

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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

CASE MANAGEMENT ORDER NO. 1

This document Relates to:

ALL ACTIONS

On January 18, 2024, the Court held the initial case management conference in this multidistrict litigation (“MDL”). ECF No. 55. The Court’s rulings during the initial case management conference are summarized below.

I. APPOINTMENT AND ORGANIZATION OF PLAINTIFFS’ LEADERSHIP

The Court finds good cause to appoint interim lead counsel for the personal injury/wrongful death cases and will appoint Robert W. Cowan of Bailey Cowan Heckaman PLLC and Rene F. Rocha of Morgan & Morgan to serve as co-lead counsel. The Court will revisit the appointment of lead counsel after it receives and reviews the proposal for the steering committee and other leadership groups at the further case management conference on March 7, 2024.

The Court does not find that the appointment of interim lead counsel is necessary for the class action cases at this time, but recognizes that M. Anderson Berry of Clayeo C. Arnold, A Professional Corporation, and Jerrod C. Patterson of Hagens Berman Sobol Shapiro LLC will initially handle the class action cases and will work with counsel in *Nemeth v. Future Motion, Inc.*, 23-cv-6504.

II. PLAINTIFF’S FACT SHEETS

The parties agree that Plaintiffs will prepare Plaintiff’s Fact Sheets in all cases. The parties

United States District Court
Northern District of California

1 SHALL meet and confer regarding the form of Plaintiff’s Fact Sheets to be used in this MDL.
2 The parties shall reach an agreement on the form of the Plaintiff’s Fact Sheets no later than
3 February 5, 2024. The Plaintiff’s Fact Sheets shall be distributed to the plaintiff in each personal
4 injury/wrongful death case consolidated into this MDL on February 5, 2024. The plaintiffs are to
5 complete the Plaintiff’s Fact Sheets and serve them on Defendant no later than March 6, 2024.

6 For any case consolidated with this MDL after February 5, 2024, the plaintiff SHALL
7 complete a Plaintiff’s Fact Sheet and serve it on Defendant within 30 days of that case being
8 consolidated.

9 **III. INITIAL DISCLOSURES**

10 Initial disclosure will be conducted in two phases. For Phase I, interim co-lead counsel for
11 the personal injury/wrongful death cases are DIRECTED to identify certain categories of initial
12 disclosures from Defendant that are not dependent on facts alleged in potential representative
13 cases and serve these categories on Defendant. Defendant SHALL provide to all Plaintiffs,
14 including class counsel, Phase I initial disclosures that address the categories identified within 30
15 days of service of the list of categories.

16 Phase II will include all initial disclosures required by Federal Rule of Procedure 26.
17 Defendant SHALL provide to all Plaintiffs, including class counsel, a complete set of initial
18 disclosures relevant to the representative personal injury/wrongful death cases pursuant Rule 26
19 within 30 days of the Court’s approval of the representative cases.

20 **IV. REPRESENTATIVE PERSONAL INJURY/WRONGFUL DEATH CASES**

21 The Court will approve six representative cases. Each side SHALL file a proposal of no
22 more than 3 personal injury/wrongful death cases that they believe to be representative of the other
23 personal injury/wrongful death cases in this MDL. Each side SHALL file their proposal with the
24 Court no later than April 10, 2024. In the event that either side objects to a case selected by the
25 other side as insufficiently representative, counsel SHALL file a concise statement of their
26 objection. The Court advises the parties to prepare substitute cases in the event that the Court
27 grants an objection.

28

1 **V. CLASS ACTION CASES**

2 Counsel for the class action cases are DIRECTED to meet and confer regarding whether
3 the Court should consolidate *Loh v. Future Motion, Inc.*, 21-cv-6088, with *Nemeth v. Future*
4 *Motion, Inc.*, 23-cv-6504. If counsel in *Nemeth* agrees to consolidation, then counsel for the class
5 action cases may file a stipulation to consolidate no later than February 1, 2024. If counsel in
6 *Nemeth* objects to consolidation, then counsel in *Loh* may file a motion to consolidate the cases by
7 February 1, 2024. The stipulation or motion must also include a deadline by which counsel shall
8 file a consolidated class action complaint.

9 If the Court consolidates *Loh* and *Nemeth*, Defendants may refile their motion to strike and
10 motion to dismiss the class action complaint after the amended class action complaint is filed.

11 **VI. PROTECTIVE ORDER**

12 The parties agree that a protective order is beneficial to the case. The parties SHALL meet
13 and confer to develop an agreed protective order and submit the proposed order to the Court by
14 February 1, 2024. Any objections shall be set forth in the submission.

15 **VII. DISCOVERY DISPUTES**

16 All discovery disputes will be referred to a magistrate judge.

17 **VIII. ALTERNATIVE DISPUTE RESOLUTION**

18 The parties agree that early settlement discussions guided by a magistrate judge would be
19 beneficial to early resolution of the cases. No later than February 1, 2024, the parties SHALL
20 jointly recommend a magistrate judge in the Northern District of California or advise the Court
21 that the Court should make the assignment.

22 **IX. FURTHER CASE MANAGEMENT CONFERENCE**

23 The Court will hold a further case management conference on March 7, 2024 at 1:30 p.m.
24 via Zoom. The parties are DIRECTED to meet and confer regarding an agenda for the conference.
25 The parties SHALL submit their joint proposed agenda, including statements summarizing each
26 side's position on each agenda item, no later than February 29, 2024.

27 At the further case management conference, the Court will revisit the appointment of lead
28 counsel and any proposals for a steering committee and other leadership groups for the personal

injury/wrongful death cases. Plaintiffs are DIRECTED to meet and confer to submit a proposal for a full leadership team, including the identification of committees, no later than February 26, 2024. In the event that any party objects to the proposal, the objections shall be filed no later than March 1, 2024.

X. CASE SCHEDULE

The Court SETS the following schedule:

Event	Date
Initial Disclosures Addressing Plaintiffs' Identified Categories	30 Days from Service of List of Categories of Initial Disclosures
Deadline to Submit a Proposed Joint Protective Order	February 1, 2024
Deadline to Advise the Court of Any Joint Selection of a Magistrate Judge for ADR	February 1, 2024
Deadline to Reach Agreement Regarding Form of Plaintiff's Fact Sheets	February 5, 2024
Deadline to Submit Leadership Proposal for Personal Injury/Wrongful Death Cases	February 26, 2024
Deadline to File Agenda for Further Case Management Conference	February 29, 2024
Deadline to Object to Leadership Proposal for Personal Injury/Wrongful Death Cases	March 1, 2024
Deadline to Serve Completed Plaintiff's Fact Sheets on Defendant	March 6, 2024
Further Case Management Conference	March 7, 2024 at 1:30 p.m. by Zoom
Deadline to File Proposals for Representative Personal Injury/Wrongful Death Cases	April 10, 2024
Commencement of Fact Discovery of Representative Plaintiffs	May 1, 2024
Initial Disclosures Relevant to Representative Plaintiffs	30 Days from Date of Court's Selection of Representative Cases
Close of All Written Fact Discovery	July 31, 2024
Last Day to File Motion for Class Certification in the Class Action Cases	September 16, 2024

IT IS SO ORDERED.

Dated: January 22, 2024


 BETH LABSON FREEMAN
 United States District Judge