

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

IN RE: FUTURE MOTION, INC.
PRODUCTS LIABILITY LITIGATION

Case No. 23-md-03087-BLF

PRETRIAL ORDER #1

This document Relates to:

ALL ACTIONS

The Judicial Panel on Multidistrict Litigation (“the Panel”) has transferred certain products liability actions relating to Defendant Future Motion, Inc.’s “Onewheel” electric skateboard to this Court for coordinated pretrial proceedings. As the number and complexity of these actions warrant holding a single, coordinated initial case management conference for all actions in *In re: Future Motion, Inc. Products Liability Litigation*, 23-md-03087-BLF, the Court ORDERS as follows:

I. APPLICABILITY OF ORDER

Prior to the initial conference and entry of a comprehensive order governing all further proceedings in this case, the provisions of this Order shall govern the practice and procedure in those actions that were transferred to this Court by the Panel. This Order applies to all related cases filed in the Northern District of California and all “tag-along actions” later filed in, removed to, or transferred to this Court.

II. CONSOLIDATION

The civil actions transferred to this Court and related actions already pending before this

1 Court are consolidated for pretrial purposes. Any “tag-along actions” transferred to this Court, or
2 directly filed in the Northern District of California, will automatically be consolidated with this
3 action without the necessity of future motions or orders. This consolidation does not constitute a
4 determination that the actions should be consolidated for trial, nor does it have the effect of
5 making any entity a party to any action in which the entity has not been named, served, or added
6 in accordance with the Federal Rules of Civil Procedure.

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8 **III. RESPONSE EXTENSION, PENDING MOTIONS, AND DISCOVERY**

9 Defendants are granted an extension of time for responding by motion or answer to the
10 complaints until a date to be set by this Court. All pending motions are TERMINATED
11 WITHOUT PREJUDICE to refile for resolution once the Court sets a schedule for any such
12 motions. All discovery currently pending may proceed.

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14 **IV. DATE OF INITIAL CONFERENCE AND CONFERENCE AGENDA**

15 The Court will conduct an initial case management conference on January 18, 2024 at 1:30
16 p.m. in Courtroom 1, Robert F. Peckham Federal Building & United States Courthouse, 280 South
17 1st Street, San Jose, CA 95113. Counsel intending to participate at the initial case management
18 conference must appear in person. Plaintiffs with similar interests may, without waiving defenses
19 or affecting future representation, agree on a single attorney to attend the conference on their
20 behalf. Those not actively participating in the conference may listen to proceedings via video
21 conference.

22 Prior to the initial case management conference, counsel SHALL meet and confer to
23 develop an agenda for the initial case management conference. Additionally, counsel SHALL
24 provide the Court with the following information in a single document filed on or before January
25 11, 2024:

26 1. Whether the appointment of liaison and lead counsel for the plaintiffs is advisable,
27 and any further needs for organizational structure. If plaintiffs recommend appointment of lead
28 and liaison counsel, they shall also recommend a process for selection.

2. Which of the individual personal injury and wrongful death cases might be suitable as representative cases.

3. A proposal for the efficient presentation of early motions, including motions to remand, motions to dismiss, and the like.

4. The schedule for discovery and a proposal for the efficient conduct of discovery.

5. The status of all of the lawsuits pending in this multidistrict litigation, and any potential tag-along lawsuits, including which plaintiffs have moved for remand.¹

6. It appears that *Loh v. Future Motion*, 21-cv-6088, is the only class action complaint consolidated into this MDL proceeding. Class counsel shall advise the Court on whether any other class action cases have been added to this proceeding, and how the class claims should be litigated together or separately from the individual personal injury cases.

7. Plaintiffs and defendants shall submit a brief written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be binding, will not waive claims or defenses, and may not be offered in evidence against a party in later proceedings.

V. PRESERVATION OF EVIDENCE

All parties and counsel are reminded of their duty to preserve evidence that may be relevant to this action, including electronically stored information. Any evidence preservation order previously entered in any of the transferred actions shall remain in full force and effect until further order of the Court. Until the parties reach an agreement on a preservation plan for all cases or the Court orders otherwise, each party shall take reasonable steps to preserve all evidence that may be relevant to this litigation. Counsel, as officers of the court, are obligated to exercise all reasonable efforts to identify and notify parties and non-parties, including employees of corporate or institutional parties, of their preservation obligations.

¹ The Court does not intend to discuss each case individually at the initial case management conference.

VI. MASTER DOCKET FILE

The Clerk of Court will maintain a master docket case file under the style *In re: Future Motion, Inc. Products Liability Litigation*, ECF No. 23-md-03087-BLF. When a pleading is intended to apply to all actions, this shall be indicated by the words: “This Document Relates to: ALL ACTIONS.” When a pleading is intended to apply to fewer than all cases, this Court’s docket number for each individual case to which the document relates shall appear immediately after the words “This Document Relates to.”

VII. FILING

Each attorney of record is obligated to become a Northern District of California ECF User and be assigned a user ID and password for access to the system. If counsel has not already done so, counsel shall register forthwith as an ECF User and be issued an ECF User ID and password. Forms and instructions can be found on the Court’s website at www.cand.uscourts.gov/cm-ecf. All documents shall be e-filed on the master docket, 23-md-3087. Documents that pertain to one or only some of the pending actions shall also be e-filed in the individual case(s) to which the document pertains. Registration instructions for pro se parties who wish to e-file can be found on the Court’s website at www.cand.uscourts.gov/ECF.proseregistration.

VIII. APPEARANCES

Counsel who are not admitted to practice before the Northern District of California must file an application to be admitted pro hac vice. *See* Civ. L.R. 11-3. The requirement that pro hac vice counsel retain local counsel, *see* Civ. L.R. 11-3(a)(3) and 11-3(f), is waived and does not apply to this MDL action.

IX. COMMUNICATION WITH THE COURT

Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing and e-filed. The Court recognizes that cooperation by and among Plaintiffs’ counsel and by and among Defendants’ counsel is essential for the orderly and expeditious

1 resolution of this litigation. The communication of information among and between Plaintiffs'
2 counsel and among and between Defendants' counsel shall not be deemed a waiver of the
3 attorney-client privilege or the protection afforded attorneys' work product, and cooperative
4 efforts contemplated above shall in no way be used against any Plaintiff by any Defendant or
5 against any Defendant by any Plaintiff. Nothing contained in this provision shall be construed to
6 limit the rights of any party or counsel to assert the attorney-client privilege or attorney work
7 product doctrine.

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9 **IT IS SO ORDERED.**

10 Dated: December 15, 2023

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13 BETH LABSON FREEMAN
14 United States District Judge
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