

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 22-cv-01220-WJM-NYW

RON BUNNELL, on behalf of the ESTATE OF  
CARL JOSEPH BUNNELL, deceased,  
BARCLAY BUNNELL, individually, and MISTY  
ODEEN, as next friend and representative of  
MAXWELL BUNNELL, a minor,

Plaintiffs,

v.

FUTURE MOTION, INC.,

Defendant.

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**FIRST AMENDED COMPLAINT AND JURY DEMAND**

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Plaintiffs, Ron Bunnell, on behalf of the Estate of Carl Joseph Bunnell, Barclay Bunnell, and Misty Odeen, as next friend and representative of Maxwell Bunnell (collectively “Plaintiffs”), complain and allege against Defendant Future Motion, Inc. as follows:

**I.  
NATURE OF ACTION**

1. This is a wrongful death and survival products liability case arising out of the severe personal injuries and death of Mr. Carl Joseph Bunnell (“Joe Bunnell” or “Decedent”) as a result of serious defects and negligence caused by riding his “Onewheel,” a one-wheeled self-balancing electric transporter designed, manufactured, marketed, and sold by Defendant Future Motion, Inc. (“Defendant”), which ultimately caused Decedent’s injuries and death.

## **II.** **PARTIES**

2. The Plaintiffs in this matter are Ron Bunnell, on behalf of the Estate of Carl Joseph Bunnell, Barclay Bunnell (“Barclay Bunnell”), individually, and Misty Odeen, as next friend and representative of Maxwell Bunnell, a minor (“Maxwell Bunnell”). The Plaintiffs in this matter will be referred to collectively hereinafter as “Plaintiffs.” Plaintiff Ron Bunnell is the father of Joe Bunnell and the representative of his estate. Barclay and Maxwell Bunnell are both Joe Bunnell’s sons. Misty Odeen is Maxwell Bunnell’s mother; she was not married to Joe Bunnell at the time of the incident in question.

3. Plaintiffs file this action for wrongful death and survival of Joe Bunnell, who died from complications arising out of injuries he sustained while riding Defendant’s Onewheel product as described below on December 2, 2021.

4. Defendant is a corporation organized and existing under the laws of the State of Delaware with its principal place of business in the State of California. Defendant has appeared in this action through its counsel.

5. Defendant’s founder and current CEO, Kyle Doerksen, founded Defendant and designed, manufactured, distributed, and sold the Onewheel in and from Santa Cruz, California.

6. On information and belief, Plaintiffs allege that the majority of Defendant’s Executive Team, including the CEO, Kyle Doerksen, as well as its Chief Technology Officer and its Chief Marketing Officer, all live in, or reside near, Santa Cruz County, California.

7. At all times hereinafter mentioned, Defendant was, and still is, an electric vehicle company involved in research, development, testing, manufacture, production, promotion, distribution, and marketing of Onewheel for distribution, sale, and use by the general public, throughout the United States and the State of Colorado.

**III.**  
**VENUE AND JURISDICTION**

8. Joe Bunnell was an individual that at all relevant times was a resident of Colorado. Therefore, Ron Bunnell, as representative of the Estate of Carl Joseph Bunnell, is deemed a citizen of Colorado for purposes of this lawsuit. *See* 28 U.S.C. § 1332(c)(2).

9. Barclay Bunnell is an individual, and at all relevant times, a resident of Colorado.

10. Maxwell Bunnell is an individual and, at all relevant times, a resident of Colorado. Misty Odeen, as next friend and representative of Maxwell Bunnell, is a resident of South Dakota at all relevant times. *See* 28 U.S.C. § 1332(c)(2).

11. Defendant has purposefully availed itself of the benefits and protections of the laws within the State of Colorado. Defendant has had sufficient contact such that the exercise of jurisdiction would be consistent with the traditional notions of fair play and substantial justice.

12. This Court has diversity jurisdiction under 28 U.S.C. § 1332 because Plaintiffs are residents of Colorado, and Defendant's principal place of business is in California, and the amount in controversy exceeds \$75,000.

13. Venue is proper because a substantial part of the events giving rise to Plaintiffs' claims occurred in the District of Colorado. 28 U.S.C. § 1391(b)(2).

**IV.**  
**GENERAL ALLEGATIONS**

14. Defendant's hugely successful and popular product, the "Onewheel," is a self-balancing, battery-powered, one-wheel electric transport that is often described as an electric skateboard. The product was and is advertised, analyzed, assembled, compounded, designed, developed, distributed, formulated, inspected, labeled, manufactured, marketed, packed, produced, promoted, processed, researched, sold, and tested by Defendant. Upon information and belief,

Defendant developed, designed and/or manufactured not only the Onewheel product line, but all the subsystems that power it, including motors, power electronics, battery unit, battery management system, controller unit or circuit board, footpads, and smartphone applications (“apps”).

15. Operation of Defendant’s Onewheel is, or may be, controlled and/or monitored, in part, by an “app” installed on users’ smartphones. The Onewheel app allows users to view their total miles, battery life, speed, and other information. The speed indicator of the Onewheel app is similar to a speedometer in a car. The maximum speed of a Onewheel is believed to be 20 miles per hour or greater.

16. Defendant promotes itself as being “IN THE BUSINESS OF MAKING THE FUTURE ‘RAD’.” According to Defendant’s website, the Onewheel is designed to make the rider forget that “there are thousands of calculations happening per second to keep you perfect.” Defendant claims that the Onewheel can “really reignite the childhood” inside of riders. Videos on Onewheel’s website and social media channels depict users riding the Onewheel device in a variety of settings — in concrete drainage basins, through standing water, on the open highway (with cars approaching), on dirt paths, on the beach, through wooded areas, across fallen logs, and on and off the sidewalk. Onewheel-sponsored videos show users riding a Onewheel with and without helmets.

17. One of Onewheel’s key features (and its most dangerous and unpredictable feature) is that it will allegedly provide the rider with “pushback” when approaching the device’s limits during use. Often however, instead of, or in addition to, such “pushback” (which is allegedly designed as a warning to riders to avoid a dangerous situation), the Onewheel will simply shut off and cause the board to unbalance and “nosedive” forward, often resulting in the rider being thrown

off the device. The harder the device works to maintain operations, the less the Onewheel is able to assist the rider in balancing. Once the motor's resources reach a critical point, the motor's normal ability to help the rider balance disappears, and the rider experiences an unexpected violent nosedive. Often, this will feel to the rider like the motor suddenly cut out or shut down. Different factors create a variability as to when and what will cause the Onewheel to shut down and nosedive, including the rider's weight, tire pressure, wind direction, rider's stance, battery level, grade of incline or decline, and other factors known and unknown. Thus, predicting exactly when or what will cause a nosedive is impossible.

18. One cause of "pushback" nosediving is velocity. When experiencing velocity pushback, the rider will purportedly feel the nose of the board rise to various degrees when a certain velocity is reached. Velocity pushback may occur at a speed lower than that of the maximum due to the above-mentioned factors.

19. Nosedives also occur when ascending or descending hills, purportedly to alert the rider, again, that the motor and/or the battery unit may be becoming overworked. The problem when this type of nosedive occurs, however, is that it is difficult to discern when the rider is feeling pushback, or whether it is the natural resistance caused by the incline/decline. While ascending hills, riders are already pressing against the nose of the device and the grade of the hill to ascend, and therefore may not be able to discern pushback as any form of "warning." While descending, a rider may not feel pushback because his/her weight is likely already on the tail to control speed. The absence of pushback in such situations can result in a sudden nosedive or shut-off, especially if the rider is unaware that the board is giving them pushback. Again, the result will be that the rider feels the board suddenly shut down during operation resulting in the nose hitting the ground, which leads to the rider being violently thrown forward and down, off the board.

20. Another instance when a board nosedive occurs is when the Onewheel is nearing battery depletion. When the Onewheel purportedly senses the battery unit is about to be damaged by over-depletion, the board will shut off entirely, leaving the rider left to suddenly and unexpectedly recalibrate his/her balance without warning, resulting in the rider being thrown off the board.

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

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

23. A nosedive can also occur when the board fails to (accurately) sense that the rider

is onboard. The Onewheel front footpad is pressure-sensitive and separated into roughly equal sections running parallel to the length of the board. To start riding the board, the pressure-sensitive front footpad must sense the rider's foot on both halves of the pad. Once the board is moving faster than approximately 1 mile per hour, the front footpad need only detect the weight of the rider's foot on at least one half of the footpad. However, the front footpads have been shown to have defects, where large portions of the footpad's pressure sensitivity fails to register any pressure, and if that occurs while the board is operating, the board may then fail to detect a rider aboard and suddenly shut down, causing a nosedive. The board is designed to shut down if no rider is detected.

24. Upon information and belief, not only is it prohibitively difficult to determine when nosedives/shut-offs will occur, but the result of such unexpected, unpredictable and undiscernible events almost invariably cause the rider to be ejected or fall from the board, resulting in severe injuries or death. A Onewheel nosedive or shut-off is not a small event as it might be with any other type of vehicle. The board suddenly ceases to self-balance, and the front of the board violently slams into the ground, inevitably throwing the rider forward and downward towards the ground, often with the rider impacting the ground with his/her head. The most dangerous nosedives can occur at speeds approaching 20 miles per hour or greater.

25. The seriousness and unpredictability of the latent defects described above render the Onewheel a prohibitively dangerous device. Experienced Onewheel riders have said that such failures can "strike at anytime" and that it is a "big fear" when riding the device. Many riders do not know how to recognize and react to "pushback." Onewheel itself has admitted that sensing pushback may be difficult to learn for less experienced riders. Again, pushback is the only "warning" in place to notify riders of an impending nosedive. Riders say they fall because they

do not know what pushback is or what it feels like. Many other riders insist they never felt any pushback at all before the motor just “cuts off” and stops, no matter the speed at which the rider is traveling. There exist no warning lights, vibrations, or sounds to alert a rider that a nosedive is imminent, and although the device connects to the rider’s smartphone with an arguably sophisticated “app,” the app provides no ability for the rider to be warned of a dangerous operating condition—no buzzes, vibrations, alarms, or other alerts are offered. Onewheel riders say that “[a] lot of people just jump to conclusions that it’s all the rider’s fault,” but the fact is that nosedives have been a flaw since day one. Other riders wonder “[w]hy can’t there be an audible alarm accompanied by the ‘pushback?’ and that the ‘flaw should have been addressed a LONG TIME ago!” Another unofficial Onewheel spokesperson describes the vehicle as “one wheel against anything that can go wrong.” “If people want ripped tendons, let’s give them ripped tendons.”

26. In 2021 or 2022, Defendant updated the Onewheel system warnings to enhance pushback with the addition of an audible “beep” that allegedly occurs during pushback. However, the addition of the safety beep came too late for Joe Bunnell, as it was not included on his Onewheel model. Additionally, Defendant has refused to add any other warnings to the Onewheel to alert the rider about an impending nosedive/shut-off. Furthermore, after-market front small wheels called “fangs” can be purchased and installed on the leading edge of the Onewheel to help the device roll to a stop during a nosedive/shut-off event, mitigating the potential danger that can be caused when such an event occurs, but Defendant does not even include them as an option on the Onewheel nor sell or recommend such devices as after-market additions.



**V.**  
**PLAINTIFFS' INJURIES**

27. Plaintiffs reallege and incorporate by reference the allegations contained in the preceding paragraphs as if fully set forth herein.

28. On or about December 2, 2021, Joe Bunnell was riding his Onewheel board from his home in Red Canyon, Colorado to Eagle Valley High School. At that time, Joe Bunnell was accompanied by his son, Barclay Bunnell, each riding their own Onewheel devices. During this ride, Joe and Barclay were facing each other, riding parallel.

29. Joe Bunnell was riding the Onewheel on a flat, smooth, asphalt-paved sidewalk imposing no obstructions or imperfections of any kind. Joe Bunnell was also wearing a helmet. Joe Bunnell's Onewheel device suddenly shut off and "nosedived" while he was riding on the sidewalk, causing the front of the board to violently and unexpectedly slam into the pavement (i.e., nosedive), throwing him forward from the board. Barclay Bunnell witnessed the nosedive and subsequent aftermath. As a result of being unexpectedly thrown off the Onewheel device, Joe Bunnell was knocked unconscious, suffering severe head and brain trauma.

30. Shortly thereafter, police and paramedics arrived on scene and Joe Bunnell temporarily regained consciousness. A short time after returning to their residence, Joe Bunnell's condition worsened significantly. Paramedics were called, and Joe Bunnell was rushed to Vail Health Hospital in Vail, Colorado.

31. Joe Bunnell remained at Vail Health Hospital for less than an hour before he was air lifted to Denver Health Trauma Center in Denver Colorado. Joe underwent surgery, but his condition did not improve. He ultimately succumbed to the severe head and brain injuries caused by his unexpected ejection from the Onewheel device.

**VI.**  
**WRONGFUL DEATH & SURVIVAL ACTIONS**

32. Plaintiffs Barclay Bunnell and Misty Odeen, as next friend and representative of Maxwell Bunnell, hereby sue Defendant for the wrongful death of Joe Bunnell under C.R.S. § 13-21-201 *et seq.* Barclay and Maxwell are Joe Bunnell’s sons and heirs under the statute, and Joe Bunnell was not married at the time of his death. C.R.S. § 13-(1)(a)(IV). Plaintiffs Barclay Bunnell and Misty Odeen, as next friend and representative of Maxwell Bunnell, seek compensatory and other damages to the fullest extent permitted under Colorado law.

33. Plaintiff Ron Bunnell, as representative of the Estate of Joe Bunnell, sues Defendant pursuant to the Colorado “survival” statute, C.R.S. § 13-20-101, for loss of earnings and expenses sustained by Joe Bunnell prior to his death resulting from Defendant’s actions, omissions, and negligence.

**VII.**  
**CAUSES OF ACTION**

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

**First Cause of Action: Strict Liability**  
(Defective Design, Manufacture, and Failure to Warn)

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

31. Defendant is the designer, manufacturer, and/or marketer/seller of the Onewheel device and each is strictly liable to Plaintiffs for designing, creating, manufacturing, marketing, labeling, distributing, selling, and placing into the stream of commerce the product Onewheel.

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

33. The Onewheel device that was designed, manufactured, distributed and/or sold by Defendant was defective due to its unreasonably dangerous and unpredictable propensity to shut-off suddenly, and/or nosedive, 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.

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

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

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

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

- a) The gravity of the potential harm resulting from the use, or foreseeable misuse, of the Onewheel was enormous as evidenced by Joe Bunnell's injuries;

- b) There existed a high likelihood that severe harm would occur from a sudden and unexpected nosedive of the Onewheel that would cause its rider to be thrown forward and down to the ground headfirst; and
- c) At the time of the Onewheel's manufacture, there existed numerous and inexpensive alternative safer designs with few or no disadvantages to the existing design, including but not limited to additional warning signals and "fangs," as described above.

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

39. At all times herein mentioned, the subject Onewheel was unsafe for use by consumers, including Joe Bunnell, and Defendant 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, Defendant failed to adequately warn users of the risk of serious injury or death.

40. Joe Bunnell used the Onewheel device in the manner in which Defendant intended it to be used.

41. Defendant 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 Decedent.

42. The Onewheel, as used by Joe Bunnell, was defective and unreasonably dangerous when sold by Defendant, 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.

43. The Onewheel, as used by Joe Bunnell, had potential risks that were known or knowable by Defendant 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.

44. 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.

45. 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, as described above.

46. Defendant failed to adequately warn or instruct of the above-described potential risks of the Onewheel, including but not limited to its propensity to nosedive suddenly and without warning under various conditions, as described above.

47. Defendant further breached its duty to provide timely and adequate warnings, instructions, and information, at least in the following particulars:

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

48. Defendant continued to aggressively manufacture, market, promote, distribute, and sell the Onewheel, even after it knew or should have known of the unreasonable risks of serious injury or death caused by use of the Onewheel. The lack of sufficient instructions and/or warnings was a substantial factor in causing Decedent's death in that Defendant's designing, manufacturing,

marketing, and/or selling the Onewheel device and placing it in the stream of commerce without adequate warnings of the risk of serious injury or death, as alleged herein, caused Joe Bunnell's severe injuries.

49. Defendant's designing, manufacturing, marketing, failing to warn about, and/or selling the defective Onewheel device as alleged herein and placing it in the stream of commerce, as alleged herein, was a substantial factor in causing Decedent's injuries, and Plaintiffs are entitled to recover compensatory damages in an amount according to proof and subject to each Plaintiff's standing and applicable statute(s). Plaintiffs have been generally damaged in an amount within the jurisdictional limits of this court.

**Second Cause of Action: Negligence**

(Defective Design, Manufacture, and Failure to Warn)

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

51. Defendant owed Plaintiffs and the consumer public a duty of due care in designing, manufacturing, marketing, selling, warning about, and distributing the Onewheel device used by Joe Bunnell such that the device could be operated in a normal, safe, and non-dangerous manner.

52. Defendant breached its duties to Plaintiffs by failing to exercise ordinary care and due diligence in negligently designing, manufacturing, marketing, selling, warning about, and distributing the Onewheel device used by Joe Bunnell such that the device could not be operated in a normal, safe, and non-dangerous manner. Defendant's activities and omissions described herein contributed in natural and/or continuous sequence to the Decedent's severe injuries and were a substantial contributing factor to Decedent's injuries and death. At all times mentioned herein, Defendant, through its negligence as alleged herein, ignored its responsibilities to Plaintiffs and unreasonably jeopardized the health and well-being of Decedent and caused his injuries and

death. Further, in light of the potential and actual risk of harm associated with Onewheel's use, a reasonable person who had actual knowledge of the potential and actual risk of harm and/or death would have concluded that Onewheel should not have been marketed, sold, or distributed in that condition.

53. The Onewheel device that was designed, manufactured, distributed and/or sold by Defendant was defective due to its unreasonably dangerous and unpredictable propensity to shut-off suddenly, and/or nosedive, 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.

54. The Onewheel device that was designed, manufactured, marketed, and/or sold by Defendant was defective due to negligence in testing the Onewheel.

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

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

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

- a) The gravity of the potential harm resulting from the use or foreseeable misuse of the Onewheel was enormous as evidenced by Joe Bunnell's injuries;

- b) There existed a high likelihood that severe harm would occur from a sudden and unexpected nosedive of the Onewheel that would cause its rider to be thrown forward and down to the ground headfirst; and
- c) At the time of the Onewheel's manufacture, there existed numerous and inexpensive alternative safer designs with few or no disadvantages to the existing design, including but not limited to additional warning signals and "fangs," as described above.

58. Due to Defendant's negligence, the Onewheel device involved in the subject incident contained a manufacturing defect in that the subject Onewheel differed from the manufacturer's design or specifications or from other typical units of the same product line when it left the possession of Defendant.

59. At all times herein mentioned, the subject Onewheel was unsafe for use by consumers, including Joe Bunnell, and Defendant 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, Defendant failed to adequately warn users of the risk of serious injury or death.

60. Joe Bunnell used the Onewheel device in the manner in which Defendant intended it to be used.

61. Defendant negligently 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 Decedent.

62. Due to Defendant's negligence, the Onewheel, as used by Joe Bunnell, was defective and unreasonably dangerous when sold by Defendant, who is liable for the injuries arising from the Onewheel's design, manufacture, marketing, sale, and use without adequate warning of the device's serious dangers.



63. The Onewheel, as used by Joe Bunnell, had potential risks that were known or knowable by Defendant 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.

64. 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.

65. 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, as described above.

66. Defendant failed to adequately warn or instruct of the above-described potential risks of the Onewheel, including but not limited to its propensity to nosedive suddenly and without warning under various conditions, as described above.

67. Defendant further breached its duty to provide timely and adequate warnings, instructions, and information, at least in the following particulars:

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

68. Defendant continued to aggressively manufacture, market, promote, distribute, and

sell the Onewheel, even after it knew or should have known of the unreasonable risks of serious injury or death caused by the use of the Onewheel. The lack of sufficient instructions and/or warnings was a substantial factor in causing Decedent's death in that Defendant's designing, manufacturing, marketing, and/or selling the Onewheel device and placing it in the stream of commerce without adequate warnings of the risk of serious injury or death, as alleged herein, caused Joe Bunnell's severe injuries and death.

69. Defendant's negligence, as alleged herein, was a substantial factor in causing Decedent's injuries, and Plaintiffs are entitled to recover compensatory damages in an amount according to proof and subject to each Plaintiff's standing and applicable statute(s). Plaintiffs have been generally damaged in an amount within the jurisdictional limits of this court.

**Third Cause of Action: Violations of Colorado Consumer Protection Act**  
(C.R.S. § 6-1-101 *et seq.*)

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

71. Joe Bunnell was an actual consumer of Defendant's Onewheel device.

72. Plaintiffs are informed and believe and thereon allege that Defendant, by the conduct and omissions alleged herein, violated the Consumer Protection Act, Colorado Revised Statute § 6-1-105.

73. Colorado Revised Statute § 6-1-105(1) provides that a person engages in a deceptive trade practice when, in the course of a person's business, vocation, or occupation, the person either knowingly or recklessly makes a false representation as the characteristics or uses of goods, § (1)(e), or represents that goods are of a particular standard or quality if he knows or should know that they are of another, § (1)(g).

74. The acts and practices described in the preceding paragraphs were and are likely to mislead the general public and, therefore, constitute unfair and/or deceptive practices within the meaning of Colorado Revised Statute § 6-1-105. Defendant's conduct included, but is not limited to, the following omissions:

- (a) Defendant omitted and concealed from Decedent and the general public that the Onewheel had a propensity to nosedive and/or shut off without adequate warning to the rider, causing serious or even fatal injuries during operation;
- (b) Defendant omitted from written and electronic information that it provided to Decedent and other Onewheel purchasers warnings sufficient to describe the danger and likelihood of nosedives and sudden shut-offs of the device; and
- (c) Defendant omitted from advertising, including social media advertising, the serious risk of injury or death caused by nosedives and sudden shut-offs of the device, as well as omitted disclosure in advertising of the Onewheel's propensity to nosedive and shutdown without adequate warning to the rider.

75. The foregoing information should have been disclosed by Defendant to Decedent, other Onewheel purchasers and users, and the general public to (a) inform them of the dangers of the product they were purchasing and/or using; (b) to warn them of the unsafe conditions of the product, as described herein; and (c) to allow Decedent, other Onewheel purchasers and users, and the general public to make informed decisions about whether to purchase and/or use the Onewheel device in the safest manner possible. Defendant should have corrected such omissions and provided the required information in advance of Decedent's purchasing and/or riding his Onewheel, such as through written or electronic communications to Decedent, including but not limited to literature provided with the Onewheel, information provided through the Onewheel App or the internet, as well as advertising communications, and Defendant should have done the same for other Onewheel purchasers and the general public.

76. Those omissions constitute violations of the Colorado Consumer Protection Act.

77. Defendant acted in bad faith with respect to the above-described acts and omissions because it knew of the dangerous propensities of the Onewheel device, the absence of adequate warnings, and/or the failure to disclose such propensities in its communications, including advertising, about the device, yet it persisted (and persists today) with such conduct and omissions, despite also knowing that Onewheel consumers could be seriously injured or killed as a result of Defendant's conduct and omissions.

78. Defendant's conduct and omissions described above present a continuing threat to members of the public in that Defendant continues to engage in such conduct and omissions. Defendant's conduct and omissions significantly impact the public as actual or potential consumers of Defendant's goods.

79. Defendant's conduct and omissions described above caused Plaintiffs to suffer injury—i.e., that the Onewheel device caused Joe Bunnell's injuries and untimely death, and Plaintiffs have suffered injury and damages as a result of Joe Bunnell's injuries and death, as described herein.

80. Defendant's conduct and omissions in violation of the Colorado Consumer Protection Act, as alleged herein, were a substantial factor in causing Decedent's injuries, and Plaintiffs are entitled to recover actual damages in an amount according to proof and subject to each Plaintiff's standing and applicable statute(s). In the alternative, and subject to proof, Plaintiffs are entitled to recover three times the amount of actual damages sustained upon proof by clear and convincing evidence of Defendant's bad faith conduct, as described herein, subject to each Plaintiff's standing and applicable statute(s). Plaintiffs have been generally damaged in an amount within the jurisdictional limits of this court.

**VIII.**  
**JURY DEMAND**

81. Plaintiffs demand a trial by jury and have paid the requisite jury fee.

**IX.**  
**PRAYER**

WHEREFORE, Plaintiffs pray for judgment against Defendant FUTURE MOTION, INC., and as appropriate for each cause of action alleged, to the particular standing of each Plaintiff, and according to the particular damages permitted to be recovered under applicable statutes, including but not limited to the Colorado Wrongful Death and Survival Acts, C.R.S. §§ 13-21-201 *et seq.* and 13-20-101, and the Colorado Consumer Protection Act, C.R.S. § 6-1-101 *et seq.* as follows:

1. Past and future general and actual damages, the exact amount of which has yet to be ascertained, in an amount which will conform to proof at time of trial;
2. Past and future economic and special damages according to proof at the time of trial;
3. Loss of earning and impaired earning capacity according to proof at the time of trial;
4. Medical expenses, past and future, according to proof at the time of trial;
5. For past and future mental and emotional distress, according to proof at the time of trial;
6. Pain and suffering, grief, loss of consortium, and/or loss of companionship;
7. Treble actual damages under the Colorado Consumer Protection Act;
8. Attorneys' fees;
9. For costs of suit incurred herein;
10. For pre- and post-judgment interest as provided by law; and,
11. For such other and further relief, whether in equity or at law, as the Court may deem just and proper.

Dated: July 12, 2022

Respectfully submitted,

**BAILEY COWAN HECKAMAN PLLC**

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***Counsel for Plaintiffs***

**CERTIFICATE OF SERVICE**

I certify that on this the 12th day of July, 2022, the above and foregoing First Amended Complaint was filed via the Court's CM/ECF system which sends notification of such electronic filing to all registered counsel of record in this case.

/s/ Robert W. Cowan  
Robert W. Cowan