is quite capable to oversee these matters. As you conceded yesterday morning (and in your previous moving papers), none of these cases is truly "complex" under the rules, so by seeking the transfer of only about ¼ of the total pending Future Motion cases to Santa Cruz County from other counties would not seem to impose the same kind of burden on Judge Volkmann as would a truly complex coordinated proceeding like those assigned by the judicial council. In other words, Santa Cruz County is already home to about ¾ of the pending Future Motion cases (most of which were filed by your office); whereas Alameda County is home to one (*Lim*).

In light of the foregoing, we agree that transfer and coordination is appropriate provided the following occurs: (1) *all* pending product liability cases against Future Motion are made part of the transferred/coordinated action; (2) the transfer and coordination occurs in Santa Clara County or Santa Cruz County, and (3) there is a stay of all actions against Future Motion pending a decision on transfer and coordination. As we offered yesterday morning, Future Motion is prepared to file the motion for transfer and coordination in Santa Clara County, where it is a defendant in two pending cases, if your offices would agree that is the preferred venue under the rules. Even though you declined that offer yesterday, we hope you will reconsider.

Very truly yours,

LIVINGSTON LAW FIRM

A handwritten signature in blue ink that reads "Craig A. Livingston". The signature is written in a cursive, flowing style.

Craig A. Livingston

CAL:mtf

Cc: John J. Wackman, Esq.
Christy M. Mennen, Esq.
Allison Lange Garrison, Esq.

EXHIBIT K

DECLARATION OF JAMES LIM

I, James S. Lim, declare as follows:

1. I am an adult over the age of 18 years and am fully competent to make this Declaration. I have personal knowledge of the facts set forth in this Declaration and, if asked, I could and would testify competently to the truth of each statement of fact asserted within this Declaration, as well as to the foundation for the same.

2. I am a named Plaintiff in an action entitled *James S. Lim and Faith Hong v. Future Motion, Inc., and DOES 1-100*, Case No. 22CV010495, that was filed in the Alameda County Superior Court, on April 26, 2022; the First Amended Complaint adding my wife Faith Hong as a necessary party and co-Plaintiff to that action was thereafter filed on September 2, 2022. I am represented in said action by the attorneys of PEARCE LEWIS LLP (located in California) and BAILEY COWAN HECKAMAN PLLC (located in Texas).

3. I am one of the two named Plaintiffs in the herein referenced action through which my legal counsel seeks, by way of direction of a Motion to the Court, to have other actions sharing common questions of fact and law pending in different courts to be transferred for coordinated pre-trial proceedings with my action in the Alameda County Superior Court.

4. I give my express permission to the filing of the herein referenced Motion for Transfer and Coordination.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I signed this declaration in Seoul, Republic of Korea on this day on October 8, 2022.

James S. Lim



DECLARATION OF FAITH HONG

I, Faith Hong, declare as follows:

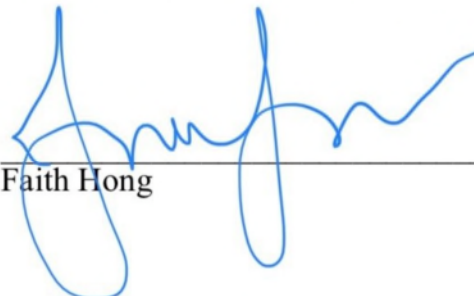
1. I am an adult over the age of 18 years and am fully competent to make this Declaration. I have personal knowledge of the facts set forth in this Declaration and, if asked, I could and would testify competently to the truth of each statement of fact asserted within this Declaration, as well as to the foundation for the same.

2. I am a named Plaintiff in an action entitled *James S. Lim and Faith Hong v. Future Motion, Inc. and DOES 1-100*, Case No. 22CV010495, that was filed in the Alameda County Superior Court on April 26, 2022; in my capacity as the wife of James Lim, I was added as a necessary party and co-Plaintiff by way of the First Amended Complaint to the action on September 2, 2022. I am represented in said action by the attorneys of PEARCE LEWIS LLP (located in California) and BAILEY COWAN HECKAMAN PLLC (located in Texas).

3. I am one of the two named Plaintiffs in the herein referenced action through which my legal counsel seeks, by way of direction of a Motion to the Court, to have other actions sharing common questions of fact and law pending in different courts to be transferred for coordinated pre-trial proceedings with my action in the Alameda County Superior Court.

4. I give my express permission to the filing of the herein referenced Moton for Transfer and Coordination.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I signed this declaration in Seoul, Republic of Korea on this day on October 18, 2022.



Faith Hong

EXHIBIT 3

Hearing

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

DEPARTMENT 5 HON. TIMOTHY VOLKMANN

MYLES ALLINGHAM,)
)
PLAINTIFF,)
)
VS.) NO. 22CV00518
) AND RELATED CASES
FUTURE MOTION,)
)
DEFENDANTS.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TUESDAY, SEPTEMBER 12, 2023

APPEARANCES:
(TAKEN BY WAY OF MINUTE ORDER BUT NOT NOTED HEREIN.)

REPORTED BY: MICHELLE GRACIANO COOPER, CSR NO. 13572
OFFICIAL REPORTER PRO TEM

Hearing

1 CASE NUMBER: 22CV00518
2 CASE NAME: ALLINGHAM V. FUTURE MOTION
3 SANTA CRUZ, CA TUESDAY, SEPTEMBER 12, 2023
4 DEPARTMENT 5 HON. TIMOTHY VOLKMANN
5 REPORTER: MICHELLE G. COOPER, CSR NO. 13572
6 TIME: A.M.
7 APPEARANCES: (SEE TITLE PAGE.)

8

9 (APPEARANCES PREVIOUSLY TAKEN.)

10 THE COURT: LET'S NOW GO BACK ON THE RECORD
11 REGARDING FUTURE MOTION. I APPRECIATE YOU INDULGING ME
12 ON IN THIS REGARD.

13 ALL RIGHT. WE ARE HERE IN RELATIONSHIP TO A
14 REQUEST PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE
15 SECTION 404.

16 I WILL REPRESENT, JUST FOR SAKE OF BACKGROUND,
17 THAT THERE IS ANOTHER CASE THAT AT LEAST PART OF IT IS
18 FLOATING THROUGH SANTA CRUZ COUNTY WITH ABOUT 100
19 PLAINTIFFS AND CERTAIN COSMETICS, AND THERE ARE CASES
20 THROUGHOUT THE STATE. AND I LOOKED INTO THAT CASE JUST
21 TO SEE HOW LONG IT TOOK FOR THE JUDICIAL COUNCIL TO
22 RESPOND TO A REQUEST FOR COORDINATION. IT TOOK ABOUT
23 32 DAYS. IT'S NOT LIKE IT'S A LONG PERIOD OF TIME TO
24 RESPOND. ONCE THE REQUEST WAS MADE PURSUANT TO THE CODE
25 SECTION, SPECIFICALLY CODE OF CIVIL PROCEDURE SECTION 404
26 AND RULE 3.524, THE RESPONSE FROM THE CHAIR OF THE
27 JUDICIAL COUNCIL WAS WITHIN LESS THAN FIVE WEEKS. AND
28 THEY THEN APPOINTED A JUDGE TO DETERMINE IF IT WAS A

1 COMPLEX CASE AND THEN TO DETERMINE HOW THINGS SHOULD GO
2 FROM THERE.

3 WHILE IT'S A RATHER RAPID PROCESS IN THAT
4 REGARD, I MUST ADMIT I'M HAVING TROUBLE SEEING HOW DO WE
5 PUSH THIS TOWARDS THE GOAL LINE BY GOING THROUGH THIS
6 PROCESS HERE. I'M PRESUMING, UNLESS SOMETHING GOES
7 HAYWIRE, THAT THIS CASE IS COMING RIGHT BACK TO ME
8 ANYWAY. SO IT MAY BE THAT THE GOAL IS POTENTIALLY THAT
9 THERE IS SOME LEVEL OF FINANCIAL ASSISTANCE OFFERED BY
10 THE STATE BY HAVING THESE MATTERS COORDINATED. OKAY.
11 MAYBE THERE IS SOME BENEFIT THERE. I DON'T KNOW EXACTLY
12 HOW THAT WORKS AT THIS POINT, AND I HAVEN'T SEEN HOW THAT
13 WORKS IN THE OTHER CASE THAT I'M TANGENTIALLY INVOLVED
14 IN, BUT WE HAVE FOLKS ORGANIZED.

15 I'VE INDICATED THAT I'M WILLING TO TAKE ALL
16 THESE CASES FOR WHATEVER COUNTY. I DON'T FIND THEM
17 FACTUALLY COMPLEX. IT'S LIABILITY. IT'S PERSONAL
18 INJURY. IT'S NEGLIGENCE. IT'S EVALUATING DAMAGES.
19 AGAIN, I DON'T THINK ANY CASE BY ITSELF IS COMPLEX. THE
20 NUMBER OF CASES CAN BE CONSIDERED COMPLEX BASED UPON THE
21 IMPACT TO THE COURT. I WAS SURPRISED THAT IN 404.1,
22 HEAVEN FORBID THEY STILL USE THE TERM "MANPOWER." I
23 DIDN'T THINK THAT WAS ALL RIGHT ANY LONGER. I THINK YOU
24 NEEDED TO SAY "PERSON POWER" OR "PEOPLE POWER," SOMETHING
25 LIKE THAT. I'M SURPRISED THAT THAT GOT THROUGH, BUT THEY
26 DO LOOK AT THE EFFICIENT UTILIZATION OF JUDICIAL
27 FACILITIES AND MANPOWER, THE CALENDAR OF THE COURT, THE
28 DISADVANTAGE OF DUPLICATIVE AND INCONSISTENT RULINGS. I

1 MEAN, ALL OF THOSE ARGUABLY CAN APPLY TO WHY THEY SHOULD
2 BE IN ONE PLACE, BUT YOU WILL HAVE TO EDUCATE ME AS TO
3 WHAT ARE THE BENEFITS OF GOING THROUGH THIS PROCESS AND
4 WHAT I PRESUME IS SIMPLY SOMEBODY AT THE JUDICIAL COUNCIL
5 SAYING, "WE'RE SENDING IT RIGHT BACK TO SANTA CRUZ, AND
6 THE PRESIDING JUDGE IS GOING TO BE HANDLING IT," AND I
7 HAPPEN TO BE THE PRESIDING JUDGE. I READ YOUR PLEADINGS,
8 BUT I JUST COULDN'T SEE HOW IT WAS MOVING THIS BALL
9 TOWARDS THE GOAL LINE.

10 MS. FUCHS: ALL RIGHT. THANK YOU, YOUR HONOR,
11 FOR THAT.

12 THIS IS FOR ANYA FUCHS OF PEARCE LEWIS FOR THE
13 PLAINTIFF.

14 I THINK WE HAVE TO GO BACK TO WHAT WE AGREE
15 UPON BETWEEN PLAINTIFFS AND DEFENSE COUNSEL IS THAT WE
16 WANT ONE COORDINATED PROCEEDING, AND WE WANT ALL CASES
17 THAT SATISFY THE 404.1 CRITERIA IN THAT PROCEEDING. WE
18 CAN ALL HAVE 403, AND THE NON-COMPLEX ROUTE IS THAT THERE
19 ARE CERTAIN OBSTACLES I DON'T THINK THAT WE AS A
20 COLLECTIVE GROUP OR HIS HONOR CAN ACTUALLY STIPULATE
21 AROUND. AND I THINK IT PUTS AT JEOPARDY THE ONE
22 COORDINATED PROCEEDING.

23 WE ALL CANNOT, I DO NOT THINK, SIT HERE AND
24 SAY, "LET'S JUST AGREE THAT WHATEVER CASES ARE FILED IN
25 THE STATE OF CALIFORNIA WE'LL JUST TRANSFER THEM OVER
26 HERE." THERE HAS TO BE A PROCESS. WE CANNOT BIND FUTURE
27 LITIGANTS AND FUTURE PLAINTIFF'S COUNSEL THAT ARE NOT
28 SITTING HERE OR ON THIS COMPUTER SCREEN TO SOME AGREEMENT

1 THAT WE ARE MAKING BECAUSE THERE WILL BE PLAINTIFF'S
2 COUNSEL WHO SAY, "I'VE BEEN WATCHING WHAT IS GOING ON IN
3 SANTA CRUZ, AND I DON'T REALLY WANT TO BE THERE. I WANT
4 TO BE IN ORANGE COUNTY."

5 NO OFFENSE, YOUR HONOR.

6 THE COURT: I CAN'T IMAGINE THAT SOMEBODY WOULD
7 FEEL THAT WAY, BUT GO AHEAD.

8 MS. FUCHS: SO THIS IDEA THAT IT WOULD JUST ALL
9 GO AWAY AND EVERYBODY WILL AGREE AND IT WILL BE
10 HUNKY-DORY RUNS CONTRARY TO COMMON SENSE AND THE NATURE
11 OF LITIGATION. SO YOU'LL HAVE TO BRING SUCCESSIVE 403
12 MOTIONS TO BRING THESE CASES ON OVER HERE. WHEN THEY GET
13 HERE, THESE THOSE LITIGANTS MAINTAIN A 170.6 PEREMPTORY
14 CHALLENGE. AGAIN, GOD FORBID THEY DO THAT TO YOU, BUT
15 THEY RETAIN IT. THEY HAVE IT.

16 SO THEY GET HERE, AND NOW THEY'RE COORDINATED
17 IN SANTA CRUZ. NOW WE HAVE TWO DIFFERENT PROCEEDINGS IN
18 ONE COURTHOUSE. WHAT PROVIDES A SOLUTION FOR THAT ARE
19 THE GOVERNANCE THAT THE COMPLEX RULE OF -- COMPLEX RULES,
20 AND THOSE ONLY APPLY WHEN WE ARE COORDINATED UNDER A
21 JCCP. IT'S NOT THAT THERE IS NO PROCESS IN A JCCP, BUT
22 THERE IS A STREAMLINED PROCESS OF ADD-ON CASES WHEREUPON
23 THERE IS NO 170.6 CHALLENGE PER LITIGANT. IT'S ONLY ONE
24 PER SIDE. IT GETS RID OF THOSE OBSTACLES AND ENSURES ONE
25 COORDINATED PROCEEDING. THAT IS A HUGE BENEFIT. NOW,
26 THERE ARE OTHERS AS WELL, BUT THAT IS ONE WE CAN ALL
27 AGREE IS IMPORTANT TO MAINTAIN THE INTEGRITY OF ONE
28 COORDINATED PROCEEDING.

1 YOU KNOW, I THINK THAT THERE WAS SOME DEGREE OF
2 MISUNDERSTANDING, CERTAINLY ON MY PART, ON OTHER
3 PLAINTIFF'S COUNSEL, ABOUT WHEN AND HOW THE APPLICATION
4 OF THESE COMPLEX RULES MIGHT APPLY. I PERSONALLY FALL ON
5 MY SWORD AND SAY I THOUGHT THAT BECAUSE THAT WAS THE ONLY
6 WAY I THOUGHT THIS COULD ALL MAKE SENSE. AND IN FULL
7 TRANSPARENCY, YOUR HONOR, YOU AND I HAVE HAD DISCUSSIONS
8 IN OPEN COURT ABOUT WHEN THAT JCCP NUMBER MIGHT BE COMING
9 DOWN SO WE CAN TALK ABOUT GLOBAL PRO HAC VICE. SO THERE
10 WAS A LAYER OF MISUNDERSTANDING THERE AS WELL.

11 I THINK YOU COULD ALSO LOOK AT IT FROM THE
12 FLIPSIDE AND SAY, OKAY, WELL, WHAT IF WE PROCEED ON
13 NON-COMPLEX ROUTE? WELL, WE HAVE ISSUES WITH MAINTAINING
14 AT LEAST ONE COORDINATED PROCEEDING. WE HAVE ISSUES WITH
15 PREEMPTORY CHALLENGES. WE ALSO NEED TO START FOLLOWING
16 THE RULES THAT APPLY TO NON-COMPLEX CASES, WHICH MEANS WE
17 WANT A ONE-YEAR TRIAL DATE FOR ALL OF THESE CASES,
18 SOMETHING NOBODY IS REALLY TALKING ABOUT OR RAISED, WHICH
19 PRESENTS QUITE AN ADMINISTRATIVE AND BUREAUCRATIC
20 HEADACHE, IS THAT IT'S EVEN POSSIBLE, BUT WE ARE ENTITLED
21 TO THAT AND WE WOULD BE ASKING FOR THAT.

22 THE COURT: ALL RIGHT.

23 MR. COWAN: YOUR HONOR, MAY I BE HEARD?

24 THE COURT: YES. PLEASE OFFER YOUR NAME FOR
25 OUR REPORTER.

26 MR. COWAN: SURE. ROBERT COWAN FOR THE BAILY
27 COWAN PLAINTIFFS AND THE PEARCE LEWIS PLAINTIFFS.

28 YOUR HONOR, I WOULD JUST ADD THAT A GREAT

1 CONCERN OR WHAT SHOULD BE A GREAT CONCERN FOR BOTH SIDES
2 IS THE DANGER OF INCONSISTENT RULINGS IF A CONSOLIDATION,
3 EVEN ONE THAT IS CODDLED TOGETHER HERE UNDER RULE 403,
4 DOESN'T HOLD. THERE IS NO GUARANTEE THAT CASES FILED IN
5 SAN DIEGO OR ORANGE COUNTY OR WHEREVER ARE GOING TO AGREE
6 TO TRANSFER THE CASES HERE, AND WE VERY MUCH COULD END UP
7 IN THESE WHAT OUGHT TO BE CONSOLIDATEDLY HANDLED, SIMILAR
8 CASES ABOUT THE SAME PRODUCTS, HAVE CONSISTENT RULINGS
9 FROM ONE JURIST. THE ONLY WAY TO GUARANTEE THAT
10 HAPPENING WE BELIEVE IS TO FOLLOW THE PROCEDURES THAT ARE
11 SET UP UNDER RULE 404. AS THE JUDGE IN ALAMEDA COUNTY,
12 WHEN HE CONSIDERED THE ISSUE OF COMPLEX VERSUS
13 NON-COMPLEX AND COORDINATING THESE MATTERS THERE, HE
14 WROTE IN HIS ORDER THAT, AS YOU JUST ACKNOWLEDGED, YOUR
15 HONOR, THE CASES INDIVIDUALLY MAY NOT BE COMPLEX; BUT
16 ONCE YOU PUT THEM ALL TOGETHER, THEN THEY ARE COMPLEX.
17 AND THE ONLY WAY TO MAKE SURE THAT, IN THIS STATE, THE
18 CASES THAT ARE DEALING WITH THIS PRODUCT, THESE PRODUCT
19 LIABILITY MATTERS, HAVE FAIR, CONSISTENT RULINGS, WHICH
20 WAS THE POINT OF BRINGING THEM ALTOGETHER, A HUGE POINT
21 OF BRINGING THEM ALTOGETHER IN THE FIRST PLACE, WE
22 BELIEVE IS TO FOLLOW THE COMPLEX ROUTE AND THE RULE 404
23 ROUTE, ESPECIALLY GIVEN THE LIMITED AMOUNT OF TIME THAT
24 WE BELIEVE THAT IT WOULD TAKE THE JCCP PANEL TO RULE ON
25 THEM -- ON THE REQUEST.

26 THE COURT: THANK YOU.

27 RESPONSE, PLEASE?

28 MR. WACKMAN: THANK YOU, YOUR HONOR.

1 JOHN WACKMAN FROM NILAN JOHNSON.

2 I GUESS WE'RE IN YOUR CAMP, WHICH IS I DON'T
3 UNDERSTAND WHAT THE BENEFIT OF ANY OF THIS IS. WE HAVE
4 -- YOU KNOW, YOU HAVE INDICATED YOU'LL TAKE THE CASE AS
5 WE'VE SEEN NO INDICATION THAT ANYBODY IS GOING TO PURSUE
6 A SEPARATE COORDINATED PROCEEDING OR IS OBJECTING TO A
7 CONSOLIDATION. IN FACT, WHEN CASES HAVE BEEN FILED,
8 WE'VE REACHED OUT, AND PEOPLE SAY, OKAY -- MOST OF THEM
9 ARE FILING HERE, BUT THE ONE -- THE FEW THAT HAVE BEEN
10 FILED ELSEWHERE, WE'VE REACHED OUT, AND THEY SAID, "OH,
11 SURE. LET'S PUT THE TRANSFER ORDER TOGETHER AND MOVE
12 THEM OVER." SO, YOU KNOW, WE HAVEN'T SEEN ANYTHING TO
13 THE EFFECT THAT THIS ISN'T GOING TO WORK.

14 WE HAVE PROPOSED IN A CASE MANAGEMENT ORDER
15 THAT WE ESSENTIALLY ADOPT THE KEY PROVISIONS OF THE
16 COORDINATED PROCEEDING SO THAT THINGS CAN GO SMOOTHLY.
17 THAT MAKES SENSE. AND I THINK THAT WHEN WE GOT TOGETHER
18 FIRST ON JUNE 7TH, MR. HECKMAN WAS HERE FOR PLAINTIFFS,
19 AND HE SUGGESTED HE WAS GOING TO RULE ON A BUNCH OF
20 ORDERS TO THAT EFFECT; THAT HE'S DONE THIS MANY TIMES,
21 AND HE'S GOING TO -- WE'RE GOING TO HAVE ONE PRO HAC
22 VICE. HE'S GOING TO HAVE A SERIES OF ORDERS THAT WOULD
23 ESSENTIALLY MAKE THIS LIKE A COORDINATED COMPLEX
24 PROCEEDING, AND WE'LL JUST KIND OF FOLLOW THE RULES SINCE
25 THERE IS NO BODY OF RULING THAT WORK THERE.

26 SO I THINK THAT'S WHAT WE HAVE PROPOSED. AND
27 SO FAR THAT HASN'T BEEN AGREED TO, BUT I THINK THAT'S THE
28 ROUTE. I THINK WE'RE JUST GOING TO BOOMERANG RIGHT BACK

1 HERE. SO I DON'T SEE THE REAL BENEFIT OF IT.

2 THE COURT: WELL, MS. FUCHS IS ARGUING THAT YOU
3 HAVE MORE CONTROL OVER FOLKS FILING LITIGATION IN OTHER
4 COUNTIES IF WE HAVE THIS COORDINATION PROCEDURE IN PLACE
5 SO THAT YOU DON'T END UP WITH A RISK THAT SOMEHOW THERE
6 IS SOMEONE IN CONTRA COSTA COUNTY WHO DECIDES, "I'M GOING
7 TO PROCEED. AND YOU KNOW WHAT? I'M NOT PARTICULARLY
8 ENAMORED WITH GETTING TOGETHER WITH ANOTHER 110 FOLKS."
9 OKAY? AND THAT GOING THROUGH THIS -- I DON'T WANT TO
10 SPEAK FOR MS. FUCHS, BUT GOING THROUGH THIS PROCESS WOULD
11 BE A WAY OF ENSURING THAT EVERYTHING ENDS UP UNDER ONE
12 UMBRELLA.

13 IF THE PROCESS -- AND I CAN APPRECIATE A
14 CONCERN FROM ANYONE'S PERSPECTIVE THAT YOU DON'T WANT
15 THIS LANGUISHING. IF INDEED THE JUDICIAL COUNCIL IS
16 GOING TO BE CONSISTENT WITH WHAT THEY DID IN A DIFFERENT
17 CASE THAT I'M INVOLVED IN AND MAKE A DECISION WITHIN
18 ABOUT FIVE WEEKS -- SO IT'S NOT A LONG PERIOD OF TIME --
19 AND INDEED THEY SEND IT RIGHT BACK HERE FOR THE COURT TO
20 MAKE DETERMINATIONS AS TO RULE 3.530 -- I'M JUST LOOKING
21 AT THE ORDER THAT WAS SUBMITTED IN THIS OTHER CASE FOR MY
22 OWN PERSONAL BENEFIT.

23 BUT IF THEY SEND IT RIGHT BACK HER, OKAY, NOW
24 YOU'VE GOT IT ALL COORDINATED. NOW IF SOMEBODY FILES AN
25 ACTION IN NAPA, IT'S GOING TO END UP HERE. WE'RE GOING
26 TO END UP WITH ALL THE CASES AND BE ABLE TO PROCEED WITH
27 DISCOVERY IN WHAT I HOPE IS AN ORGANIZED COORDINATED WAY
28 THROUGH THE CONTROL AND EFFORTS OF A SPECIAL MASTER.

1 DO YOU LOSE THAT MUCH IF YOU GO THROUGH THIS
2 PROCESS AND HAVE IT COME BACK HERE ANYWAY? EXCUSE ME.

3 MR. WACKMAN: NO, I DON'T THINK SO. I SHARE
4 MS. COWAN'S CONCERN THAT WE DON'T WANT INCONSISTENT
5 RULINGS. IT'S THE REASON WE BROUGHT THE RULE 403 MOTION.
6 OUR CONCERN IS THAT WE MAY NOT END UP HERE. AND SO, YOU
7 KNOW, IF -- AND THE OTHER CONCERN IS WE HAVE ALL SAID
8 THIS IS NOT COMPLEX. I DON'T KNOW THAT WE CAN JUST KIND
9 OF CROSS OUR FINGERS AND SAY THIS IS COMPLEX. WE HAVE
10 SAID IN OPEN COURT THESE ARE NOT COMPLEX PROCEEDINGS.
11 THEY HAVE SAID IT, AND YOU'VE SAID IT.

12 SO I DON'T KNOW THAT WE CAN PUT UP OUR HANDS
13 TOGETHER AND SAY, "OKAY. WE'RE KIDDING. THEY'RE REALLY
14 COMPLEX." I DON'T THINK ANYTHING HAS CHANGED. SO, YOU
15 KNOW, FROM A POSITION ESTOPPEL, WE HAVE ALREADY SAID
16 THEY'RE NOT COMPLEX. SO I CAN'T JUST KIND OF COME IN AND
17 SAY, "OKAY. I WAS KIDDING. THEY ARE COMPLEX."

18 BUT IF THAT IS -- IF IT'S A BOOMERANG, AND IT
19 TAKES TWO MONTHS, AND WE COME BACK AND WE HAVE THE
20 BENEFIT, WE HAVE SUGGESTED THE RULES MAKE SENSE. I'M NOT
21 GOING TO SAY THERE IS NOT A BENEFIT OF HAVING THAT.

22 THE COURT: ALL RIGHT. I MEAN, I'M SIMPLY IN A
23 POSITION -- THAT'S WHY INSTEAD OF OFFERING A TENTATIVE
24 RULING REGARDING THE MOTION, I THOUGHT WE'LL JUST TALK
25 THIS THROUGH, BECAUSE I HAD THE BENEFIT OF THIS OTHER
26 MATTER WITH ABOUT 100 PLAINTIFFS. AGAIN, SANTA CRUZ IS
27 NOT THE KEY IN THIS CASE. WE ONLY HAVE ABOUT 20 OF THE
28 PLAINTIFFS. THERE ARE CASES THROUGHOUT THE CASE, BUT AT

1 LEAST I CAN SEE THE CHRONOLOGY REGARDING THIS
2 COORDINATION PROCESS. AND I WENT BACK TO IT BECAUSE I
3 WAS WORRIED, "MY GOD, WHAT IF THE JUDICIAL COUNCIL SITS
4 ON THIS FOR SIX MONTHS OR SOMETHING?" THEN NO, I'M
5 PROBABLY NOT ENAMORED WITH IT. BUT THEY GOT BACK IN
6 32 DAYS WITH A DECISION WITH THE PRESIDING JUDGE OF A
7 PARTICULAR COUNTY BEING AUTHORIZED TO ASSIGN THE MATTER
8 TO A JUDGE.

9 NOW, AGAIN, I'M PRESUMING THE JUDICIAL COUNCIL
10 IS GOING TO DO THE SAME THING AND SEND IT BACK TO THE
11 PRESIDING JUDGE IN SANTA CRUZ COUNTY, WHICH IS ME.
12 YOU'VE MET THE ENEMY. IT IS ME, AND WE CAN PROCEED. I
13 CAN APPRECIATE THE ARGUMENT REGARDING HAVING -- I DON'T
14 WANT TO CALL THEM RENEGADE CASES OUT THERE -- BUT A CASE
15 THAT IS NOT PART OF THIS GROUP AND THEY DON'T WANT TO BE
16 PART OF THIS GROUP, AND ALL THE SUDDEN YOU FOLKS ARE
17 FIGHTING ON SEVERAL FRONTS; AND YOU DO THEN HAVE TO WORRY
18 OF HAVING INCONSISTENT RULINGS, AND THINGS MOVE AT
19 DIFFERENT PACES, AND FOLKS HAVING DIFFERENT DECISIONS ON
20 DISCOVERY. THAT'S THE TYPE OF MESS YOU ACTUALLY WANT TO
21 AVOID.

22 SO ANYONE ELSE WHO HAS A COMMENT REGARDING THIS
23 ISSUE OF GOING THROUGH THE JUDICIAL COUNCIL OF CALIFORNIA
24 COORDINATION PROCEEDING PROCESS?

25 MS. FUCHS: MAY I SAY ONE MORE THING?

26 I HOPE WE BOOMERANG RIGHT BACK HERE. WE WILL
27 AS FOR THAT IN OUR PETITION. THERE IS A SECTION WHERE
28 YOU GET TO ADVOCATE WHERE YOU OUGHT TO GO AND WHY. WE

1 WILL SAY THAT. THIS WHOLE HEARING WILL BE PART OF THAT
2 PROCEDURAL POSTURE.

3 GOING BACK ABOUT WE'LL HAVE A CASE MANAGEMENT
4 ORDER THAT SAYS X, NO CASE MANAGEMENT ORDER CAN STRIP
5 AWAY SOMEBODY'S PEREMPTORY CHALLENGE, DO AWAY WITH THE
6 NEED FOR A SUCCESSIVE MOTION. IT JUST DOES NOT -- YOU'RE
7 POWERFUL, BUT NOT THAT POWERFUL.

8 WITH REGARD TO "WE ALL SAID THEY WERE
9 NON-COMPLEX. WE CONCEDED," I'VE EXPLAINED AD NAUSEAM WHY
10 I'VE CONCEDED THAT. AND THERE IS A RULE IN THE RULE OF
11 COURT THAT SAYS HIS HONOR HAS ONGOING CONTINUING POWER TO
12 CHANGE HIS MIND ON THAT ISSUE AT ANYTIME. THAT IS THE
13 MOST SIMPLISTIC ISSUE BEFORE THE COURT AND THE MOST
14 IMPORTANT ONE, BECAUSE BASED ON THAT IT'S LIKE A
15 BLESSING, A KISS OF APPROVAL FOR THE PETITION. IT WILL
16 BE A CHECK OFF THE BOX.

17 THE COURT: RIGHT. WELL, THERE IS A WORRY ON
18 BEHALF OF THE DEFENSE -- LET'S TALK ABOUT IT BECAUSE IT
19 WAS IN THE PLEADINGS -- THAT THERE IS SOME TYPE OF FORUM
20 SHOPPING GOING ON HERE OR SOME TYPE OF OPTION THAT MIGHT
21 BE EXERCISED TO TAKE IT OUT OF SANTA CRUZ FOR ONE OPTION
22 OR ANOTHER. I APPRECIATE YOUR REPRESENTATION IN THAT
23 REGARD ON THE RECORD. SO I THINK THAT CONCERN IS PUT TO
24 REST.

25 LET ME INQUIRE AT THIS POINT. IS THERE ANYONE
26 ELSE WHO HAD A COMMENT CONCERNING THIS COORDINATION
27 PROCEEDING SITUATION?

28 MS. SANGUINETTI: YES, YOUR HONOR. THIS IS

1 ELISE SANGUINETTI.

2 I JUST WANT TO ADD TO THE NEED FOR I THINK ALL
3 PARTIES FOR US TO MOVE FORWARD IN THIS ACTION THAT THERE
4 IS A POTENTIAL THAT THERE ARE HUNDREDS, IF NOT THOUSANDS,
5 OF ADDITIONAL CASES OUT THERE THAT COULD BE FILED, AND
6 THIS IS REALLY THE ONLY WAY TO PROTECT FROM US DOING A
7 LOT OF WORK IN THIS COURT AND THEN LATER SOMEONE --
8 ANOTHER FIRM COMING IN OR OTHER ADDITIONAL FIRMS COMING
9 IN AND TRYING TO DERAIL EVERYTHING THAT'S BEEN DONE IN
10 THIS COURT. SO I JUST WANTED TO RAISE THAT AS AN ISSUE.

11 WE DO -- OUR FIRM DOES SUPPORT AND OUR
12 PLAINTIFFS DO SUPPORT MOVING FORWARD IN THIS FASHION AND
13 ALSO THE REQUEST TO HAVE THE CASES BROUGHT BACK TO SANTA
14 CRUZ COUNTY ONCE A JCCP IS APPROVED.

15 THE COURT: YOU'RE TRYING TO SCARE ME WITH
16 "HUNDREDS, IF NOT THOUSANDS, OF ADDITIONAL CASES"? ARE
17 YOU TRYING TO INTIMIDATE ME?

18 MS. SANGUINETTI: I AM NOT TRYING TO INTIMIDATE
19 YOU. I'M JUST LOOKING FORWARD AND THINKING THAT'S A
20 POTENTIAL ISSUE THAT WE NEED TO PREPARE FOR.

21 THE COURT: AGAIN, JUST FULL DISCLOSURE, I
22 THINK I'VE ADVISED YOU FOLKS ALREADY, BUT I'M RETIRING AT
23 THE END OF MARCH. SO I THINK YOU FOLKS KNOW THAT MY
24 INVOLVEMENT IN THIS MATTER IS GOING TO BE ABOUT 6 OR 7
25 MORE MONTHS, AND THEN I'LL BE MOVING ON. SO I'M SORRY.

26 WHO ELSE WANTS TO BE SPEAK?

27 MS. FUCHS: GOOD MORNING, YOUR HONOR. THIS IS
28 ALLISON LANGE GARRISON ON BEHALF OF FUTURE MOTION.

1 I WOULD JUST RESPECTFULLY DISAGREE WITH MS.
2 SANGUINETTI AND MS. FUCHS'S POSITION THAT CHAOS WILL
3 ENSUE AND THAT MULTIPLE COORDINATED PROCEEDINGS WILL
4 OCCUR. WE HAVE BRIEFED THIS AT LENGTH, BUT RULE 3.500
5 FORECLOSES THAT RISK OF MULTIPLE COORDINATED PROCEEDINGS.

6 HERE IS THE COORDINATING PROCEEDING. IF
7 STIPULATIONS DON'T -- AREN'T FORTHCOMING FROM FUTURE
8 PLAINTIFF'S COUNSEL, WE WILL BRING SECTION 403 MOTION
9 PRACTICE. WE DID IT FAIRLY EFFICIENTLY LAST TIME, AND
10 OTHER COURTS WOULD RESPECT YOUR ORDER TO TRANSFER AND
11 COORDINATE LIKE-MINDED CASES TO YOUR COURT. SO JUST THAT
12 ISSUE HAS BEEN OVERBLOWN ON PLAINTIFFS' SIDE.

13 THANK YOU.

14 THE COURT: THANK YOU.

15 MR. OLSON: YOUR HONOR, CONNOR OLSON ON BEHALF
16 OF PLAINTIFF ELIJAH SOTO.

17 BASED ON THE HISTORY OF THIS CASE AND WHAT HAS
18 HAPPENED WITH THE CASE I'M WORKING ON, I WANTED TO MAKE
19 SURE THAT THE COURT IS AWARE THAT THIS CASE IS NOT
20 SUBJECT TO THE MOTION BASED ON THE NOTICE OF ERRATA THAT
21 WAS FILED. I'VE HEARD A LOT OF PEOPLE TALK ABOUT THESE
22 CASES BEING PRODUCTS LIABILITY, PERSONAL INJURY, AND
23 NEGLIGENCE. THE PLAINTIFF ELIAH SOTO'S CASE IS NONE OF
24 THOSE AND WAS MADE SPECIFICALLY EXEMPT FROM THIS
25 COORDINATED PROCEEDING. SO WE ARE APPEARING HERE ON THE
26 CMC TO DISCUSS OTHER STUFF.

27 I'LL LET THE DISCUSSION CONTINUE, BUT I WANTED
28 TO MAKE THAT CLEAR SINCE LAST TIME WE KIND OF GOT LOOPED

1 INTO THE EARLIER COORDINATED.

2 THE COURT: THE SOTO MATTER IS NUMBER 36. I
3 ACTUALLY HAVE THAT WRITTEN DOWN IN FRONT OF MY ENTIRE
4 CALENDAR: SOTO, 36, NEED TO DISCUSS THAT SEPARATELY IN
5 RELATIONSHIP TO THE CONCERNS THAT YOU RAISED. SO WE'LL
6 DO THAT AT THE END. THAT'S FINE, MR. OLSON.

7 ANYONE ELSE WITH A COMMENT CONCERNING THE
8 COORDINATION ASPECT OF THIS?

9 HEARING NONE, OKAY.

10 I'M GOING TO ALLOW YOU TO GO FORWARD WITH THIS
11 REQUEST TO THE JUDICIAL COUNCIL. I'M CONVINCED THAT
12 THERE IS MINIMAL, POTENTIALLY NO, PREJUDICE TO THE
13 DEFENSE OR OTHER PLAINTIFFS THAT MAY HAVE A CONCERN ABOUT
14 IT. WITH GOING THROUGH THIS PROCESS, I THINK THE
15 BENEFITS OUTWEIGH THAT PREJUDICE. THE BENEFITS IN
16 PARTICULAR INVOLVE THE FACT THAT A RELATIVELY RAPID
17 DECISION WILL BE BROUGHT FORWARD BY THE JUDICIAL COUNCIL,
18 AND WE WILL NOT THEN HAVE ISSUES WITH FOLKS FILING
19 ACTIONS IN OTHER COUNTIES, WHICH WILL COMPEL PLAINTIFFS
20 AND/OR DEFENDANTS HANDLING LITIGATION IN MULTIPLE
21 COUNTIES. THE PRESUMPTION IS THAT THEY WILL ALL COME
22 BACK TO SANTA CRUZ. I THINK THERE IS A BENEFIT THERE.

23 I'M NOT CONCERNED ABOUT THE ISSUE OF
24 INCONSISTENCY CONCERNING COMPLEX LITIGATION FROM A
25 COMPLEX LITIGATION PERSPECTIVE. I'LL STAND ON WHAT I
26 SAID PREVIOUSLY. I DON'T THINK CLAIMS OF NEGLIGENCE,
27 PRODUCTS LIABILITY, PERSONAL INJURY EVALUATION, ARE
28 COMPLEX IN AND OF THEMSELVES. BUT THE POTENTIAL IMPACT

1 TO THE EFFICIENCY OF IN MY COURT AND THE IMPACT TO THE
2 PERSONNEL THAT WE HAVE IN THIS COURT IN LIGHT OF THE FACT
3 THAT WE NOW HAVE 85 TO 105 CASES AND MORE ARE EXPECTED
4 CERTAINLY SUPPORTS THE REQUEST FOR COORDINATION, AND WE
5 ARE GOING TO GO FORWARD IN THAT REGARD.

6 SO IF YOU NEED SOME ORDER FROM ME, PREPARE IT,
7 SUBMIT IT TO ALL OTHER COUNSEL, AND SEND IT TO ME THROUGH
8 OUR CLERKS OFFICE, AND I WILL SIGN IT.

9 IS IT THE INTENT OF EVERYONE TO HAVE A RESPONSE
10 FROM THE JUDICIAL COUNCIL ON THIS ISSUE BEFORE YOU TURN
11 IT BACK OVER TO ME TO MAKE A DECISION ON WHO THE SPECIAL
12 MASTER IS GOING TO BE? EVERYBODY SEEMS TO BE NODDING YES
13 ON THAT.

14 I HAVE NO PROBLEM SELECTING A SPECIAL MASTER.
15 I UNDERSTAND THERE IS A GOOD FAITH DISAGREEMENT AS TO WHO
16 THE SPECIAL MASTER WOULD BE. I DON'T HAVE ANY PROBLEM
17 USING THE WORD "JUDGE" AS A VERB. SO WE'LL JUDGE THAT
18 AND MAKE A DECISION REGARDING SPECIAL MASTER. I MAY CALL
19 TWO OR THREE PEOPLE IN THE INTERIM BETWEEN NOW AND THE
20 NEXT CMC JUST TO SEE IF THEY REMAIN AVAILABLE AND SEE WHO
21 FEELS THEY CAN DO IT.

22 AGAIN, I REALIZE THAT THERE ARE A COUPLE FROM
23 -- ON BEHALF OF THE PLAINTIFFS THAT I'M NOT AS FAMILIAR
24 WITH, AND THEN I HAD RECOMMENDED THREE OR FOUR NAMES. I
25 BELIEVE THOSE WERE SATISFACTORY TO THE DEFENSE. I'LL
26 JUST -- I'M GOING TO PICK SOMEBODY, IF NECESSARY, IF YOU
27 CAN'T WORK IT OUT IN THE INTERIM. IF YOU WORK IT OUT,
28 THEN I'M HAPPY TO ACCEPT WHOEVER YOU HAVE.

1 REGARDING THE SPECIAL MASTER, THERE WAS SOME
2 SUGGESTION FROM THE CLERKS OFFICE TO ME THAT SOMEONE
3 WANTED TO FILE 22 MOTIONS TO STRIKE. I WILL RESPECTFULLY
4 SUBMIT THAT'S EXACTLY WHAT I DON'T WANT TO SEE HAPPEN IN
5 THIS MATTER. I DON'T WANT TO SEE RANDOM MOTIONS FILED
6 ALL OVER. WE SIMPLY, IN SANTA CRUZ COUNTY, DON'T HAVE
7 THE PERSONNEL TO DO THIS.

8 WE HAVE ONE JUDGE IN CIVIL RIGHT NOW. WE'RE
9 GOING TO HAVE TWO JUDGES, AND YOU'RE MEETING HIM. WE
10 HAVE TWO JUDGES IN CIVIL AS OF OCTOBER 16TH, BUT I WILL
11 BE THE ONLY JUDGE IN CIVIL AND HAVE BEEN SO FOR THE PAST
12 THREE YEARS WHO HANDLES JURY TRIALS. SO IF I'M EVER IN A
13 JURY TRIAL, THEN THAT REALLY TAKES ME OUT OF COMMISSION
14 IN RELATIONSHIP TO THE CONSISTENT HANDLING OR MONITORING
15 THAT ONE MIGHT REQUIRE IF FOLKS START FILING RANDOM
16 MOTIONS EVERYWHERE. I REALLY WANT THAT TYPE OF ISSUE AND
17 DISCOVERY ISSUES COORDINATED THROUGH A SPECIAL MASTER.
18 SO I'LL JUST SAY THAT FOR WHAT IT'S WORTH RIGHT NOW. AND
19 I'M TELLING THE CLERK'S OFFICE WE'RE NOT SETTING MOTIONS
20 RIGHT NOW. WE'RE IN THE WALK-BEFORE-WE-RUN STAGE.

21 I'M WILLING TO SET A FURTHER CMC. IF YOU GET
22 THIS GOING RELATIVELY QUICKLY, IF WE HAD A FURTHER CMC
23 SHORTLY AFTER THANKSGIVING, TRY TO KEEP THIS ON A TWO --
24 THAT WOULD BE ABOUT 75 TO 80 DAYS OUT. YOU SHOULD HAVE A
25 RESPONSE FROM THEM BY THEN, AND YOU SHOULD HAVE AN
26 OPPORTUNITY TO MEET AND CONFER REGARDING HOW YOU WANT TO
27 PROCEED BY THEN. I SHOULD HAVE A RESPONSE BY THEN
28 BECAUSE THEY SEND DIRECT NOTICE TO THE COURT, TO THE

1 PRESIDING JUDGE. IF WE SET IT OUT FOR EARLY DECEMBER FOR
2 FURTHER CMC, I WOULD APPRECIATE CMC STATEMENTS AS TO THE
3 PRESENT STATUS. BUT IF WE SET IT SAY -- HOLD ON -- FOR
4 DECEMBER 15TH, FRIDAY. I'LL TRY TO MAKE SURE I DON'T
5 HAVE MUCH SET. INITIALLY, WE HAD THE CMC SET ON A DATE
6 WHERE I HAD NOTHING ELSE SET BECAUSE I WANTED TO PROTECT
7 IT FOR THIS. WHEN THE MOTION GOT SET, THEY JUST PICKED A
8 DATE IN THE CLERK'S OFFICE, AND WE HAD OTHER MATTERS SET.
9 THAT'S WHY WE HAD TO WAIT. I'LL TRY TO CLEAR AS MUCH AS
10 I POSSIBLY CAN FOR THE 15TH, DECEMBER 15TH, AT 8:30, IN
11 DEPARTMENT 5 FOR THE FURTHER CMC. PLEASE PROVIDE A
12 STATEMENT BEFORE THEN.

13 I DO WANT TO TALK ABOUT THE SOTO MATTER. AND
14 IS THERE ANYTHING ELSE THAT FOLKS WANT TO DISCUSS ON ANY
15 OTHER ISSUE OTHER THAN THE SOTO MATTER? BUT I WILL BE
16 DISCUSSING THAT A BIT IN TERMS OF FACT THAT THERE ARE
17 DIFFERENT THEORIES OF RECOVERY CAUSES OF ACTION IN SOTO
18 THEN THERE ARE IN THE BALANCE OF THESE CASES.

19 ANYTHING ELSE THAT FOLKS WANT TO DISCUSS?

20 MS. FUCHS: I JUST WANT TO MAKE ONE POINT.
21 THIS IS ANYA FUCHS.

22 I BELIEVE THE RULES OF COURT GIVE US 30 DAYS
23 FROM THE DATE THE MOTION FOR PERMISSION IS GRANTED, BUT I
24 FEEL CONFIDENT I CAN DO IT SOONER THAN THAT. AND I
25 BELIEVE THERE IS ALSO A RULE OF COURT THAT SAYS THEY HAVE
26 TO ASSIGN A MOTION JUDGE WITH 45 DAYS.

27 THE COURT: RIGHT. AGAIN, I'LL BE HONEST WITH
28 YOU, I DON'T HAVE A LOT OF EXPERIENCE WITH THIS

1 COORDINATION PROCESS THROUGH THE JUDICIAL COUNCIL, BUT WE
2 HAPPEN TO HAVE A DIFFERENT CASE. SO I LOOKED IT UP TO
3 SEE HOW THE TIMING WORKED ON IT. THE TIMING DIDN'T WORRY
4 ME AS MUCH AS I THOUGHT IT MIGHT. SO I THINK THEY
5 RESPOND PRETTY QUICKLY IN THAT REGARD.

6 ANYTHING ELSE THAT ANYONE WANTS TO OFFER OTHER
7 THAN REGARDING THE SOTO MATTER?

8 OKAY. MR. OLSON IS TAKING A GOOD FAITH
9 POSITION THAT "I'M BEING BROUGHT FORWARD WITH 100 OTHER
10 FOLKS, AND HIS CASE HAS A DIFFERENT THEORY OF RECOVERY OR
11 THEORIES OF RECOVERY." THE DEFENSE POSITION IS THAT
12 THERE IS GOING TO BE SOME LEVEL OF OVERLAP FROM A
13 DISCOVERY PERSPECTIVE.

14 LET ME INQUIRE OF MR. OLSON. WHAT DID YOU WANT
15 THE COURT TO DO?

16 MR. OLSON: I WOULD APPRECIATE IF THE COURT
17 LIFTED THE STAY ON THIS CASE SO WE CAN PROCEED FORWARD.

18 WE HAVE DISCOVERY. THE COURT PREVIOUSLY
19 ORDERED US TO MEET AND CONFER ON THAT. FUTURE MOTION
20 SUBMITTED A CASE MANAGEMENT STATEMENT THAT WE GOT
21 YESTERDAY THAT WE THINK MISREPRESENTED THE STATUS OF
22 THESE MEET-AND-CONFER EFFORTS, BUT WE HAVE NOT SEEN
23 ANYTHING THAT WE THINK WOULD JUSTIFY COORDINATION. WE
24 DON'T KNOW WHAT LEGAL STANDARD WOULD BE APPLIED TO
25 WHETHER WE SHOULD BE COORDINATED OR NOT.

26 WE HAVE -- YOU KNOW, WE FILED THIS CASE THREE
27 YEARS AGO. WE SENT DISCOVERY MAYBE 18 MONTHS AGO. WE
28 HAVE YET TO RECEIVE A SINGLE DOCUMENT. THEIR POSITION OF

1 THEM IS "THE CASE IS STAYED. YOU'RE NOT GETTING
2 ANYTHING."

3 SO WE NEED THIS CASE TO MOVE FORWARD. WE HAVE
4 LESS THAN TWO YEARS. IT'S A PROPOSED CLASS ACTION. SO
5 THERE IS GOING TO BE A LOT OF LEGWORK AFTER WE DO
6 DISCOVERY AS WELL. AND I'M VERY CONCERNED THAT WITH LESS
7 THAN TWO YEARS WE CAN DO THIS. IF WE'RE RELYING ON THE
8 OTHER SIDE TO STIPULATE TO ALLOW THIS CASE TO GO LONGER
9 THAN FIVE YEARS, I'M NOT AS HOPEFUL OF THAT AS WELL. WE
10 NEED THIS CASE BROUGHT TO JUSTICE. IT CONCERNS A LOT OF
11 ILLEGAL PRACTICES THAT THEY'RE ALLOWED TO CONTINUE
12 OPERATING BECAUSE OF THE DELAYS.

13 THE COURT: I MUST ADMIT THERE IS A CERTAIN
14 IRONY WITH THIS BECAUSE I WENT BACK AND READ THE
15 COMPLAINT, AND I FOUND YOUR COMPLAINT AND THEORIES OF
16 RECOVERY MORE COMPLEX THAN THE OTHERS. FROM THAT
17 PERSPECTIVE, IT WAS IRONIC. I UNDERSTAND THE POSITION
18 YOU'RE IN.

19 DEFENSE'S RESPONSE, PLEASE?

20 UNIDENTIFIED SPEAKER: WELL, OUR POSITION IS
21 THEY SHOULD RESPOND TO OUR PROPOSAL AS TO WHAT CAN BE
22 COORDINATED AND WHAT CANNOT. WE ARE TRYING TO AVOID
23 GOING DOWN TWO TRACKS IN DISCOVERY. IT'S BEEN A COUPLE
24 MONTHS WE'VE BEEN WAITING FOR A RESPONSE. I THINK A
25 RESPONSE TO OUR PROPOSAL WOULD MOVE THE BALL FORWARD.

26 THE COURT: WHAT I CAN DO IS THIS. WE HAVE A
27 PROCESS CALLED AN INFORMAL DISCOVERY CONFERENCE, AN IDC,
28 WHERE THE COURT MEETS WITH THE ATTORNEYS. I DON'T ISSUE

1 ORDERS BASED ON IT, BUT I DISCUSS THE STATUS OF DISCOVERY
2 AND WHAT CAN BE DONE TO MOVE THINGS FORWARD.

3 IF COUNSEL FOR DEFENSE AND MR. OLSON WOULD LIKE
4 TO HAVE AN INFORMAL DISCOVERY CONFERENCE AS TO THOSE
5 ISSUES, I'M HAPPY TO DO THAT TO TRY TO MOVE IT OFF DEAD
6 CENTER.

7 I MEAN, BASICALLY I SET THOSE IN THE MORNING.
8 I SET THEM AT 8:30. NORMALLY, I CALL EVERY OTHER MATTER
9 FIRST, AND SO IT ENDS UP GOING 10:00 TO 9:00 OR
10 9 O'CLOCK. AGAIN, IT'S NOT FOR THE PURPOSE OF ME ISSUING
11 ORDERS, BUT IT'S MORE TO TRY TO EFFECTUATE SOME LEVEL OF
12 AGREEMENT. FOLKS USUALLY WILL PROVIDE A SHORT BRIEF
13 BEFOREHAND TO THE COURT AS TO THE STATUS OF DISCOVERY AND
14 WHAT THEY WANT TO SEE ISSUED BY THE COURT.

15 I'M JUST ROLLING THAT OUT AS AN OPTION TO SEE.

16 MR. OLSON: PLAINTIFF WOULD APPRECIATE THAT
17 SINCERELY.

18 UNIDENTIFIED SPEAKER: I THINK THAT MAKES
19 SENSE, AND I'M WONDERING IF WE SHOULD SORT OF REDO A CMC
20 WITH THIS MATTER ONLY, BUT I THINK THERE IS ALSO A MOTION
21 FOR A STAY INDEPENDENT OF ALL THIS STUFF THAT'S ON FILE
22 AS WELL.

23 THE COURT: OH, IS THERE? I'M NOT AWARE OF
24 THAT. THERE'S A SEPARATE MOTION?

25 UNIDENTIFIED SPEAKER: I COULD BE WRONG.

26 THE COURT: THERE WAS AN EX PARTE. IS THAT
27 WHAT YOU'RE TALKING ABOUT?

28 MR. OLSON: I CAN EXPLAIN. SO ORIGINALLY,

1 THERE WERE TWO SEPARATE MOTIONS FILED BY FUTURE MOTION -
2 ONE TO THE PERSONAL INJURY ACTIONS REQUESTING THE STAY
3 AND COORDINATION, AND THEN ONE SPECIFICALLY TRYING TO
4 STAY THIS CASE PENDING A FEDERAL CASE. AT THE TIME, WE
5 ASKED THEM SPECIFICALLY. WE SAID, "HEY, ARE YOU TRYING
6 TO MAKE US PART OF THE OTHER COORDINATION PROCEEDING?"
7 THEY SAID, "NO. WE CAN'T DO THAT BECAUSE THERE IS NO
8 COMMON QUESTIONS OF LAW AND FACT, BUT WE WANT YOU STAYED
9 PURSUANT TO THIS OTHER FEDERAL ACTION."

10 AT THE HEARING, THE COURT VACATED THAT HEARING,
11 AND WE GOT SWEEPED UP INTO THIS COORDINATION PROCEEDING.
12 AND WE'VE BEEN TRYING TO GET OUT EVER SINCE.

13 SO FUTURE MOTION'S POSITION AS TAKEN IN E-MAILS
14 IS IF THE JUDGE ISN'T GOING TO COORDINATE US, THEN WE ARE
15 GOING TO RELY ON THE STAY PENDING THE OUTCOME OF THE
16 FEDERAL CASE. THE PARTIES ALREADY BRIEFED THAT.

17 SO THAT'S WHY WE WE'RE HERE. IT WAS SORT OF
18 THIS DUAL TRACK, AND THEN WE GOT PUT ON THE OTHER TRACK
19 IN FRONT OF THE TRAIN IT FELT LIKE. AND SO IF THE COURT
20 IS WILLING TO HEAR THAT MOTION, IT FEELS LIKE WE AREN'T
21 STAYED ANY LONGER.

22 THE COURT: YEAH. WHAT MOTION ARE YOU TALKING
23 ABOUT?

24 MR. OLSON: IT WAS FILED IN DECEMBER. IT WAS A
25 MOTION TO STAY PENDING THE OUTCOME OF THE LOWE MATTER.
26 THIS WAS FILED BY FUTURE MOTION. IT WAS THEIR INTENT TO
27 STAY US PENDING THAT. WHAT HAPPENED WAS THE COURT ON ITS
28 OWN VOLITION PUT OUR CASE IN WITH THE OTHER PERSONAL

1 INJURY MATTERS.

2 THE COURT: I'M SURE THAT'S WHAT HAPPENED.

3 MR. OLSON: I TRIED TO RAISE IT AT THE OTHER
4 CMC. AND SO THAT'S HOW WE GOT HERE. SO THERE IS A
5 PENDING MOTION THAT'S BEEN FULLY BRIEFED THAT HAS NOT
6 BEEN HEARD BY THE COURT. WE THINK IT'S WITHOUT MERIT FOR
7 THE REASONS WE'VE GIVEN.

8 I THINK SETTING THE INFORMAL DISCOVERY HEARING
9 WOULD LET US GO THAT WAY AS WELL.

10 THE COURT: I WILL REPRESENT I DIDN'T GO BACK
11 TO A DECEMBER MOTION IN PREPARATION FOR TODAY.

12 I'M WILLING TO SET AN INFORMAL DISCOVERY
13 CONFERENCE WITHIN THE NEXT 30 DAYS TO TRY TO GET THIS
14 ISSUE OFF CENTER. I MEAN, AGAIN, LOOKING AT MR. OLSON'S
15 COMPLAINT, I THINK IT'S MORE COMPLEX THAN THE OTHER ONES.
16 BUT I DON'T KNOW HOW YOU TAKE HIS COMPLAINT, WHICH LOOKS
17 LIKE A SQUARE PEG, AND TRY TO RAM IT INTO THE ROUND HOLE
18 OF THIS LITIGATION. THE CAUSES OF ACTION AREN'T THE
19 SAME. IT'S A COMPLETELY DIFFERENT THEORY OF RECOVERY.

20 IF THE POSITION OF THE DEFENSE IS THAT THEY
21 DON'T WANT TO HAVE THE SOTO CASE ON A SEPARATE TRACK
22 BECAUSE YOU FEEL IN GOOD FAITH THAT THERE IS SOME OVERLAP
23 IN DISCOVERY THAT IS GOING TO IMPACT THE EFFICIENCY OF
24 THIS MATTER, I'LL ACCEPT YOUR ASSERTION IN GOOD FAITH,
25 AND LET'S JUST DISCUSS IT. OKAY?

26 UNIDENTIFIED SPEAKER: YES, YOUR HONOR.

27 WHAT WOULD YOU LIKE US TO DO WITH THE PENDING
28 MOTION TO STAY THAT'S UNRELATED TO CONSOLIDATION?

1 THE COURT: THE PENDING MOTION TO STAY THAT WAS
2 FILED BACK IN DECEMBER?

3 UNIDENTIFIED SPEAKER: IT'S STILL RIPE. THE
4 ARGUMENTS ARE STILL THERE. NOTHING HAS CHANGED THAT
5 WOULD IMPACT, YOU KNOW, THE REASON WE WOULD WANT THE
6 STAY.

7 THE COURT: OKAY. LET ME JUST MAKE A NOTE THAT
8 I WILL GO BACK AND READ THAT MOTION, AND I'LL READ
9 MR. OLSON'S OPPOSITION; AND FOCUSING STRICTLY AND SOLELY
10 ON THE SOTO MATTER, I'LL TAKE THAT INTO ACCOUNT WHEN WE
11 HAVE OUR DISCOVERY CONFERENCE. ALL RIGHT?

12 I'M NOT GOING TO PUT IT BACK ON CALENDAR OR
13 ANYTHING. I DON'T THINK THAT IS NECESSARY. BUT AT LEAST
14 I CAN SEE WHAT FOLKS ARE ASSERTING AT THIS POINT AS TO
15 WHY IT SHOULD REMAIN HERE OR NOT REMAIN HERE OR AT LEAST
16 HAVE A STAY PLACED ON MR. SOTO BEING ABLE TO DO WHAT HE
17 WOULD LIKE TO DO.

18 AND SO IF WE HAD AN INFORMAL DISCOVERY
19 CONFERENCE, I NORMALLY LIKE TO SET ASIDE ABOUT 30 TO
20 45 MINUTES FOR THOSE. WHAT DAY WOULD YOU LIKE,
21 MR. OLSON?

22 MR. OLSON: I HAVE A VERY AVAILABLE SCHEDULE.
23 I'M LOOKING AT IT RIGHT NOW. IF FRIDAYS WORK, SEPTEMBER
24 29TH WORKS.

25 THE COURT: SEPTEMBER 29TH, OKAY.

26 SO SEPTEMBER 29TH AT 8:30. IF YOU WANT TO
27 PROVIDE A SHORT STATUS REPORT AS TO THESE ISSUES, THAT IS
28 FINE. PROVIDE IT AND EXCHANGE IT A WEEK BEFOREHAND.

1 WE'LL FOCUS STRICTLY AND SOLELY ON THIS ISSUE OF WHETHER
2 MR. SOTO'S CASE SHOULD BE SEGREGATED IN LIGHT OF
3 MR. OLSON FEELING THAT HE'S WORKING ON DIFFERENT THEORIES
4 OF RECOVERY VERSUS FUTURE MOTION FEELING THAT THERE IS
5 SOMEHOW GOING TO BE SOME OVERLAP IN DISCOVERY THAT WILL
6 MAKE COORDINATION MORE COMPLEX.

7 SO WE'LL TALK IT THROUGH AND JUST SEE WHAT WE
8 CAN DO. ALL RIGHT? SO SEPTEMBER 29TH. AND I'LL READ
9 THE MOTIONS AND RESPONSE IN THE INTERIM. OKAY?

10 MR. OLSON: ONE OTHER WRINKLE IS THAT IS THE
11 COURT JUST ASSUMING THAT THE CASE IS STAYED UNTIL THEN?
12 WE HAVE DISCOVERY DEADLINES THAT I DON'T WANT TO LAPSE.
13 SO IF THE COURT IS FINE --

14 THE COURT: IT IS. IT IS CONSIDERED STAYED.

15 ALL RIGHT. THANK YOU. ANYTHING ELSE FROM
16 ANYONE'S PERSPECTIVE?

17 WE'LL SEE. I HOPE I GET TO CONTINUE TO WORK
18 WITH YOU FOLKS FOR SIX TO SEVEN MORE MONTHS AT LEAST, BUT
19 WE'LL SEE WHAT HAPPENS WITH THE POWERS THAT BE AT THE
20 JUDICIAL COUNCIL.

21 THANK YOU VERY MUCH FOR YOUR PATIENCE AND TIME
22 ON THIS. I APPRECIATE IT.

23 (PROCEEDINGS ADJOURNED.)

24

25

26

27

28

1 STATE OF CALIFORNIA)
)
2 COUNTY OF SANTA CRUZ)

3

4

REPORTER'S CERTIFICATE

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6

7

I, MICHELLE GRACIANO COOPER, CSR 13572,

8

REPORTER PRO TEM FOR THE SUPERIOR COURT OF THE STATE OF

9

CALIFORNIA, FOR THE COUNTY OF SANTA CRUZ, DO HEREBY

10

CERTIFY THAT THE FOREGOING PAGES COMPRISE A FULL, TRUE,

11

AND CORRECT TRANSCRIPTION OF MY SHORTHAND NOTES THEREOF,

12

AND A FULL, TRUE, AND CORRECT STATEMENT OF THE

13

PROCEEDINGS HAD IN THE ABOVE-ENTITLED.

14

15

DATED THIS 21ST OF SEPTEMBER 2023

16

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MICHELLE GRACIANO COOPER, CSR NO. 13572

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EXHIBIT 4

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2 STUART B. LEWIS, ESQ. (SBN 321824)
3 ANYA FUCHS, ESQ. (SBN 215105)
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14 ROBERT W. COWAN (*Pro Hac Vice* anticipated)
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21 rcowan@bchlaw.com
22 Onewheel@bchlaw.com

23 Attorneys for Petitioner MYLES ALLINGHAM

24 **JUDICIAL COUNCIL OF CALIFORNIA**
25 **CHAIR OF THE JUDICIAL COUNCIL**

26 MYLES ALLINGHAM,
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28 Plaintiff,
29
30 v.
31 FUTURE MOTION, INC., and DOES 1-100,
32
33 Defendants.

Judicial Council Coordination Proceeding

JCCP No. _____

Santa Cruz County Superior Court
Case No.: 22CV00518
Filing Date: 3-11-2022

PETITION FOR COORDINATION

Cal. Civ. Proc. §§ 404, et seq.
Cal. Rule of Court, Rule 3.501, et seq.

34 JAMES APPLGATE,
35
36 Plaintiff,
37
38 v.
39 FUTURE MOTION, INC., and DOES 1-100,
40
41 Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02067
Filing Date: 9-26-2022

1 JOHN ARCHER,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01018
Filing Date: 5-20-2022

JASON ARENS,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV00520
Filing Date: 3-11-2022

BRADFORD ASHBY,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01417
Filing Date: 6-16-2023

GARRETT BACKSTROM,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01644
Filing Date: 7-13-2023

AUSTIN BAKER,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01706
Filing Date: 7-19-2023

RYAN BANKS,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01707
Filing Date: 7-19-2023

1 MATTHEW BENNER,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01432
Filing Date: 6-16-2023

DOUGLAS BILODEAU,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02263
Filing Date: 9-21-2023

CODY BIRCH,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02737
Filing Date: 12-14-2022

WESLEY BLAINE,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02264
Filing Date: 9-21-2023

BRIAN BLIETZ,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Clara County Superior Court
Case No.: 21CV389464
Filing Date: 12-8-2021

DREW BLIMKA,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02519
Filing Date: 11-14-2022

1 JESSE BLODGETT,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02054
Filing Date: 9-22-2022

TYLER BRADSHAW,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV00423
Filing Date: 2-28-2022

SPENCER BRINGHURST,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 21CV03080
Filing Date: 12-28-2021

MICHAEL BRISKMAN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Los Angeles County Superior Court
Case No.: 22STCV31420
Filing Date: 9-26-2022

ELLEN BROERS and JEREMY RICKMAN,
Plaintiffs,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

San Diego County Superior Court
Case No.: 37-2021-00051589
Filing Date: 12-7-2021

ROBERT BRUNO,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01418
Filing Date: 6-16-2023

1 JAMES BURNSTEIN,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV00789
Filing Date: 4-19-2022

LAUREN CASTRO,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No: 23CV02057
Filing Date: 8-28-2023

MARTIN CERPERLY,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02055
Filing Date: 9-22-2022

ELIAS CHOUSLEB,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01420
Filing Date: 6-16-2023

DOUGLAS CHUTE,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02265
Filing Date: 9-21-2023

RAYMOND COBURN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02068
Filing Date: 9-26-2022

1 GRANT CONFER,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02122
Filing Date: 9-6-2023

SHA COHEN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 21CV01879
Filing Date: 8-4-2021

STEVEN COLLMANN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 21CV00050
Filing Date: 1-8-2021

FRANK CONGINE,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

San Diego County Superior Court
Case No.: 37-2021-00032113- CU-PL-CTL
Filing Date: 7-28-2021

TERESA CONLAN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV00913
Filing Date: 5-6-2022

NICHOLAS CONTE,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02140
Filing Date: 9-29-2022

1 ROBERT CROSS,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01410
Filing Date: 6-16-2023

GABRIELA CURTIS,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01453
Filing Date: 7-8-2022

EVELYN CUSHING,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02069
Filing Date: 9-26-2022

JUSTIN DEYO,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01454
Filing Date: 7-8-2022

FRANCISCO DIAZ,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02266
Filing Date: 9-21-2023

GABRIEL DOTTL,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02267
Filing Date: 9-21-2023

1 TYLER D’SPAIN,
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Plaintiff,

v.

FUTURE MOTION, INC., and DOES 1-100,
 Defendants.

Santa Cruz County Superior Court
 Case No.: 22CV01935
 Filing Date: 9-8-2022

NATHAN DOUGLAS,
 Plaintiff,
 v.
 FUTURE MOTION, INC., and DOES 1-100,
 Defendants.

Santa Cruz County Superior Court
 Case No.: 23CV01422
 Filing Date: 6-16-2023

GEOFFREY DURANT,
 Plaintiff,
 v.
 FUTURE MOTION, INC., and DOES 1-100,
 Defendants.

Santa Cruz County Superior Court
 Case No.: 23CV01423
 Filing Date: 6-16-2023

GEOFFREY ERWIN,
 Plaintiff,
 v.
 FUTURE MOTION, INC., and DOES 1-100,
 Defendants.

Nevada County Superior Court
 Case No.: CU0000593
 Filing Date: 2-27-2023

SONDR ENGVALDSEN,
 Plaintiff,
 v.
 FUTURE MOTION, INC., and DOES 1-100,
 Defendants.

Santa Cruz County Superior Court
 Case No.: 21CV02808
 Filing Date: 11-17-2021

MOHAMMAD ETMINAN,
 Plaintiff,
 v.
 FUTURE MOTION, INC., and DOES 1-100,
 Defendants.

Santa Cruz County Superior Court
 Case No.: 22CV02056
 Filing Date: 9-22-2022

1 AMIR EVAN,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02058
Filing Date: 9-22-2022

MAXX EVAN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01433
Filing Date: 7-6-2022

TYLOR FARLEY,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01430
Filing Date: 6-16-2023

SCOTT FINE,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01727
Filing Date: 8-12-2022

JONAH FISHER,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01934
Filing Date: 9-8-2022

JOSEPH FREED,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01431
Filing Date: 6-16-2023

1 ANTHONY SCOTT GANDOLF,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01334
Filing Date: 6-21-2022

REMINGTON GASPARD,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02070
Filing Date: 9-26-2022

SAMUEL GILLILAN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Clara County Superior Court
Case No.: 23CV414331
Filing Date: 4-7-2023

JOHN GODWIN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV00828
Filing Date: 4-25-2022

LUIS GOMEZ,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Orange County Superior Court
Case No.: 30-2022-01266437- CU-PO-CXC
Filing Date: 6-23-2022

JAMES GMACHOWSKI,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01435
Filing Date: 6-16-2023

1 KYLE GREEN,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02819
Filing Date: 12-23-2022

ANDREW GUNDERSON,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02268
Filing Date: 9-21-2023

RYAN HAGARTY,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Clara County Superior Court
Case No.: 23CV418550
Filing Date: 6-29-2023

PHILIPPE HAIBLE,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01246
Filing Date: 6-13-2022

ANDREW HARRISON,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01342
Filing Date: 6-9-2023

CLAYTON HARRISON,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01281
Filing Date: 6-15-2022

1 LOREN HATFIELD,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01409
Filing Date: 6-16-2023

SPENCER HAYS,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01113
Filing Date: 5-31-2022

BOWEN HENDY,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01436
Filing Date: 6-16-2023

WILLIAM HOLLEMAN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV00693
Filing Date: 4-6-2022

SETH HOLSTER,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02073
Filing Date: 9-26-2022

TREVOR HUNT,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01305
Filing Date: 6-17-2022

1 COREY JAGGI,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV00255
Filing Date: 2-4-2022

HELEN JANG-STERETT, et al.,
Plaintiffs,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 21CV01296
Filing Date: 5-20-2021

FREDRIK JENSSEN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02313
Filing Date: 9-26-2023

JARED KATZENBARGER,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV00768
Filing Date: 4-18-2022

MAURICE KIELY,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02269
Filing Date: 9-21-2023

ROBERT KOSHA,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02059
Filing Date: 9-22-2022

1 DANIEL KROHN,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02648
Filing Date: 11-30-2022

ALEX LAFOE,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV00998
Filing Date: 5-18-2022

CURTIS LAHTI,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

San Diego County Superior Court
Case No.: 37-2023-00040922-CU-PO-CTL
Filing Date: 9-20-2023

DAVID LARRO,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01231
Filing Date: 6-10-2022

LONDON LAZAROV, et al.,
Plaintiffs,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01809
Filing Date: 8-22-2022

JAMES LIM and FAITH HONG,
Plaintiffs,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02061
Filing Date: 8-28-2023

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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02220
Filing Date: 9-18-2023

VICTOR LISLE,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02061
Filing Date: 9-22-2022

JOSHUA LITTON,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Clara County Superior Court
Case No: 23CV418519
Filing Date: 6-9-2023

TIMOTHY LOGIOVINO,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01347
Filing Date: 6-21-2022

THOMAS LOWELL and WESLEY GRIFFIN,
Plaintiffs,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02229
Filing Date: 10-11-2022

MATTHEW MATTERN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02089
Filing Date: 8-30-2023

1 THOMAS MATTHYS, et al,
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Plaintiffs,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01865
Filing Date: 8-4-2023

CHRISTOPHER MATTSON,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01325
Filing Date: 6-21-2022

SCOTT McGOWAN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02071
Filing Date: 9-26-2022

MELVYN MEDINA,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

San Diego County Superior Court
Case No.: 37-2022-00026878-CU-PO-CTL
Filing Date: 7-8-2022

TONY MILES,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 21CV02425
Filing Date: 10-4-2021

JEREMY MORAN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 21CV01492
Filing Date: 6-15-2021

1 ASHLEY MURPHY, et al.,
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Plaintiffs,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01883
Filing Date: 9-1-2022

SEAN MURPHY,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV00790
Filing Date: 4-19-2022

MARIANO NIETO GARCIA,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV00794
Filing Date: 4-19-2022

CHAD NORRIS,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Los Angeles County Superior Court
Case No.: 21STCV07171
Filing Date: 2-23-2021

STEVEN OLSON,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01437
Filing Date: 6-16-2023

BILL OSBORNE,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 21CV01824
Filing Date: 7-28-2021

1 DEVIN OVERDORF,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02270
Filing Date: 9-21-2023

JON PATTI,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01728
Filing Date: 8-12-2022

BONNIE PLES, et al.,
Plaintiffs,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01714
Filing Date: 7-20-2023

JAMES RAPOSA,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 21CV03030
Filing Date: 12-17-2021

TODD REED,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02060
Filing Date: 8-28-2023

TED ROBBINS,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Clara County Superior Court
Case No.: 23CV413832
Filing Date: 3-30-2023

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JARED ROBERTS,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01438
Filing Date: 6-16-2023

JOSHUA ROSATO,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01282
Filing Date: 6-2-2023

ALBERT RUBIN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 21CV03081
Filing Date: 12-28-2021

MATTHEW SALVO,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01913
Filing Date: 8-10-2023

SHAWN SELLERS,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01416
Filing Date: 6-16-2023

MICHAEL SHAFER,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01017
Filing Date: 5-20-2022

1 JENNIFER SHIMER,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01996
Filing Date: 8-18-2023

COLLIN SILL,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Contra Costa County Superior Court
Case No.: C23-02385
Filing Date: 9-21-2023

CRAIG SULLIVAN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01408
Filing Date: 6-16-2023

JAMES SWIHART,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01943
Filing Date: 8-14-2023

NATHAN TATUM,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01415
Filing Date: 6-16-2023

TALON TORNETTA-KLINE,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02072
Filing Date: 9-26-2022

1 JONATHAN VAN WICKLE,
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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01985
Filing Date: 9-15-2022

ROBERT VANDEN BROECKE,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01867
Filing Date: 8-4-2023

EDGAR VANEGAS,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01933
Filing Date: 9-8-2022

JEFFREY S. VAZQUEZ,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02064
Filing Date: 8-28-2023

PIRIYA VONGMANOBKUN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02062
Filing Date: 9-22-2022

GARRY WARBLE,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02074
Filing Date: 9-26-2022

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Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV02090
Filing Date: 8-30-2023

CHRISTOPHER WARREN,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01987
Filing Date: 9-15-2022

GANTRY WILSON,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 23CV01911
Filing Date: 8-10-2023

JAMISON WILSON,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01160
Filing Date: 6-3-2022

ZACHARY WOOD,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV02063
Filing Date: 9-22-2022

KYLE YOUNG,
Plaintiff,
v.
FUTURE MOTION, INC., and DOES 1-100,
Defendants.

Santa Cruz County Superior Court
Case No.: 22CV01623
Filing Date: 7-28-2022

standards for coordination pursuant to Code of Civil Procedure §§ 404 and 404.1 and Rules 3.501 et seq. (and thus, inherently Rules 3.400 *et seq.* via Rule 3.502).

More specifically, that Order reflects Judge Volkmann’s findings that: (1) the Included Actions share common questions of fact and law that predominate and are significant to the litigation; (2) coordination pursuant to section 404 will promote the convenience of the parties, witnesses, and counsel, as well as avoid duplicative and inconsistent rulings; and (3) the Included Actions are collectively “complex” as defined by Rule 3.400 *et seq.* given that the large number of included actions require exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the cases, keep costs reasonable, and promote effective decision making by the court, the parties, and counsel. (*See*, “**Exhibit A**” to the Fuchs Decl.)

The Included Actions

Pursuant to Rule 3.521(a)(2) & (4), the 131 Included Actions are identified by case title, case number, filing date, venue / title of the court in which the action is pending, and legal counsel of record, in a list attached as “**Exhibit B**” to the Fuchs Decl. The Included Actions, as of the date the Petition is submitted to the Chair of the Judicial Council, are pending in seven (7) different California counties.² A venue break-down of the 131 Included Actions, as of the date the Petition is submitted to the Chair of the Judicial Council, is as follows:

- One hundred seventeen (117) Included Actions in Santa Cruz County
- Five (5) Included Actions in Santa Clara County
- Two (2) Included Actions in Los Angeles County
- One (1) Included Action in Orange County
- One (1) Included Action in Nevada County
- Four (4) Included Actions in San Diego County

² Petitioner notes that as of the Petition’s submission date, 9 of the Included Actions now pending in Santa Cruz County were originally filed in other venues and thereafter transferred to Sant Cruz pursuant to a Code of Civil Procedure § 403 Order signed by Judge Volkmann on June 15, 2023. Petitioner also notes that, again, as of the Petion’s submission date, 10 of the Included Actions that were subject to said June 15th transfer Order remain pending in their originally filed venues (Santa Clara, Los Angeles, Orange, Nevada, and San Diego counties amongst them). The venue in which a given Included Action is pending as of the Petition’s submission date is the venue identified in the Petition. (A more detailed explanation of the procedural posture of some of the Included Actions is set forth in the concurrently filed supporting Memorandum of Points and Authorities.)

- One (1) Included Action in Contra Costa County

The Included Actions assert the same set of core product liability and failure to warn claims and theories of liability arising out of severe personal injuries sustained and arising from several manufacturing, design, and warning defects of a self-balancing, battery-powered, one-wheel electric transport device (often described as an electric skateboard): to wit, the “Onewheel” (of which there are a few different models).

The Included Actions predominately assert identical causes of action, including: (1) Negligence, (2) Strict Liability, (3) Failure to Warn, (4) Negligent Design, and (5) Negligent Recall/Retrofit. While all the Included Actions allege a Negligence and Strict Liability claim, less than one-third additionally plead violations of California Business & Professions Code § 17200 as well as violations of the California the Consumer Legal Remedies Act embodied in California Civil Code § 1750, et seq. The Included Actions seek the same relief in the form of monetary compensation for general damages, special damages, and punitive damages.

The physical injuries alleged in the Included Actions are severe, ranging from shattered and otherwise badly broken bones, dislocations, and deep lacerations, to concussions, skeletal fractures, brain bleeds, permanent brain damage, and death. The emotional injuries alleged in the Included Actions are profound, spanning from PTSD to chronic anxiety and fear of reinjuring oneself to debilitating depression about future endeavors and altered physical appearance.

The Defendants / Defense Counsel of Record

Future Motion, Inc. (“FM”) is a named Defendant in each of the Included Actions; less than half a dozen of the Included Actions additionally name Future Motion MFG, LLC, a related entity, as a co-Defendant. Two of the Included Actions name other additional entities that are alleged to be participants in the supply chain of the Onewheel at issue. The same law firm represents the named Defendants in each of the Included Actions in what appears to be a pseudo “national counsel” capacity, including the entities named in addition to FM.

That law firm is NILAN JOHNSON LEWIS PA located at 250 Marquette Avenue South, Suite 800 Minneapolis, Minnesota 55401; NILAN JOHNSON LEWIS PA has at least one California licensed attorney, Pablo Orozco, Esq. that is listed as counsel of record for FM in its employ. Other

1 NILAN JOHNSON LEWIS PA attorneys are permitted to appear in California *pro hac vice* in a few
2 of the Included Actions, specifically including in Petitioner Allingham’s action. The named
3 Defendant(s) in the Included Actions are also represented by several different sets of local counsel, all
4 of which are listed to the extent known in “**Exhibit B**” to the Fuchs Decl. Local counsel representing
5 FM in Petitioner Myles Allingham’s action is the LIVINGSTON LAW FIRM located at 1600 S. Main
6 Street in Walnut Creek, California 94596. In each of the Included Actions that FM filed and served an
7 Answer to the Complaint, FM pleaded the same defenses.

8 **The Plaintiffs / Plaintiffs’ Counsel of Record**

9 The plaintiffs named in 99 of the 131 Included Actions, including Petitioner Allingham’s
10 action, are co-represented by the law firms of Pearce Lewis LLP of San Francisco, California and co-
11 counsel Bailey Cowan Heckaman PLLC of Houston, Texas; the individual names of the attorneys
12 from those law firms that serve in that representative capacity, and the addresses of those law firms,
13 are reflected on the initial caption page of this pleading. That identifying information is also set forth
14 in “**Exhibit B**” to the Fuchs Declaration. The names and addresses of legal counsel representing the
15 plaintiffs in the other 31 Included Actions are likewise identified in that “**Exhibit B.**”

16 Pursuant to Rule 3.521(a)(3), Petitioner Allingham’s legal counsel of record represents in her
17 concurrently filed supporting Fuchs Declaration that as of the submission date of the Petition, service
18 of the summons and Complaint has been achieved in each and every of the 99 actions amongst the
19 Included Actions that are represented by Pearce Lewis LLP and co-counsel Bailey Cowan Heckaman
20 PLLC.

21 **The Included Actions Satisfy the Coordination Standards Specified in C.C.P. §§ 404 and 404.1**

22 As discussed with greater specificity via the accompanying Memorandum of Points and
23 Authorities and the concurrently filed Declaration of Petitioner’s attorney Anya Fuchs of Pearce
24 Lewis LLP (and Exhibits thereto), Petitioner, by and through his counsel, pursuant to Rule 3.521
25 identifies the below stated facts as those relied upon to show that the Included Actions satisfy the
26 coordination standards specified in Code of Civil Procedure §§ 404 and 404.1.

27 1. The Included Actions share several common questions of fact and law that predominate
28 and are significant to the litigation, and coordination will promote the convenience of the parties,

1 witnesses, and counsel as well as the ends of justice. Coordination under section 404 of the Code of
2 Civil Procedure will also avoid duplicative and inconsistent rulings.

3 a. Examples of shared common questions of law and fact that predominate include:
4 (1) whether the Onewheel boards have a defect (or, multiple defects); and (2)
5 whether that / those defect(s) are capable of producing a “nosedive” event or
6 otherwise ejecting the rider and causing injury. Petitioner’s counsel is hard
7 pressed to imagine two more critical shared common questions of law in product
8 defect actions other than the presence of defect and the element of general
9 causation. Additional examples include: (3) whether the Onewheel boards at issue
10 have a footpad sensor with a “dead zone;” (4) whether the Onewheel boards at
11 issue unilaterally shut-off while in motion; (5) whether the “pushback” feature of
12 the Onewheel boards provide a sufficient warning of anything to the rider; (6)
13 whether the injured riders / Plaintiffs were thrown from the Onewheel in an
14 inverted pendulum trajectory; (7) whether the Onewheel board “nosedived”
15 immediately before the rider was thrown from the Onewheel; (8) whether FM had
16 an ability to design the Onewheel boards to be less dangerous, in what way, and at
17 what monetary cost, but resolved nevertheless to not do so; and (9) whether, and
18 when, FM knew or should have known that the Onewheel boards posed inherent
19 risks to the health and safety of its riders and what, if anything, FM did or did not
20 do to warn riders of those risks and/or minimize or eliminate those risks.
21 Additional shared common questions of law and fact that predominate also
22 include those arising out of the named Defendants’ pleaded defenses.

23 b. The above are a mere sampling of the many shared common questions of law and
24 fact that predominate, many of which will involve laborious and time-consuming
25 expert analysis and testing in the fields of mechanical engineering and accident
26 reconstruction.

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1 c. The shared common questions of law and fact that are identified above are neither
2 trivial nor of minimal consequence to the Included Actions; quite to the contrary,
3 they are of utmost significance to the outcome of the litigation thereof.

4 2. Coordination will further the efficient use of and/or avoid the unnecessary duplication of
5 judicial resources, particularly with respect to the determination of time-consuming discovery disputes
6 and resulting law and motion arising from the parties' divergent perspectives pertaining to the
7 discoverability of FM's internal and third-party communications regarding the defects and dangers of
8 the Onewheel boards from third party entities as well as from riders of the boards, the source
9 code/technology of the Onewheel boards, documents produced in related personal injury actions, and
10 communications posted by riders on a since deleted or wiped clean online community forum
11 previously found on FM's website. Coordination will likewise serve to further the efficient use of
12 and/or avoid the unnecessary duplication of judicial resources with respect to the adjudication of
13 dispositive motions that are sure to involve many of the same or similar issues pertaining to defect and
14 causation (issues that will both necessitate significant expert testing, analysis, and testimony) as well
15 as when and what FM knew about the inherent dangers and defects of the Onewheel boards so as to
16 give rise to an award of punitive damages.

17 3. Coordination will further the convenience of the parties, witnesses, experts, and counsel;
18 streamlined discovery procedures, procedures for expert inspections of the Onewheel boards, and
19 stipulations regarding depositions of the Defendant(s) and its employee(s) will save said the litigants
20 significant time and money.

21 4. The Included Actions, collectively, are "complex" as that term is defined by Rules 3.502
22 and 3.400 et seq. As Judge Volkmann of the Santa Cruz Superior Court found in his September 21,
23 2023 Order granting Plaintiff permission to submit the Petition, the large number of Included Actions
24 require exceptional judicial management to avoid placing unnecessary burdens on the court or the
25 litigants and to expedite the cases, keep costs reasonable, and promote effective decision making by
26 the court, the parties, and counsel. (*See*, "Exhibit A" to the Fuchs Decl.; *see also*, Rules 3.400 and
27 3.502.)
28

1 5. Approximately 90% of the Included Actions are either at or extremely close to inception
2 and/or have minimally engaged in the written discovery process; the remaining approximately 10% of
3 the Included Actions have merely engaged in a preliminary round of written discovery. A handful of
4 Plaintiff depositions have been completed. A few depositions of FM’s corporate representative and
5 employees have been completed. Petitioner’s counsel is unaware of any of the Included Actions
6 having a trial date set in the near future.

7 6. Coordination will produce valuable streamlined processes with respect to written
8 discovery, depositions, dispositive motions, expert inspections and reports, and the like, all of which
9 will greatly reduce the time, labor, work product, and financial resources of all legal counsel involved
10 and, critically, will surely serve to move the litigation of the Included Actions in a more swift,
11 uniform and non-duplicative and thus productive pace that will absorb the labor and other resources of
12 one Judge and courtroom, instead of many.

13 7. Coordination will avoid the risk and disadvantages of duplicative and/or inconsistent
14 rulings pertaining to discovery matters—specifically, for example, whether FM is required to produce
15 internal and/or external communications regarding the safety of the Onewheel boards or documents
16 reflecting the source code of the boards. Coordination will likewise avoid the risk and disadvantages
17 of inconsistent rulings, orders, and judgments with respect to critical issues such as the presence of
18 defect(s) and causation.

19 8. Absent coordination, over half a dozen (if not more) different California Superior Court
20 venues will decide essentially the same set of critical issues and may easily (and will perhaps likely)
21 render different rulings thereon, which will ultimately lead to further litigation, including at the
22 appellate level.

23 9. Coordination will secure efficient use of judicial facilities and labor such that it will allow
24 the venue with the location, calendar, availability, and other resources most able to absorb the cost of
25 adjudicating the significant number of herein identified Included Actions to most appropriately do so.
26 For reasons hereinafter stated, the litigants in the Included Actions, with the full support from the
27 current Presiding Judge of the Santa Cruz Superior Court, respectfully submit that the most
28

1 appropriate venue for the JCCP of the Included Actions (and the California Onewheel litigation in
2 general) to proceed is Santa Cruz County.

3 10. Coordination will increase the possibility of settlement and non-judicial resolution of the
4 disputed matters. A significant portion of the Included Actions endeavored to mediate to resolution
5 and were unsuccessful.

6 **Santa Cruz County is the Most Appropriate Venue for the JCCP to Proceed**

7 Should the coordination motion Judge assigned by the Judicial Council to determine if
8 coordination of the Included Actions is appropriate pursuant to section 404 *et seq.* of the Code of Civil
9 Procedure is appropriate grants the Petition, Petitioner advocates for the JCCP to be assigned to Santa
10 Cruz County Superior Court. (*See*, Rules 3.530 and 3.540; *See also*, generally, C.C.P. §§ 404 and
11 404.3). FM's counsel shares that perspective. The Presiding Judge of the Santa Cruz Superior Court
12 has explicitly expressed a desire and willingness to serve as the assigned venue for the JCCP.

13 The majority of the Included Actions are currently pending in Santa Cruz County, and the
14 Presiding Judge of the Santa Cruz Superior Court has expressly stated his support and desire for Santa
15 Cruz County be the assigned venue for the JCCP of the California Onewheel litigation. The
16 September 21, 2023 Order issued by the Presiding Judge of the Santa Cruz Superior Court granting
17 Petitioner Allingham with permission to submit the Petition memorializes both the parties' and the
18 Santa Cruz Superior Court's support for Santa Cruz County to be assigned the California Onewheel
19 JCCP. A Santa Cruz assignment will serve the convenience of the parties, witnesses, and counsel as
20 well as the efficient utilization of judicial facilities and manpower.

21 **Hearing on the Petition: No Opposition is Anticipated**

22 It is Petitioner's counsel's understanding that counsel for Defendant FM has not expressed an
23 intention to oppose the request for coordination of the Included Actions under section 404 of the Code
24 of Civil Procedure and, furthermore, that defense counsel supports Petitioner's advocacy for the JCCP
25 of the California Onewheel litigation to be assigned to Santa Cruz County Superior Court. It is
26 Petitioner's counsel's understanding that FM's counsel has expressed its position that should they
27 resolve to respond to the Petition, they will do so pursuant to the briefing schedule required by the
28 Rules of Court. Also, to Petitioner's counsel's knowledge, no other party to any of the Included

1 Actions oppose the request for section 404 coordination and the proposed Santa Cruz assignment.
2 (See, October 2, 2023 letter from counsel for Petitioner to defense counsel, attached as “**Exhibit C**” to
3 the Fuchs Declaration (indicating Petitioner’s intention to submit the Petition on October 4th and
4 which invites defense counsel to communicate if FM has an intention to oppose the same, to which
5 defense counsel replied with a one sentence email indicating that if they resolved to respond to the
6 Petition, they would do so timely.)

7 Should, as is anticipated, no party to the Included Actions submit a written opposition to the
8 Petition within the time permitted by Rule 3.525, Petitioner requests that the Petition be granted
9 without a hearing.

10 Pursuant to Rule 3.527(b), if the coordination motion Judge is for some reason inclined to
11 deny the Petition, Petitioner anticipates that his attorney of record will receive notice of a hearing
12 thereon and at which she will appear.

13 Should any party submit a written opposition to the Petition, said party will request a hearing
14 date on the Petition at which counsel for Petitioner will appear pursuant to Rule 3.527(b).

15 In the event there is a hearing held on the Petition, Petitioner requests the site for that hearing
16 be in Santa Cruz County where the majority of the actions are pending and where legal counsel is
17 accustomed to appearing. (See, Rule 3.521(a)(8).)

18 **Interim Liaison Counsel**

19 Pursuant to Rule 3.506 of the California Rules of Court, Petitioner respectfully requests that
20 the coordination motion Judge appoint Anya Fuchs, Esq. and Timothy F. Pearce of Pearce Lewis LLP
21 to be *Interim* Plaintiffs’ Co-Liaison Counsel until a determination on coordination is made.

22 At the appropriate time after a determination on coordination is made, the attorneys of Pearce
23 Lewis LLP and Bailey Cowan Heckaman PLLC intend to file a request for appointment as Plaintiffs’
24 Co-Liaison Counsel within the JCCP.

25 **A Stay of the Included Actions is Requested**

26 Petitioner requests that the coordination motion Judge issue an Order causing an immediate
27 stay of the Included Actions pursuant to Code of Civil Procedure § 404.5 and Rule 3.515. A stay
28 Order of the Included Actions is both necessary and appropriate to effectuate and advance the

1 purposes of coordination as set forth above: to proceed with the discovery in an of the Included
2 Actions would be contrary to the goal of creating streamlined coordinated discovery procedures.

3 **Petitioner Shall Satisfy His Obligations Under Rules 3.522 and 3.523**

4 Petitioner intends to satisfy his obligations under Rules 3.522 and 3.523 of the California
5 Rules of Court pertaining to providing Notice of the submission of the Petition in each of the Included
6 Actions, and proof thereof to the Judicial Council, within the time allotted.

7
8 DATED: October 4, 2023

Respectfully Submitted,

9
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24 **Attorneys for Petitioner**

**BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT
LITIGATION**

**IN RE: FUTURE MOTION, INC.)
PRODUCTS LIABILITY LITIGATION)
)**

MDL DOCKET NO. 3087

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appearance, attachment of Amended Schedule of Actions and this Proof of Service was served via ECF on October 6, 2023, to the following:

Ron Bunnell, on behalf of the Estate of Carl Joseph Bunnell, Barclay Bunnell, individually, and Misty Odeen, as next friend and representative of minor Maxwell Bunnell v. Future Motion, Inc. (D. Colo. 1:22-cv-01220-CNS-KAS)

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Jared Reynolds-Mohler (aka Joseph Reynolds-Mohler) v. Future Motion, Inc. et al. (E.D.N.Y 1:22-cv-00354-RPK-TAM)

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Matthew L. McAllister v. Future Motion, Inc. also known as Onewheel (E.D. Tex. 4:23-cv-00205-SDJ-AGD)

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Keith Gregie v. Future Motion, Inc., a Delaware Corporation (N.D. Ill. 1:22-cv-05528)

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Jason Brown v. Future Motion, Inc. (N.D. Ill. 1:22-cv-04510)

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James Pate Gustafson v. Future Motion, Inc., et al. (N.D. Ill. 1:22-cv-02632)

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Ian Quincannon v. Future Motion, Inc. (M.D. Fla. 2:23-cv-00448-JLB-KCD)

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Kevin Roesler v. Future Motion, Inc. (M.D. Fla. 2:22-cv-00144-SPC-KCD)

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Kwynn Koop v. Future Motion, Inc. (M.D. Fla. 3:22-cv-00134-BJD-PDB)

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Schuyler Elliott v. Future Motion, Inc. (M.D. Fla. 3:23-cv-00789-BJD-LLL)

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Victor McNair v. Future Motion, Inc. (M.D. Fla. 3:22-cv-00329-MMH-LLL)

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Anh Truong v. Future Motion, Inc. (M.D. Fla. 6:23-cv-01596-RBD-EJK)

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Joel Thomas v. Future Motion, Inc. (M.D. Fla. 6:23-cv-01334-RBD-EJK)

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Ralph Nacca v. Future Motion, Inc. (M.D. Fla. 6:22-cv-00472-WWB-LHP)

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Christopher Delapaz v. Future Motion, Inc. (M.D. Fla. 8:23-cv-01512-MSS-AEP)

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Scott Patrick v. Future Motion, Inc. (M.D. Fla. 8:22-cv-01748-CEH-SPF)

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Shane Smith v. Future Motion, Inc. (M.D. Fla. 8:22-cv-00320-MSS-UAM)

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Jason Bailey v. Future Motion, Inc. (M.D. Tenn. 3:22-cv-00855)

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Brandon Greer v. Future Motion, Inc. (M.D. Tenn. 3:22-cv-00810)

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Stephen Russo v. Future Motion, Inc. (D.N.J. 2:22-cv-04383-SDW-MAH)

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Bryan Reedy v. Future Motion, Inc. (D.N.J. 3:21-cv-17081-ZNQ-TJB)

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Kirston Gould v. Future Motion, Inc. (D.N.M. 1:23-cv-00266-JB-KK)

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Michael Haggerty v. Future Motion, Inc. (N.D. Ga. 1:22-cv-00322-SEG)

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Caleb Metts v. Future Motion, Inc. (N.D. Cal. 5:23-cv-04445-NC)

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Darryl Martin John Oatridge and Bridget Oatridge v. Future Motion, Inc. (N.D. Cal. 5:21-cv-09906-BLF)

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Jonathan Reeves v. Future Motion, Inc. (S.D. Fla. 0:23-cv-61295-RS)

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Brian Kinchen and Lori Kinchen v. Future Motion, Inc. (S.D. Tex. 4:22-cv-01970)

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Samuel W. King v. Future Motion Inc. (D.S.C. 8:22-cv-03323-TMC)

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Orlando Lopez-Roman v. Future Motion, Inc. (S.D. Fla. 4:23-cv-10072-KMM)

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Grant Downs v. Future Motion, Inc. (W.D. Okla. 5:22-cv-01029-D)

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Whitney Young and Mary Kokstis v. Future Motion Inc. (W.D. Wash. 2:22-cv-01701-JNW)

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