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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RAYMOND WANG, DEVON HOLT and
JERROD HUNTER NICHOLS, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

FUTURE MOTION, INC.,

Defendant.

CASE NO. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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1 RAYMOND WANG, DEVON HOLT and JERROD HUNTER NICHOLS, individually and
2 on behalf of all others similarly situated, file this Class Action Complaint against Defendant Future
3 Motion, Inc. (“FM”). This lawsuit is based upon the investigation of counsel and the investigation of
4 experts with relevant education and experience. In support thereof, Plaintiffs state as follows:

5 **I. INTRODUCTION**

6 1. Plaintiffs bring this civil action on behalf of all class members to recover damages
7 suffered as a result of a defective “Onewheel” product, an electronic skateboard designed,
8 manufactured, marketed, distributed, and sold by Defendant Future Motion, Inc. (“FM”). The Onewheel
9 electronic skateboard is defective and unreasonably dangerous under California and Florida law.

10 2. The Onewheel board (“Board”) is a self-balancing, battery-powered, one-wheeled
11 transportation device that is often described as an electronic skateboard. The product was and is
12 designed, developed, manufactured, produced, distributed, marketed, and sold by Defendant FM.
13 Upon information and belief, FM developed and designed the subsystems that power the Onewheel,
14 including motors, power electronics, battery modules, and smartphone applications (“apps”). Below is
15 a picture of a Onewheel:



23 3. Operation of the Board is controlled and/or monitored, in part, by an app installed on
24 users’ smartphones. The Onewheel app allows users to view their total miles, battery life, speed, and
25 other information.

26 4. One of Onewheel’s key features (and its most dangerous and unpredictable feature) is
27 that it will provide the rider with “pushback,” or physical resistance, when approaching the device’s
28

1 limits during use. This pushback feature is allegedly designed as a warning to riders to avoid a
 2 dangerous situation, like excessive speeds, low battery power, or overcharging. Often, however,
 3 instead of or in addition to pushback, the Onewheel will simply shut off and nosedive abruptly,
 4 resulting in the rider being catapulted off the device (the “Nose-Dive Defect”).

5 5. This defect has needlessly led to severe injuries, and at least three deaths. It has caused
 6 multiple broken bones, road rashes, cuts, and bruises, all because of a design flaw that was easily
 7 fixable. According to analysis conducted by retained experts, the Onewheel could have easily been
 8 designed to emit a warning signal (through a warning light, or auditory beep or tone) in the event of
 9 excessive speed, overcharging, or low battery. Or it could have been designed to simply slow down in
 10 these situations. Instead, the Onewheel skateboards were designed to abruptly stop and/or nosedive, at
 11 considerable risk to the rider.

12 6. Even as the Nose-Dive Defect presents a serious safety risk to its riders, FM deliberately
 13 markets the Boards based on their ease of use. For example, its website promotes a testimonial from a
 14 rider that the Board is “*The most fun toy that I’ve ever owned.*”¹ Its website also features the following
 15 graphic, assuring consumers that “100%” of the public can ride Onewheel:²



26 ¹ Unless otherwise indicated, all references to Onewheel’s internet advertising is available at
 27 www.onewheel.com.

28 ² <https://onewheel.com/pages/support-videos>.

1 **2. Plaintiff Devon Holt**

2 12. Plaintiff Devon Holt is and was throughout the events pleaded herein a citizen of the
3 State of California, and domiciled in La Mesa, California. Plaintiff has purchased four boards, all
4 online from Onewheel in La Mesa, CA, as follows:

5

Board Type	Date of purchase	Status of Board
Original Onewheel	April 2015	Sold in June 2015
Onewheel XR	July 2016	Sold in November 2016
Pint	September 2019	Still owns board
GT	November 2021	Still owns board

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11 13. With the original Onewheel board, Plaintiff sold the Board because it continued to go
12 “nose-up,” and the mileage and speed limits on the Board were low. When Plaintiff owned the
13 Onewheel XR, he had to turn it in for service on a couple of occasions because it was having battery
14 problems and would not turn on. Plaintiff provided the Pint to his wife for her use, but on one occasion,
15 she experienced a sudden shut-down when riding on the beach. Fortunately for her, she landed in the
16 sand and was uninjured.

17 14. But on April 26, 2022, Plaintiff was riding his GT to work, which was about 20 miles
18 away. The GT board’s range was supposed to be 26-27 miles. A mile away from work, he stopped at
19 a red light and checked his battery gauge, which indicated that he had 13% battery remaining. Based
20 on his experience, Plaintiff believed that he should have at least two more miles with that level of
21 power. But, 10 seconds after starting up after the light, the board completely and suddenly shut down,
22 catapulting Plaintiff onto the street. Plaintiff went to the hospital with his injuries, which included torn
23 hands, and bruised shoulder, ribs, pelvis, and wrist, and a separated AC joint in his shoulder.

24 15. Prior to his purchase, Plaintiff had been looking for an electronic skateboard that was
25 fun to ride, but that was also durable, reliable, and reasonably safe to operate. Plaintiff saw and recalled
26 FM’s advertisements through all forms of media. None of the advertising that Plaintiff reviewed or
27 saw contained a disclosure about the Nose-Dive Defect. Had FM made this disclosure, from his
28

1 research Plaintiff would have received this disclosure, and he would not have purchased the Onewheel
2 or would have paid less for it. There is a substantial difference in the market value of the device
3 promised by FM and the market value received by Plaintiff; thus, Plaintiff did not receive the benefit
4 of the bargain, but received less than what was bargained for.

5 **3. Plaintiff Jerrod Hunter Nichols**

6 16. Plaintiff Jerrod Hunter Nichols is and was throughout the events pleaded herein a
7 citizen of the State of Florida, and domiciled in Edgewater, Florida. In or around October 8, 2020,
8 Plaintiff purchased a Onewheel Pint from a Future Motion-authorized retailer in Florida. Plaintiff rode
9 his Onewheel frequently, and (until the incident described below) felt comfortable using it.

10 17. On October 29, 2020, Plaintiff was riding his Onewheel at approximately 12 miles per
11 hour, not feeling any pushback, when the board suddenly shut down and nosedived into the pavement.
12 Plaintiff was thrown off the Board and rolled into the street. Fortunately, there were no vehicles, but
13 Plaintiff's left arm was broken in two places, requiring hospitalization.

14 18. Based on this incident, Plaintiff no longer felt safe on the Board.

15 19. Prior to his purchase, Plaintiff had been looking for an electronic skateboard that was
16 fun to ride, but that was also durable, reliable, and reasonably safe to operate. Plaintiff saw and recalled
17 FM's advertisements through all forms of media. None of the advertising that Plaintiff reviewed or
18 saw contained a disclosure about the Nose-Dive Defect. Had FM made this disclosure, from his
19 research Plaintiff would have received this disclosure, and he would not have purchased the Onewheel
20 or would have paid less for it. There is a substantial difference in the market value of the device
21 promised by FM and the market value received by Plaintiff; thus, Plaintiff did not receive the benefit
22 of the bargain, but received less than what was bargained for.

23 **B. Defendant Future Motion, Inc.**

24 20. Future Motion, Inc. is a privately held company incorporated in Delaware and
25 headquartered in Santa Cruz, California. Future Motion sells its Onewheel products through its website
26 and numerous dealers throughout the United States, including in California and Florida, with dozens
27 of dealers in this District.

III. VENUE AND JURISDICTION

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2 21. This Court also has original jurisdiction over the subject matter of this action pursuant
3 to 28 U.S.C. §§ 1331 and 1332(d). Subject matter jurisdiction arises under the Magnuson-Moss
4 Warranty Act claims asserted under 15 U.S.C. § 2301, *et seq.* This Court also has jurisdiction over the
5 instant matter pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1711, *et seq.*,
6 which vest original jurisdiction in the district courts of the United States for any multi-state class action
7 where the aggregate amount in controversy exceeds \$5 million and where the citizenship of any
8 member of the class of plaintiffs is different from that of any defendant. The \$5 million amount-in-
9 controversy and diverse citizenship requirements of CAFA are satisfied in this case. This Court also
10 has supplemental jurisdiction over the state law claims because those claims are integrally related to
11 the federal claims and form part of the same case and controversy under 28 U.S.C. § 1367.

12 22. FM designed, manufactured, distributed, and sold the Onewheel Boards that form the
13 basis of this Complaint (the “Subject Onewheel”) to Plaintiffs.

14 23. Defendant FM may be served with process by serving its registered agent, 1505
15 Corporation, 2804 Gateway Oaks Dr., Suite 100, Sacramento, CA.

16 24. This Court has personal jurisdiction over FM by virtue of its transacting and doing
17 business in this District and because FM is registered to do business in California. FM
18 has transacted and done business in the State of California and in this District and has engaged in
19 statutory violations and common law tortious conduct in California and in this District.

20 25. Venue is proper pursuant to 28 U.S.C. § 1391(a) & (b) because a substantial part of the
21 events or omissions giving rise to the claims occurred in this District. Venue is proper pursuant to
22 U.S.C. § 1965(a) & (b) because FM transacts affairs in this District, and the ends of justice require it.
23 Venue is also proper in this District under 28 U.S.C. § 1391(b)(1) because FM resides in this judicial
24 District for venue purposes.

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IV. FACTUAL ALLEGATIONS

A. The Nose-Dive Defect

26. As described above, the Onewheel skateboard produces “pushback” when approaching the device’s limits during use. But 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 is diminished, and the rider will experience an unexpected nosedive. Often, this will feel to the rider like the motor suddenly cut out or shut down. Different factors impact when and what will cause the Onewheel to shutdown and nosedive, including the rider’s weight, tire pressure, wind direction, battery level, rider stance, and the grade of incline or decline. Thus, it is impossible to predict exactly when a nosedive will occur or what will cause it to occur.

27. The primary cause of “pushback” nosediving is velocity. When experiencing velocity pushback, the rider will feel the nose of the Board rise to various degrees when a certain velocity is reached. Often, velocity pushback occurs at a speed lower than that of the maximum due to the above-mentioned factors.

28. Pushback and nosedives also occur on inclines and declines, purportedly to alert the rider that the motor is on the verge of becoming overworked. The problem with this form of pushback, however, is that it is difficult for the rider to discern whether the rider is actually feeling pushback, or alternatively whether it is the natural resistance caused by the incline/decline. While ascending hills, riders are already pressing against the nose and the grade of the hill to ascend, and therefore may not discern pushback.

29. While descending, a rider may not feel pushback because his/her weight is likely already on the tail to control speed. Pushback in such situations will likely result in a sudden nosedive or tailspin, 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.

30. Another form of pushback occurs when the Onewheel is nearing battery depletion. This pushback purportedly alerts riders by elevating the nose dramatically. When the Onewheel purportedly

1 senses that the batteries are about to be damaged by over-depletion, the Board will shut off entirely,
2 leaving the rider to suddenly and unexpectedly recalibrate his/her balance, often resulting in the rider
3 being thrown from the Board.

4 31. Yet another form of pushback is referred to as regeneration pushback. One way that the
5 Onewheel recharges its battery is to collect kinetic energy when going down a decline and to reserve
6 this power in the battery. However, this may result in the battery becoming overcharged, which would
7 damage the battery. FM purportedly “addressed” this problem by designing the Board to suddenly and
8 unexpectedly shut down to prevent battery damage, at the expense of rider safety. Instead of allowing
9 the battery to overcharge, prior to regeneration-related damage to the battery, the Onewheel will shut
10 down. The same problems in discerning pushback while ascending/descending also occur in this
11 situation.

12 32. Another common cause of nosedives is acceleration. If a rider attempts to accelerate
13 quickly, the motor may not support the sudden weight and force on it and the nose will suddenly drop.
14 Yet, FM advertises its Onewheel’s ability to accelerate quickly, even from a complete stop. Such
15 acceleration nosedives can happen at any speed, even from a dead stop, and the rider will feel as though
16 the motor has suddenly cut out or shut off. “Tail-slides” can also occur when the rider shifts his/her
17 weight onto the back of the Board and thereby overwhelms the motor. In that case, the tail of the Board
18 will suddenly drop and slide on the ground, causing the rider to become instantly unbalanced.

19 33. Not only is it prohibitively difficult to determine when nosedives/tailspins/shut-offs
20 will occur, but the result of such unexpected and undiscernible events almost invariably cause the rider
21 to be ejected or fall from the Board, often resulting in significant injuries. A Onewheel nosedive or
22 shut-off is not a mild event as it might be with any other type of vehicle. The front of the Board
23 violently slams into the ground and the rider is thrown forward, all without warning.

24 34. News articles report that the Nose-Dive Defect has led to serious injuries, including
25 death. One Texas man lost his life when, according to his counsel’s website, “he experienced a sudden
26 stop while using the skateboard. This sudden stop feature, related to the ‘pushback’ of the unit’s safety
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1 system, is built into the scooter’s mechanics. This built-in safety feature is believed to be a defective
2 feature for these types of scooters and is thought to be the reason that the scooter made a hard stop.”³

3 35. In another posting on a separate law firm website chronicling the injuries and deaths
4 caused by the Nose-Dive Defect, the posting explains that “[u]nlike taking a spill off of a traditional
5 four-wheeled skateboard, these riders say they didn’t just fall off of the Onewheel. Instead, they claim
6 that when the front of the board crashed downward, it forcefully propelled them forward, into the
7 ground. If a Onewheel accident were to cause the rider to hit the ground headfirst, it may put them at
8 risk of concussions and traumatic brain injuries, or they may land hard enough on their forward-leaning
9 hand or arm to fracture bones.”⁴

10 36. According to another article on the internet (“jdsupra.com”), at least three wrongful
11 death lawsuits have been filed as of July 2021 against FM related to the Nose-Dive Defect. *Id.* Another
12 article identifies a fourth wrongful death lawsuit, stemming from a nose-diving incident in December
13 2021 in Colorado.⁵

14 37. The Nose-Dive Defect has been the subject of complaints online as well. About three
15 years ago, one user on the Reddit website posted the following on Onewheel’s subreddit: “I was riding
16 uphill for 2 seconds and going straight afterward. And it suddenly stopped and threw me off. It was 16
17 mph and I got a big bruise on my elbow. Can someone help me explain for [sic] this situation.”⁶

18 38. Another user responded as follows (*id.*): “I just had a bad fall today in a similar situation
19 (just came back from ER) was going close to full speed on flat pavement, with 65% battery on a Pint
20 XR (bought it two days ago)[.] The board stopped all of a sudden, went nose down and i flew and
21 stumbled on the pavement, dislocated my shoulder and other bruises.”

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24 ³ <https://www.pintas.com/blog/electric-onewheel-skateboard-shuts-off-suddenly-kills-texas-man/>.

25 ⁴ <https://www.jdsupra.com/legalnews/onewheel-skateboard-injury-lawsuit-7316679/>.

26 ⁵ <https://www.vaildaily.com/news/eagle-valley/lawsuit-claims-onewheels-failure-to-warn-is-to-blame-for-eagle-county-mans-death/>.

27 ⁶ https://www.reddit.com/r/onewheel/comments/cnhi7n/onewheel_just_suddenly_stop_while_riding/.

1 **B. FM Promotes the Onewheel as a Harmless “Toy”**

2 39. FM promotes itself as being “IN THE BUSINESS OF MAKING THE FUTURE
3 RAD.” (<https://onewheel.com/pages/about-us>). A promotional video on FM’s website states that the
4 Onewheel was designed to make riders forget that “there are thousands of calculations happening per
5 second to keep you perfect.” The same video depicts the Onewheel device being operated in concrete
6 drainage basins, through standing water, on an open highway (with cars approaching), across dirt paths,
7 on the beach, through wooded areas, across fallen logs, and on and off the sidewalk. Onewheel-
8 sponsored videos show users riding both with and without helmets.

9 40. FM’s website promotes three models, which it describes as “THE PERFECT RIDE
10 FOR EVERY RIDER”: a “pint” model, a “pint x” model,” and a “GT model, with a listed price of
11 \$1,050, \$1,400, and \$2,200, respectively.

12 41. The Onewheel skateboards are promoted as follows on FM’s website:

- 13 • “RIDING IN MINUTES: Stick the landing. Pint features Simplestop dismount
14 technology, enabling new riders to learn to ride quickly and feel confident.”
15 • “This little ripper hits the sweet spot between price, performance, and practicality.”
16 • “‘Pint’ is pure joy. . . . It has a zippy, playful, and responsive ride feel which pairs
17 well with coffee runs, driveway shenanigans, and momentary escapes from reality.”

18 42. The website contains testimonials from purported owners of the Onewheel skateboard.
19 Among these testimonials are statements from “Matteo V.” that it’s the “*The most fun toy that I’ve*
20 *ever owned.*”⁷ Additional testimonials are as follows:

- 21 • “Ryan V.” stated, “Loving the board! First go at one wheeling, never skateboarded
22 before. Easy to learn and extremely fun. We’ll [sic] built/engineered...”
23 • “Ray R.” stated “A SENIOR CITIZEN ZIPPING AROUND TOWN. I am enjoying
24 my one wheel pint it is an awesome ride. I’m 64 years old and been spinning around
25 town! Awesome fun!!!”

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27 _____
28 ⁷ All of these statements scroll across the screen at www.onewheel.com.

- 1 • “Jessica W.” said, “Day 2 Cruising. I love it. It’s so cool I thought it was going to
- 2 take several days to learn to rides [sic]. I was cruising around town by day 2...”
- 3 • “David H. stated, “My PINT is simply outstanding! What a concept. I simply can’t
- 4 get enough time to ride it and take different adventures riding it...”
- 5 • “Robert K.” stated, “Best new hobby. Got my Onewheel begging [sic] of oct and so
- 6 far love it can’t wait for the warm weather.”
- 7 • “Jamaal G.” stated, “Heavenly butter. I am totally addicted & it’s been only 3
- 8 weeks. I love my pint & it’s [sic] carving ability.”

9 43. The second listed “FAQ” on FM’s website asks, “Are Onewheels difficult to ride?”
10 Posted response: “Nope! Anyone can ride Onewheel with a little instruction and practice. Onewheel
11 is packed with technology that actively helps to keep you balance Tens of thousands of people of
12 all ages and skill levels have learned to ride and we know you can do it too. Don’t believe us? Watch
13 us demo a stranger or check out 86 year old, Shreddin Eddie.”⁸ The phrase “Shreddin Eddie” is a link
14 to a YouTube video featuring a group of senior citizens (some in wheelchairs) cheering on an elderly
15 gentlemen on a Onewheel, with a younger person prompting him with, “it’s a little easier than you
16 thought, huh?”⁹

17 44. Another FAQ asks, “What’s the maximum age to ride Onewheel?” Posted response:
18 “There is none! We have riders of all ages and it is never too late to start riding a Onewheel. Don’t
19 believe us? Check out 86 year old, Shreddin Eddie.”

20 45. Another FAQ asks, “Do Onewheels need regular maintenance?” Posted response:
21 “Nope! They’re built like tanks.”

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27 ⁸ <https://onewheel.com/pages/faq>.

28 ⁹ <https://www.youtube.com/watch?v=5EGcl-27buw&t=75s>.

1 **C. FM Failed to Adequately Warn Riders of the Danger Risks**

2 46. FM's Owner's Manual fails to adequately warn users of the risks of the Nose-Dive
3 Defect. Among the deficiencies of the Owner's Manual are the following:¹⁰

- 4 • The cover page does not include any indication that the owner's manual contains
5 important safety information (p. 18).
- 6 • Page 2 contains illustrated pictures demonstrating how to ride on the board – a
7 quick-start tutorial. There are no safety warnings that precede this quick start
8 tutorial, which is advisable to increase the possibility that the user will read them.
- 9 ○ Page 2 also has a bullet under one picture that says “Always wear a helmet,”
10 but it is presented in regular type, and not highlighted as a “Warning” or
11 something similar.
- 12 ○ There is also no reference to the need for other protective equipment, such as
13 wrist guards.
- 14 • Page 3 states “Please read [the manual] before you take your first ride and keep it
15 for reference.” But this language is overshadowed by the all-caps exhortation above
16 it “**WELCOME TO THE REVOLUTION!**” and below it “**GETTING THERE
17 IS MORE THAN HALF THE FUN!**”
- 18 • P. 21, under the blue-bolded all-caps header “**AN INCREDIBLE RIDE,**” it states
19 “Quite simply the most beautiful riding experience on the planet. . . . So easy
20 grandpa can do it. . . Onewheel is designed to be intuitive. Anyone can learn the
21 basics in just a few minutes.” By describing the experience as being “intuitive,” FM
22 is downplaying its own safety and user recommendations.
- 23 • Pages 28-33 describe the “push back” function described above, but critically does
24 not explain how the push back function is a warning signal that precedes the Nose-
25

26 _____
27 ¹⁰ These deficiencies are based on the Manufacturer's Guide to Developing Consumer Production
28 Instructions, published by the U.S. Consumer Product Safety Commission in 2003. References to this
Guide are in parenthesis below.

1 Dive Defect. *At no point does the Owner’s Manual identify push back as a*
2 *warning signal.*

- 3 ○ The “push back” feature also is used to signal multiple completely distinct
4 conditions: excessive speed, overcharging, low battery, or the user may have
5 inadvertently shifted her weight onto her back foot.

6 47. The cumulative effect of the Owner’s Manual is to deemphasize the legitimate safety
7 risks of the Boards in favor of emphasizing their ease of use. Upon information and belief, this was a
8 deliberate attempt by FM to market and appeal to as wide of a spectrum of riders as possible at the
9 expense of safety.

10 48. In addition to the inadequate warnings the Owner’s Manual, there is no auditory or
11 visual signals to alert the reader to the hazardous system. These are basic steps that FM did not take,
12 despite the fact that users have an App that tracks their movements and allows them to customize the
13 settings of the Boards. Nor is there any training model that could have been installed on the app, to
14 allow riders to experience push back in a safe and controlled environment.

15 **V. TOLLING OF THE STATUTE OF LIMITATIONS**

16 49. As of the date of this Complaint, Defendant continues to market the Onewheel based
17 on its ease of use, control, and versatility in all conditions, despite its knowledge that its Onewheel
18 skateboards are defective and unreasonably dangerous. Defendant still has not disclosed and continues
19 to conceal that the Onewheel skateboards are defective and unreasonably dangerous.

20 50. Plaintiffs had no way of knowing about Defendant’s wrongful and deceptive conduct
21 with respect to the defective Onewheel skateboards.

22 51. With respect to customers who have not yet experienced the Nose-Dive Defect,
23 Plaintiffs and Class members did not discover and could not reasonably have discovered prior to
24 purchase that their Onewheel skateboards are defective and unreasonably dangerous, including that
25 their Onewheel skateboard may abruptly nose-dive or stop running, or that, as a result of the foregoing,
26 they overpaid for their Onewheel skateboards, the value of their Onewheel skateboards is diminished,
27 and/or their Onewheel skateboards will require costly modification to fix the Nose-Dive Defect, and
28

1 that any such modifications will impair other qualities of the Onewheel skateboard that formed a
2 material part of the bargain between the parties in the purchase of the Onewheel skateboards by
3 Plaintiffs and Class members.

4 52. With respect to Onewheel skateboards that have experienced the Nose-Dive Defect
5 prior to the filing of this Complaint, Plaintiffs and Class members did not discover and could not
6 reasonably have discovered that the nose-diving/sudden-stop condition of their Onewheel skateboards
7 was due to a defect known to Defendant.

8 53. Within the period of any applicable statutes of limitation or repose, Plaintiff and
9 members of the proposed class could not have discovered through the exercise of reasonable diligence
10 that Defendant was concealing the conduct complained of herein and misrepresenting and concealing
11 the defective nature of the Onewheel skateboard.

12 54. Plaintiff and Class members did not discover, and did not know of facts that would have
13 caused a reasonable person to suspect, that Defendant did not report information within its knowledge
14 to consumers, dealers or relevant authorities; nor would a reasonable and diligent investigation have
15 disclosed that Defendant was aware of the non-conforming and defective nature of the Onewheel
16 skateboards. Plaintiff only learned of the defective nature of the Onewheel skateboards and of
17 Defendant's decision to design and sell such unfit defective devices only shortly before this action was
18 filed.

19 55. All applicable statutes of limitation and repose have also been tolled by Defendant's
20 knowing, active, and fraudulent concealment, and denial of the facts alleged herein throughout the
21 time period relevant to this action.

22 56. Defendant was under a continuous duty to disclose to Plaintiff and Class members the
23 true character, quality, risk, and nature of the durability and performance of the Onewheel skateboards.
24 Instead, Defendant knowingly, affirmatively, and actively concealed or recklessly disregarded the
25 foregoing facts. As a result, Defendant is estopped from relying on any statutes of limitation or repose
26 as a defense in this action.

1 57. For the foregoing reasons, all applicable statutes of limitation and repose have been
2 tolled by operation of the discovery rule and by Defendant's fraudulent concealment with respect to
3 all claims against Defendant; and Defendant is estopped from asserting any such defenses in this
4 action.

5 **VI. CLASS ACTION ALLEGATIONS**

6 58. Plaintiffs bring this action on behalf of themselves and as a class action, pursuant to
7 Federal Rule of Civil Procedure 23, on behalf of the following classes:

8 **Nationwide Class:** All persons or entities who purchased a Onewheel
9 electronic skateboard.

10 **California Subclass:** All persons or entities who purchased a Onewheel
11 electronic skateboard in the State of California.

12 **Florida Subclass:** All persons or entities who purchased a Onewheel
13 electronic skateboard in the State of Florida.

14 59. Plaintiffs assert claims under the laws of each state set forth below.

15 60. Excluded from the Class and State-specific subclasses are individuals who have
16 personal injury claims resulting from the Nose-Dive Defect. Also excluded from the Class and State-
17 specific subclasses are Defendant and its officers, directors, affiliates, legal representatives,
18 employees, co-conspirators, successors, subsidiaries, and assigns, as well as any entity in which
19 Defendant has a controlling interest. In addition, governmental entities and any judge, justice, or
20 judicial officer presiding over this matter and the members of their immediate families and judicial
21 staff are excluded from the Class and State-specific subclasses. Plaintiffs reserve the right to revise the
22 Class definitions based upon information learned through discovery.

23 61. Certification of Plaintiffs' claims for class-wide treatment is appropriate because
24 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as
25 would be used to prove those elements in individual actions alleging the same claim.

26 62. The Class Representatives are asserting claims that are typical of claims of the Class
27 and State-specific subclasses, and they will fairly and adequately represent and protect the interests of
28 the Class and State-specific subclasses in that they have no interests antagonistic to those of the
putative Class and State-specific subclasses members.

1 63. The amount of damages suffered by each individual member of the Class, in light of
2 the expense and burden of individual litigation, would make it difficult or impossible for individual
3 Class members to redress the wrongs done to them. Plaintiffs and Class members have all suffered
4 harm and damages as a result of Defendant’s unlawful and wrongful conduct. Absent a class action,
5 Defendant will likely not have to compensate victims for Defendant’s wrongdoings and unlawful acts
6 or omissions, and will continue to commit the same kinds of wrongful and unlawful acts or omissions
7 in the future.

8 64. **Numerosity under Federal Rule of Civil Procedure 23(a)(1):** The Class and State-
9 specific subclasses members are so numerous that individual joinder of all of their members is
10 impracticable. Due to the nature of the trade and commerce involved, Plaintiffs believe that the total
11 number of Class and State-specific subclasses members is at least in the thousands, and are numerous
12 and geographically dispersed across the country. While the exact number and identities of the Class
13 and State-specific subclasses members are unknown at this time, such information can be ascertained
14 through appropriate investigation and discovery, as well as by the notice Class members will receive
15 by virtue of this litigation so that they may self-identify. The disposition of the claims of the Class and
16 State-specific subclasses members in a single class action will provide substantial benefits to all Parties
17 and the Court. Members of the Class may be notified of the pendency of this action by recognized,
18 Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet
19 postings, and/or published notice. The number of persons for whom this action is filed who are citizens
20 of these United States effectively exhausts the membership of the class.

21 65. **Commonality and Predominance under Federal Rule of Civil Procedure 23(a)(2)**
22 **and 23(b)(3):** This action involves common questions of law and fact which predominate over any
23 questions affecting individual Class members, including, without limitation:

- 24 a. Whether Defendant engaged in the conduct alleged herein;
25 b. Whether Defendant knew about the Nose-Dive Defect, including prior to
26 production;

1 c. Whether Defendant designed, advertised, marketed, distributed, leased, sold, or
2 otherwise placed the defective Boards into the stream of commerce in the United States;

3 d. Whether the Boards that are the subject of this complaint are defective such that
4 they are not fit for ordinary consumer use;

5 e. Whether Defendant omitted material facts about the quality, durability,
6 usability, and safety of the Boards;

7 f. Whether Defendant designed, manufactured, marketed, and distributed the
8 Boards with the Nose-Dive Defect;

9 g. Whether Defendant's conduct violates states' consumer protection statutes, and
10 constitutes breach of contract or warranty and fraudulent concealment, as asserted herein;

11 h. Whether Plaintiffs and the Sub-Class members overpaid for their Boards at the
12 point of sale; and

13 i. Whether Plaintiffs and the Sub-Class members are entitled to damages and other
14 monetary relief and, if so, what amount.

15 **66. Typicality under Federal Rule of Civil Procedure 23(a)(3):** Plaintiffs' claims are
16 typical of the Class and State-specific subclasses members' claims because all have been comparably
17 injured through Defendant's wrongful conduct as described above.

18 **67. Adequacy of Representation under Federal Rule of Civil Procedure 23(a)(3):**
19 Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of
20 the Class and Sub-Class members they seek to represent. Additionally, Plaintiffs have retained counsel
21 with substantial experience in handling complex class action and multi-district litigation. Plaintiffs and
22 their counsel are committed to prosecuting this action vigorously on behalf of the Class and Sub-
23 Classes and have the financial resources to do so. The interests of the Class and Sub-Classes will be
24 fairly and adequately protected by Plaintiffs and their counsel.

25 **68. Superiority of Class Action under Federal Rule of Civil Procedure 23(b)(3):** A
26 class action is superior to any other available means for the fair and efficient adjudication of this
27 controversy, and no unusual difficulties are likely to be encountered in the management of this class
28

1 action. The financial detriment suffered by Plaintiffs and the other members of the Class and State-
2 specific subclasses are relatively small compared to the burden and expense that would be required to
3 individually litigate their claims against Defendant. Accordingly, it would be impracticable for the
4 members of the Class and Subclasses to individually seek redress for Defendant’s wrongful conduct.
5 Even if members of the Class and State-specific subclasses could afford individual litigation, the court
6 system could not. Individualized litigation creates a potential for inconsistent or contradictory
7 judgments and increases the delay and expense to all parties and the court system. By contrast, the
8 class action device presents far fewer management difficulties and provides the benefits of single
9 adjudication, economy of scale, and comprehensive supervision by a single court.

10 **VII. CAUSES OF ACTION**

11 **A. Claims Brought on Behalf of the Nationwide Class**

12 **COUNT I**

13 **VIOLATIONS OF 15 U.S.C. § 2301, *ET SEQ.***
14 **THE MAGNUSON-MOSS WARRANTY ACT**

15 69. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth
16 herein.

17 70. Plaintiffs are “consumers” within the meaning of the Magnuson-Moss Warranty Act,
18 15 U.S.C. § 2301(3).

19 71. Future Motion, Inc. is a “supplier” and “warrantor” within the meaning of the
20 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)–(5).

21 72. The Onewheel electronic skateboards are “consumer products” within the meaning of
22 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

23 73. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is damaged
24 by the failure of a warrantor to comply with a written or implied warranty.

25 74. FM’s express warranties are written warranties within the meaning of the Magnuson-
26 Moss Warranty Act, 15 U.S.C. § 2301(6). The Boards’ implied warranties are covered under 15 U.S.C.
27 § 2301(7).

1 75. FM breached these warranties, as described in more detail above. Without limitation,
2 the Onewheel electronic skateboards contain a common Nose-Dive Defect in that the Boards fail to
3 operate as represented by FM.

4 76. Plaintiffs and the other Class members have had sufficient direct dealings with either
5 FM or its agents (*e.g.*, dealers, sales representatives, and technical support) to establish privity of
6 contract between FM on one hand, and Plaintiffs and each of the other Class members on the other
7 hand.

8 77. Affording FM a reasonable opportunity to cure its breach of written warranties would
9 be unnecessary and futile here.

10 78. At the time of sale of each Onewheel electronic skateboard, FM knew, should have
11 known, or was reckless in not knowing of its misrepresentations and omissions concerning the
12 skateboard's inability to perform as warranted, but nonetheless failed to rectify the situation and/or
13 disclose the defective design. Under the circumstances, the remedies available under any informal
14 settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal
15 dispute resolution procedure and/or afford Onewheel electronic skateboard a reasonable opportunity
16 to cure its breach of warranties is excused and thereby deemed satisfied.

17 79. Plaintiffs and the other Class members would suffer economic hardship if they returned
18 their Onewheel electronic skateboard but did not receive the return of all payments made by them.
19 Because FM is refusing to acknowledge any revocation of acceptance and return immediately any
20 payments made, Plaintiffs and the other Class members have not re-accepted their Onewheel electronic
21 skateboard by retaining them.

22 80. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of
23 \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and
24 costs, computed on the basis of all claims to be determined in this lawsuit.

25 81. Plaintiffs, individually and on behalf of the other Class members, seek all damages
26 permitted by law, including diminution in value of the Onewheel electronic skateboard, in an amount
27 to be proven at trial.

COUNT II

**BREACH OF CONTRACT
(COMMON LAW)**

82. Plaintiffs incorporate by reference all allegations as though fully set forth herein.

83. Plaintiffs assert this Count on behalf of themselves and the Nationwide Class or, in the alternative, on behalf of the State-specific.

84. Defendant’s misrepresentations and omissions alleged herein, including, but not limited to, Defendant’s concealment and suppression of material facts concerning the safety, reliability, durability, and quality of the Boards, caused Plaintiffs and the other Class and Subclass members to make their purchases or leases of their Boards.

85. Absent those misrepresentations and omissions, Plaintiffs and the other Class and Subclass members would not have purchased these Boards, would not have purchased these Boards at the prices they paid, and/or would have purchased or leased a different electronic skateboard that did not have the Nose-Dive Defect. Accordingly, Plaintiffs and the other Class and Subclass members overpaid for their Boards and did not receive the benefit of their bargain.

86. Each and every sale of a Board constitutes a contract between Defendant and the purchaser. Defendant breached these contracts by selling or leasing to Plaintiffs and the other Class and Subclass members defective Boards and by misrepresenting or failing to disclose material facts concerning the safety, reliability, durability, and quality of the Boards, and by affirmatively making misleading statements concerning the safety, reliability, durability, and quality of the Boards.

87. As a direct and proximate result of Defendant’s breach of contract, Plaintiffs and the Subclass members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

1 **B. Claims Brought on Behalf of the California Subclass.**

2 **COUNT III**

3 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW**
4 **(CAL. BUS. & PROF. CODE § 17200, ET SEQ.)**

5 88. Plaintiffs Raymond Wang and Devon Holt (“Plaintiffs,” for purposes of all California
6 Subclass Counts) incorporates by reference all paragraphs as though fully set forth herein.

7 89. Plaintiffs bring this Count on behalf of the California Subclass members against
8 Defendant.

9 90. California’s Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200, *et seq.*,
10 proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act or
11 practice and unfair, deceptive, untrue or misleading advertising.”

12 91. In the course of Defendant’s business, it willfully failed to disclose and actively
13 concealed that the Onewheel electronic skateboard is prone to sudden stopping or nose-diving, which
14 can cause the rider to be catapulted into the air without warning. Particularly in light of Defendant’s
15 advertising campaign, a reasonable American consumer would expect the Onewheel electronic
16 skateboard to function smoothly and safely, without a Nose-Dive Defect. Accordingly, Defendant
17 engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud,
18 misrepresentations, or concealment, suppression, or omission of any material fact with the intent that
19 others rely upon such concealment, suppression, or omission, in connection with the sale of the
20 Onewheel electronic skateboard.

21 92. In purchasing the Boards, Plaintiffs and the California Subclass members were
22 deceived by Defendant’s failure to disclose the Nose-Dive Defect, and the dangers it poses to the
23 riders.

24 93. Plaintiffs and California Subclass members reasonably relied upon Defendant’s false
25 misrepresentations. They had no way of knowing that Defendant’s representations were false and
26 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
27 deception. Plaintiffs and California Subclass members did not, and could not, unravel Defendant’s
28 deception on their own, as the Onewheel electronic skateboard’s software calibrations are a deeply

1 internal component part in the Onewheel electronic skateboard and Plaintiffs and California Subclass
2 members were not aware of the defective nature of the Onewheel electronic skateboard prior to
3 purchase or lease.

4 94. The Defendant's actions as set forth above occurred in the conduct of trade or
5 commerce.

6 95. Defendant's deception, fraud, misrepresentation, concealment, suppression, or
7 omission of material facts were likely to and did in fact deceive reasonable consumers.

8 96. Defendant intentionally and knowingly misrepresented material facts regarding the
9 Boards with intent to mislead Plaintiff and California Subclass.

10 97. Defendant knew or should have known that its conduct violated the California UCL.

11 98. Defendant owed Plaintiff and California Subclass members a duty to disclose the truth
12 about the Nose-Dive Defect because Defendant:

13 a. Possessed exclusive knowledge of the design of the Onewheel electronic
14 skateboard, the calibration of the software, and the risks posed by the Onewheel electronic skateboard;

15 b. Intentionally concealed the foregoing from Plaintiffs and the California
16 Subclass; and/or

17 c. Made incomplete representations regarding the quality, durability, and safety of
18 the Onewheel electronic skateboard, while purposefully withholding material facts from Plaintiffs and
19 the California Subclass that contradicted these representations.

20 99. Due to its specific and superior knowledge regarding the Nose-Dive Defect in the
21 Onewheel electronic skateboard, Defendant's false representations regarding the safety and reliability
22 of the Onewheel electronic skateboard, and Plaintiffs' and California Subclass members' reliance on
23 these material representations, Defendant had a duty to disclose to Plaintiffs and California Subclass
24 members about the Nose-Dive Defect and the dangers posed by this defect. Having volunteered to
25 provide information to Plaintiffs and California Subclass members, Defendant had the duty to disclose
26 not just the partial truth, but the entire truth. These omitted and concealed facts were material because
27 they directly impact the value of the Onewheel electronic skateboards purchased by Plaintiff and
28

1 California Subclass members. Reliability, durability, performance, and safety are material concerns to
2 Onewheel Class members. Defendant represented to Plaintiffs and California Subclass members that
3 they were purchasing Boards so easy to ride that they were a “toy,” when in fact the Nose-Dive Defect
4 was unreasonably dangerous and risky, and has already resulted in severe injuries and death.

5 100. Defendant’s conduct proximately caused injuries to Plaintiffs and California Subclass
6 members.

7 101. Plaintiffs and California Subclass members were injured and suffered ascertainable
8 loss, injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiffs
9 and California Subclass members overpaid for Onewheels and did not receive the benefit of their
10 bargain, and their Onewheels have suffered a diminution in value. These injuries are the direct and
11 natural consequence of Defendant’s misrepresentations and omissions.

12 102. The Onewheel has a safety defect which presents an actual and/or imminent risk to rider
13 safety; specifically, the risk of a sudden stop or nose-dive of the Board, throwing the rider off the Board
14 without warning. Defendant’s violations present a continuing risk to Plaintiffs and California Subclass
15 members as well as to the general public. Defendant’s unlawful acts and practices complained of herein
16 affect the public interest. Further, even without a safety issue, Plaintiffs and California Subclass
17 members overpaid at the point of sale as these Boards have impaired performance due to the defect.

18 103. Plaintiffs and the California Subclass seek monetary relief against Defendant in an
19 amount to be determined at trial. Plaintiffs and the California Subclass also seek punitive damages
20 because Defendant engaged in aggravated and outrageous conduct with an evil mind. Indeed,
21 Defendant carried out despicable conduct with willful and conscious disregard of the rights of others.
22 Defendant’s unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

23 104. Plaintiffs and the California Subclass also seek attorneys’ fees and any other just and
24 proper relief available.

25 **COUNT IV**

26 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT (“CLRA”)**
27 **(CAL. CIV. CODE § 1750, ET SEQ.)**

28 105. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

1 106. Plaintiffs bring this Count on behalf of the California Subclass members against
2 Defendant.

3 107. The Defendant is a “person” under Cal. Civ. Code § 1761(c).

4 108. Plaintiffs and California Subclass members are “consumers” as defined by Cal. Civ.
5 Code § 1761(d), who purchased one or more Boards.

6 109. The California Legal Remedies Act (“CLRA”) prohibits “unfair or deceptive acts or
7 practices undertaken by any person in a transaction intended to result or which results in the sale or
8 lease of goods or services to any consumer” Cal. Civ. Code § 1770(a).

9 110. In the course of Defendant’s business, it willfully failed to disclose and actively
10 concealed that the Onewheel electronic skateboard is prone to sudden stopping or nose-diving, which
11 can cause the rider to be catapulted into the air without warning. Particularly in light of Defendant’s
12 advertising campaign, a reasonable American consumer would expect the Onewheel electronic
13 skateboard to function smoothly and safely, without a Nose-Dive Defect. Accordingly, Defendant
14 engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud,
15 misrepresentations, or concealment, suppression, or omission of any material fact with the intent that
16 others rely upon such concealment, suppression, or omission, in connection with the sale of the
17 Onewheel electronic skateboard.

18 111. In purchasing the Boards, Plaintiffs and the California Subclass members were
19 deceived by Defendant’s failure to disclose the Nose-Dive Defect, and the dangers it poses to the
20 riders.

21 112. Plaintiffs and California Subclass members reasonably relied upon Defendant’s false
22 misrepresentations. They had no way of knowing that Defendant’s representations were false and
23 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
24 deception. Plaintiffs and California Subclass members did not, and could not, unravel Defendant’s
25 deception on their own, as the Onewheel electronic skateboard’s software calibrations are a deeply
26 internal component part in the Onewheel electronic skateboard and Plaintiffs and California Subclass
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1 members were not aware of the defective nature of the Onewheel electronic skateboard prior to
2 purchase or lease.

3 113. The Defendant's actions as set forth above occurred in the conduct of trade or
4 commerce.

5 114. Defendant's deception, fraud, misrepresentation, concealment, suppression, or
6 omission of material facts were likely to and did in fact deceive reasonable consumers.

7 115. Defendant intentionally and knowingly misrepresented material facts regarding the
8 Boards with intent to mislead Plaintiffs and the California Subclass.

9 116. Defendant knew or should have known that its conduct violated the California UCL.

10 117. Defendant owed Plaintiffs and California Subclass members a duty to disclose the truth
11 about the Nose-Dive Defect because Defendant:

12 a. Possessed exclusive knowledge of the design of the Onewheel electronic
13 skateboard, the calibration of the software, and the risks posed by the Onewheel electronic skateboard;

14 b. Intentionally concealed the foregoing from Plaintiffs and the California
15 Subclass; and/or

16 c. Made incomplete representations regarding the quality, durability, and safety of
17 the Onewheel electronic skateboard, while purposefully withholding material facts from Plaintiffs and
18 the California Subclass that contradicted these representations.

19 118. Due to its specific and superior knowledge regarding the Nose-Dive Defect in the
20 Onewheel electronic skateboard, Defendant's false representations regarding the safety and reliability
21 of the Onewheel electronic skateboard, and Plaintiffs' and California Subclass members' reliance on
22 these material representations, Defendant had a duty to disclose to Plaintiffs and California Subclass
23 members about the Nose-Dive Defect and the dangers posed by this defect. Having volunteered to
24 provide information to Plaintiffs and California Subclass members, Defendant had the duty to disclose
25 not just the partial truth, but the entire truth. These omitted and concealed facts were material because
26 they directly impact the value of the Onewheel electronic skateboards purchased by Plaintiffs and
27 California Subclass members. Reliability, durability, performance, and safety are material concerns to
28

1 Onewheel class members. Defendant represented to Plaintiffs and California Subclass members that
2 they were purchasing boards so easy to ride that they were a “toy,” when in fact the Nose-Dive Defect
3 was unreasonably dangerous and risky, and has already resulted in severe injuries and death.

4 119. Defendant’s conduct proximately caused injuries to Plaintiffs and California Subclass
5 members.

6 120. Plaintiffs and California Subclass members were injured and suffered ascertainable
7 loss, injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiffs
8 and California Subclass members overpaid for Onewheels and did not receive the benefit of their
9 bargain, and their Onewheels have suffered a diminution in value. These injuries are the direct and
10 natural consequence of Defendant’s misrepresentations and omissions.

11 121. The Onewheel has a safety defect which presents an actual and/or imminent risk to rider
12 safety; specifically, the risk of a sudden stop or nose-dive of the Board, throwing the rider off the Board
13 without warning. Defendant’s violations present a continuing risk to Plaintiffs and California Subclass
14 members as well as to the general public. Defendant’s unlawful acts and practices complained of herein
15 affect the public interest. Further, even without a safety issue, Plaintiffs overpaid at the point of sale
16 as these boards have impaired performance due to the defect.

17 122. On or about July 19, 2022, Plaintiffs and California Subclass members sent notice
18 letters to Defendant complying with Cal. Civ. Code § 1782(a), to the extent such notice is required for
19 this Defendant. Because Defendant has failed to remedy its unlawful conduct within the requisite time
20 period, Plaintiffs and the California Subclass seek all damages and relief to which Plaintiffs and
21 California Subclass members are entitled.

22 123. Under Cal. Civ. Code § 1780(a), Plaintiffs and California Sub-Class members seek
23 monetary relief against FM for the harm caused by FM’s violations of the CLRA as alleged herein.

24 124. Under Cal. Civ. Code § 1780(b), Plaintiffs and California Sub-Class members seek an
25 additional award against FM of up to \$5,000 for each Plaintiff who qualifies as a “senior citizen” or
26 “disabled person” under the CLRA. FM knew or should have known that their conduct was directed
27 to one or more Plaintiffs or Sub-Class members who are senior citizens or disabled persons. FM’s
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1 conduct caused one or more of these senior citizens or disabled persons to suffer a substantial loss of
2 property set aside for retirement or for personal or family care and maintenance, or assets essential to
3 the health or welfare of the senior citizen or disabled person. One or more Plaintiffs or Sub-Class
4 members who are senior citizens or disabled persons are substantially more vulnerable to FM’s conduct
5 because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and
6 each of them suffered substantial physical, emotional, or economic damage resulting from FM’s
7 conduct.

8 125. Plaintiffs also seek punitive damages against FM because their unlawful conduct
9 constitutes malice, oppression, and fraud under Cal. Civ. Code § 3294.

10 126. Plaintiffs and California Sub-Class members seek an order enjoining FM’s unfair or
11 deceptive acts or practices, restitution, costs of court, attorneys’ fees under Cal. Civ. Code § 1780(e),
12 and any other just and proper relief available under CLRA.

13 **COUNT V**

14 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
15 **(CAL. COM. CODE §§ 2314 AND 10212)**

16 127. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

17 128. Plaintiffs bring this Count individually and on behalf of the California Subclass against
18 the Defendant.

19 129. As set forth above, Plaintiffs and California Subclass members have suffered from a
20 defect that existed in the Onewheel electronic skateboards which causes the Boards to suddenly stop
21 or nose-dive without warning. Plaintiffs and California Subclass members are seeking recovery for
22 this manifested defect and any and all consequential damages stemming therefrom.

23 130. A warranty that the Boards were in merchantable condition and fit for the ordinary
24 purpose for which the devices are used is implied by law pursuant to Cal. Com. Code §§ 2314 and
25 10212. “The core test of merchantability is fitness for the ordinary purpose for which such goods are
26 used. Such fitness is shown if the product is in safe condition and substantially free from defects.” *Isip*
27 *v. Mercedes-Benz, USA, LLC*, 155 Cal. App. 4th 19, 26 (2007); *see also Mexia v. Rinker Coat Co.*,

1 *Inc.*, 174 Cal. App. 4th 1291 (2009). As demonstrated herein, the Boards are not substantially free
2 from defects; the Boards contain an existing, manifested defect which can cause the Boards to suddenly
3 stop or nose-dive, throwing the rider off the Board at dangerous speeds.

4 131. Defendant is and was at all times a “merchant” with respect to the Boards under Cal.
5 Com. Code §§ 2104(1) and 10103(c), and a “seller” of goods under § 2103(1)(d).

6 132. The Boards are and were at all relevant times “goods” within the meaning of Cal. Com.
7 Code §§ 2105(1) and 10103(a)(8).

8 133. A warranty that the Boards were in merchantable condition and fit for the ordinary
9 purpose for which the vehicles are used is implied by law pursuant to Cal. Com. Code §§ 2314 and
10 10212.

11 134. The Boards, when sold and at all times thereafter, were not in merchantable condition
12 and are not fit for the ordinary purpose for which electronic skateboards are used. The Onewheel has
13 a safety defect which presents an actual and/or imminent risk to rider safety; specifically, the risk of a
14 sudden stop or nose-dive of the Board, throwing the rider off the Board without warning.

15 135. It was reasonable to expect that Plaintiff and California Subclass members may use,
16 consume, or be affected by the defective Boards, regardless of contractual privity with Defendant.

17 136. The Boards contained an inherent defect that was substantially certain to result in
18 malfunction during the useful life of the product.

19 137. Plaintiffs and California Subclass members were and are third-party beneficiaries to the
20 Defendant manufacturer’s contracts with FM-certified/authorized retailers who sold the Boards to
21 Plaintiffs.¹¹

22
23
24 ¹¹ See *In re Nexus 6P Prod. Liab. Litig.*, 293 F. Supp. 3d 888, 922 (N.D. Cal. 2018) (“[California
25 law] allow[s] plaintiffs to bring implied warranty claims in the absence of privity if the plaintiff shows
26 that he was a beneficiary to a contract between the defendant and a third party.”); *id.* (“Because third
27 party beneficiary status is a matter of contract interpretation, a person seeking to enforce a contract as
28 a third party beneficiary must plead a contract which was made expressly for his [or her] benefit and
one in which it clearly appears that he [or she] was a beneficiary.” (citations omitted)); *In re MyFord
Touch Consumer Litig.*, 46 F. Supp. 3d 936, 983 (N.D. Cal. 2014) (“[T]here is an exception to the
privity requirement that applies when a plaintiff is the intended beneficiary of implied warranties in
agreements linking a retailer and a manufacturer.” (citations omitted)).

1 138. In addition, or in the alternative, Plaintiffs and California Subclass members directly
2 relied upon Defendant’s advertising, as alleged above.¹²

3 139. Defendant was provided notice of these issues within a reasonable time of Plaintiff’s
4 knowledge of the non-conforming or defective nature of the Boards, by letters from Plaintiff’s counsel,
5 on behalf of Plaintiff, to Defendant, complaints by Plaintiff or Class members to Defendant either
6 orally or in writing, complaints to FM dealerships, intermediate sellers, or repair facilities either orally
7 or in writing, presentation of the Boards for repair to dealerships or to intermediate sellers or repair
8 facilities, and/or by the allegations contained in this Complaint.

9 140. As a direct and proximate result of Defendant’s breach of the implied warranty of
10 merchantability, Plaintiffs and California Subclass members have been damaged in an amount to be
11 proven at trial.

12 **COUNT VI**

13 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
14 **(CAL. CIV. CODE § 1791, ET SEQ.)**

15 141. Plaintiffs incorporates by reference the paragraphs above as if fully set forth herein.

16 142. Boards are “consumer goods” and Plaintiffs and California Subclass members are
17 “buyers” within the meaning of Cal. Civ. Code § 1791. The Defendant is also a “manufacturer,”
18 “distributor,” or “retail seller” under Cal. Civ. Code § 1791.

19 143. The implied warranty of merchantability included with the sale of each Board means
20 that Defendant warranted that each Board would pass without objection in trade under the contract
21 description; (b) was fit for the ordinary purposes for which the Boards would be used; and
22 (c) conformed to the promises or affirmations of fact made on the container or label.

23 144. The Boards would not pass without objection in the electronic skateboard trade because
24 of the defect affecting the Board, which also makes them unfit for the ordinary purpose for which a
25 Board would be used.

26 _____
27 ¹² See *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1023 (9th Cir. 2008) (holding that, for
28 purposes of a breach of implied warranty claim, a Plaintiff need not stand in vertical contractual privity
with the defendant when the plaintiff relies on written labels or advertisements of a manufacturer).

1 145. The Boards are not adequately labeled because their labeling fails to disclose the defect
2 and risk of nose-diving or sudden stopping, and does not advise the members of the proposed
3 California Subclass of the existence of the issue prior to experiencing the Nose-Dive Defect firsthand.

4 146. Defendant’s actions have deprived Plaintiffs and the members of the proposed
5 California Subclass of the benefit of their bargains and have caused the Boards to be worth less than
6 what Plaintiffs and other members of the proposed California Subclass paid.

7 147. As a direct and proximate result of Defendant’s breach of implied warranty, Plaintiffs
8 and members of the proposed California Subclass received goods whose condition substantially
9 impairs their value. Plaintiffs and members of the proposed California Subclass have been damaged
10 by the diminished value of their Boards.

11 148. Under Cal. Civ. Code §§ 1791.1(d) and 1794, Plaintiffs and members of the proposed
12 California Subclass are entitled to damages and other legal and equitable relief, including, at their
13 election, the right to revoke acceptance of the Boards or the overpayment or diminution in value of
14 their Boards. They are also entitled to all incidental and consequential damages resulting from
15 Defendant’s breach, as well as reasonable attorneys’ fees and costs.

16 **C. Claims Brought on Behalf of the Florida Subclass.**

17 **COUNT VII**

18 **VIOLATIONS OF THE FLORIDA DECEPTIVE AND**
19 **UNFAIR TRADE PRACTICES ACT (“FDUTPA”),**
(FLA. STAT. ANN. § 501.201, ET SEQ.)

20 149. Plaintiff Jerrod Hunter Nichols (“Plaintiff,” for purposes of all Florida Subclass Counts)
21 incorporates all paragraphs as though fully set forth herein.

22 150. Plaintiff and Florida Subclass members who purchased their vehicles new are
23 “consumers” within the meaning of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat.
24 Ann. § 501.203(7).

25 151. The Defendant engaged in “trade or commerce” within the meaning of Fla. Stat. Ann.
26 § 501.203(8).

1 152. The FDUTPA prohibits “[u]nfair methods of competition, unconscionable acts or
2 practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Fla. Stat.
3 Ann. § 501.204(1).

4 153. In the course of Defendant’s business, it willfully failed to disclose and actively
5 concealed that the Onewheel electronic skateboard is prone to sudden stopping or nose-diving, which
6 can cause the rider to be catapulted into the air without warning. Particularly in light of Defendant’s
7 advertising campaign, a reasonable American consumer would expect the Onewheel electronic
8 skateboard to function smoothly and safely, without a Nose-Dive Defect. Accordingly, Defendant
9 engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud,
10 misrepresentations, or concealment, suppression, or omission of any material fact with the intent that
11 others rely upon such concealment, suppression, or omission, in connection with the sale of the
12 Onewheel electronic skateboard.

13 154. In purchasing the Boards, Plaintiff and the Florida Subclass members were deceived by
14 Defendant’s failure to disclose the Nose-Dive Defect, and the dangers it poses to the riders.

15 155. Plaintiff and Florida Subclass members reasonably relied upon Defendant’s false
16 misrepresentations. They had no way of knowing that Defendant’s representations were false and
17 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
18 deception. Plaintiff and Florida Subclass members did not, and could not, unravel Defendant’s
19 deception on their own, as the Onewheel electronic skateboard’s software calibrations are a deeply
20 internal component part in the Onewheel electronic skateboard and Plaintiff and Florida Subclass
21 members were not aware of the defective nature of the Onewheel electronic skateboard prior to
22 purchase or lease.

23 156. The Defendant’s actions as set forth above occurred in the conduct of trade or
24 commerce.

25 157. Defendant’s deception, fraud, misrepresentation, concealment, suppression, or
26 omission of material facts were likely to and did in fact deceive reasonable consumers.

1 158. Defendant intentionally and knowingly misrepresented material facts regarding the
2 Boards with intent to mislead Plaintiff and the Florida Subclass.

3 159. Defendant knew or should have known that its conduct violated the FDUTPA.

4 160. Defendant owed Plaintiff and Florida Subclass members a duty to disclose the truth
5 about the Nose-Dive Defect because Defendant:

6 a. Possessed exclusive knowledge of the design of the Onewheel electronic
7 skateboard, the calibration of the software, and the risks posed by the Onewheel electronic skateboard;

8 b. Intentionally concealed the foregoing from Plaintiff and the Florida Subclass;
9 and/or

10 c. Made incomplete representations regarding the quality, durability, and safety of
11 the Onewheel electronic skateboard, while purposefully withholding material facts from Plaintiff and
12 the Florida Subclass that contradicted these representations.

13 161. Due to its specific and superior knowledge regarding the Nose-Dive Defect in the
14 Onewheel electronic skateboard, Defendant’s false representations regarding the safety and reliability
15 of the Onewheel electronic skateboard, and Plaintiff’s and Florida Subclass members’ reliance on these
16 material representations, Defendant had a duty to disclose to Plaintiff and Florida Subclass members
17 about the Nose-Dive Defect and the dangers posed by this defect. Having volunteered to provide
18 information to Plaintiff and Florida Subclass members, Defendant had the duty to disclose not just the
19 partial truth, but the entire truth. These omitted and concealed facts were material because they directly
20 impact the value of the Onewheel electronic skateboards purchased by Plaintiff and Florida Subclass
21 members. Reliability, durability, performance, and safety are material concerns to Onewheel class
22 members. Defendant represented to Plaintiff and Florida Subclass members that they were purchasing
23 Boards so easy to ride that they were a “toy,” when in fact the Nose-Dive Defect was unreasonably
24 dangerous and risky, and has already resulted in severe injuries and death.

25 162. Defendant’s conduct proximately caused injuries to Plaintiff and Florida Subclass
26 members.

1 163. Plaintiff and Florida Subclass members were injured and suffered ascertainable loss,
2 injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and
3 Florida Subclass members overpaid for Onewheels and did not receive the benefit of their bargain, and
4 their Onewheels have suffered a diminution in value. These injuries are the direct and natural
5 consequence of Defendant's misrepresentations and omissions.

6 164. The Onewheel has a safety defect which presents an actual and/or imminent risk to rider
7 safety; specifically, the risk of a sudden stop or nose-dive of the Board, throwing the rider off the Board
8 without warning. Defendant's violations present a continuing risk to Plaintiff and Florida Subclass
9 members as well as to the general public. Defendant's unlawful acts and practices complained of herein
10 affect the public interest. Further, even without a safety issue, Plaintiff overpaid at the point of sale as
11 these Boards have impaired performance due to the defect.

12 165. Plaintiff and Florida Subclass members were injured and suffered ascertainable injury
13 in act, and/or actual damages as a proximate result of Defendant's conduct in that Plaintiff and Florida
14 Subclass members overpaid for their Boards, did not get the benefit of their bargain, and their Boards
15 are equipped with a defective and dangerous Nose-Dive Defect. These injuries are the direct and
16 natural consequence of Defendant's representations and omissions.

17 166. Defendant's violations present a continuing risk to Plaintiff as well as Florida Subclass
18 members.

19 167. Accordingly, Defendant is liable to Plaintiff and Florida Subclass members for damages
20 in an amount to be proven at trial.

21 168. On or about July 19, 2022, Plaintiffs and Florida Subclass members sent notice letters
22 to Defendant complying with Fla. Stat. Ann. § 501.201 *et seq.*, to the extent such notice is required for
23 this Defendant. Because Defendant has failed to remedy its unlawful conduct within the requisite time
24 period, Plaintiffs and the Florida Subclass seek all damages and relief to which Plaintiffs and Florida
25 Subclass members are entitled.

COUNT VIII

UNJUST ENRICHMENT

1
2
3 169. Plaintiff incorporates all paragraphs as though fully set forth herein.

4 170. Plaintiff brings this Count individually and on behalf of the Florida Subclass against
5 Defendant.

6 171. As set forth above, Plaintiff and Florida Subclass members have suffered from a defect
7 that existed in the Onewheel electronic skateboards which causes the Boards to suddenly stop or nose-
8 dive without warning. Plaintiff and Florida Subclass members are seeking recovery for this manifested
9 defect and any and all consequential damages stemming therefrom.

10 172. As a result of their wrongful and fraudulent acts and omissions, as set forth herein,
11 pertaining to the defects in the Boards and the concealment thereof, Defendant charged a higher price
12 for the Boards than the Boards' true value and Defendant, therefore, obtained monies that rightfully
13 belong to Plaintiff and Florida Subclass members.

14 173. Defendant has benefitted from manufacturing and selling at an unjust profit defective
15 Boards whose value was artificially inflated by Defendant's concealment of the defective nature of the
16 Boards, and false representations related thereto.

17 174. Defendant enjoyed the benefit of increased financial gains, to the detriment of Plaintiff
18 and Florida Subclass members, who paid a higher price for their Boards that actually had lower values.

19 175. Defendant has received and retained unjust benefits from the Plaintiff and Florida
20 Subclass members, and inequity has resulted.

21 176. It would be inequitable and unconscionable for Defendant to retain these wrongfully
22 obtained benefits.

23 177. Because Defendant concealed their fraud and deception, Plaintiff and Florida Subclass
24 members were not aware of the true facts concerning the Boards and did not benefit from Defendant's
25 misconduct.

26 178. Defendant knowingly accepted and retained the unjust benefits of its fraudulent
27 conduct.
28

1 179. As a result of Defendant’s misconduct, the amount of its unjust enrichment should be
2 disgorged and returned to Plaintiff and Florida Subclass members, in an amount to be proven at trial.

3 180. Plaintiff and Florida Subclass members, therefore, seek an order establishing Defendant
4 as a constructive trustee of the profits unjustly obtained, plus interest.

5 **COUNT IX**

6 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
7 **(FLA. STAT. ANN. §§ 672.314 AND 680.212)**

8 181. Plaintiff incorporates all paragraphs as though fully set forth herein.

9 182. Plaintiff brings this Count individually and on behalf of the Florida Subclass against
10 Defendant.

11 183. As set forth above, Plaintiff and Florida Subclass members have suffered from a defect
12 that existed in the Onewheel electronic skateboards which causes the Boards to suddenly stop or nose-
13 dive without warning. Plaintiff and Florida Subclass members are seeking recovery for this manifested
14 defect and any and all consequential damages stemming therefrom.

15 184. Defendant was at all times a “merchant” with respect to motor vehicles under Fla. Stat.
16 Ann. §§ 672.104(1) and 680.1031(3)(k), and a “seller” of motor vehicles under § 672.103(1)(d).

17 185. The Boards are and were at all relevant times “goods” within the meaning of Fla. Stat.
18 Ann. §§ 672.105(1) and 680.1031(1)(h).

19 186. A warranty that the Boards were in merchantable condition and fit for the ordinary
20 purpose for which electric skateboards are used is implied by law, pursuant to Fla. Stat. Ann.
21 §§ 672.314 and 680.212.

22 187. The Boards, when sold and at all times thereafter, were not in merchantable condition
23 and are not fit for the ordinary purpose for which the Boards are used. Specifically, the Boards have a
24 safety defect which presents an actual and/or imminent risk to rider safety; specifically, the risk of a
25 sudden stop or nose-dive of the Board, throwing the rider off the Board without warning.

26 188. It was reasonable to expect that Plaintiff and Florida Subclass members may use,
27 consume or be affected by the defective Boards.

1 B. An order temporarily and permanently enjoining FM from continuing unlawful,
2 deceptive, fraudulent, and unfair business practices alleged in this Complaint;

3 C. Injunctive relief in the form of an adequate recall, free replacement, or Board buy-back
4 program;

5 D. An order establishing FM as a constructive trustee over profits wrongfully obtained,
6 plus interest;

7 E. Costs, restitution, damages, including punitive damages, exemplary damages and treble
8 damages, and disgorgement in an amount to be determined at trial;

9 F. An order requiring FM to pay both pre- and post-judgment interest on any amounts
10 awarded;

11 G. An award of costs and attorney's fees; and

12 H. Such other or further relief as may be appropriate.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs hereby demand a jury trial for all claims so triable.

15
16 Dated: September 6, 2022

Respectfully submitted,

17 HAGENS BERMAN SOBOL SHAPIRO LLP

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