

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

VICTOR MEDINA,

Plaintiff,

v.

IMMOTOR, LLC,

Defendant.

No.

COMPLAINT FOR DAMAGES

JURY DEMAND

PLAINTIFF’S ORIGINAL COMPLAINT FOR DAMAGES

NOW COMES Plaintiff, Victor Medina (hereinafter “Plaintiff”), through his attorneys and hereby complains of Defendant Immotor, LLC (hereinafter “Immotor” or “Defendant”), and in support thereof will show the Honorable Court as follows:

JURISDICTION & VENUE

1. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d) because complete diversity exists between Plaintiffs and Defendant, and the matter in controversy, exclusive of interest and costs, exceeds the sum of value of \$75,000.

2. This Court has personal jurisdiction over Defendant because Defendant has transacted business and its affairs in this district and has committed acts complained of in the State of New York.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a) because Defendant transacts substantial business in the Southern District of New York.

PARTIES

4. Plaintiff is and was at all times relevant, a citizen and resident of the State of New York, Bronx County.

5. Defendant Immotor, LLC is a limited liability company organized and existing under the laws of the State of Delaware. Defendant Immotor, LLC's principal place of business and headquarters is in Irvine, California, and was doing business in the State of New York. At all times herein mentioned, Defendant Immotor, LLC developed, designed, tested, manufactured, assembled, inspected, labeled, advertised, promoted, marketed, supplied, distributed, wholesaled, and sold Immotor GO electric scooters, including the scooter operated by the Plaintiff, and introduced such products into interstate commerce with knowledge and intent that such products be sold in the State of New York.

BRIEF STATEMENT OF FACTS

6. On June 16, 2018, Plaintiff, Victor Medina, was riding the subject Immotor GO electric scooter in a neighborhood on a clear afternoon in the Bronx, New York. Plaintiff was riding the subject Immotor GO electric scooter in a manner consistent with its marketed and intended use, and consistent with the marketed, intended, and reasonably foreseeable purpose of the scooter.

7. While riding the subject Immotor GO electric scooter, Plaintiff was suddenly and without warning ejected from the scooter and thrown to the ground, knocking him unconscious and causing severe injuries, including a concussion, fractured left hand, facial lacerations, jaw dislocation, left shoulder laceration, knee lacerations, and other injuries which are serious and permanent in nature.

8. The aforesaid accident and resulting injuries and damages to Plaintiff were due to the carelessness and negligence of the Defendant, without any fault, negligence or culpable conduct on the part of the Plaintiff contributing thereto.

CAUSES OF ACTION AGAINST DEFENDANT IMMOTOR, LLC

COUNT I
(Negligence & Gross Negligence)

9. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

10. At all times herein mentioned, Defendant Immotor was engaged in the business of designing, engineering, developing, manufacturing, fabricating, assembling, equipping, testing, inspecting, repairing, retrofitting, labeling, advertising, promoting, marketing, supplying, distributing, wholesaling, and selling the Immotor GO electric scooter, and its component parts and constituents, for use by members of the general public for the intended purpose of use as a means of transportation and commuting in urban environments.

11. Defendant Immotor owed Plaintiff a duty to exercise reasonable care in the design, engineering, development, manufacturing, fabrication, assembly, equipping, testing, inspection, repair, retrofitting, labeling, advertising, promotion, marketing, supplying, distribution, wholesaling, and selling of the Immotor GO electric scooter, including a duty to assure that the Immotor GO electric scooter did not cause Plaintiff, other users, bystanders, or members of the public, to suffer from unnecessary injuries.

12. Defendant Immotor failed to exercise ordinary care and breached its duty to Plaintiff by, among other things:

- a. negligently designing the subject Immotor GO electric scooter;

- b. failing to exercise reasonable care to prevent the subject Immotor GO electric scooter from creating an unreasonable risk of harm to the person or property of one who might reasonably be expected to use the subject Immotor GO electric scooter in a foreseeable manner;
- c. manufacturing an unsafe product, the subject Immotor GO electric scooter;
- d. failing to take reasonable care to warn the consumer of the risk of harm or injury where a reasonably careful person would have done so under the circumstances;
- e. failing to incorporate safer alternative designs and formulations during the design and manufacture of the subject Immotor GO electric scooter that were practicable and would have eliminated the unsafe nature of the subject Immotor GO electric scooter without impairing its usefulness;
- f. failing to adequately test the subject Immotor GO electric scooter before retail sale; and
- g. inadequately inspecting the vehicle during the manufacture and fabrication of the subject Immotor GO electric scooter.

13. Defendant Immotor knew, or in the exercise of ordinary and reasonable care should have known, that the subject Immotor GO electric scooter was a product of such a nature that if it was not properly designed, engineered, developed, manufactured, fabricated, assembled, equipped, tested, inspected, repaired, retrofitted, labeled, advertised, promoted, marketed, supplied, distributed, wholesaled, and sold, for the use and purpose for which it was intended, it was likely to injure the person or persons by whom it was used.

14. Defendant Immotor so negligently and carelessly designed, engineered, developed, manufactured, fabricated, assembled, equipped, tested or failed to test, inspected or failed to inspect, repaired, retrofit or failed to retrofitted, failed to recall, labeled, advertised, promoted, marketed, supplied, distributed, wholesaled, and sold the subject Immotor GO electric scooter, so

that it was in a dangerous and defective condition, and unsafe for the use and purpose for which it was intended when used as recommended by Defendant Immotor.

15. Defendant Immotor knew, or in the exercise of ordinary and reasonable care should have known, of alternative designs that were technologically and economically feasible, and that would better protect occupants from the negligently designed and manufactured defects described above, but Defendant Immotor chose not to incorporate these alternative designs. Furthermore, Defendant Immotor knew or should have known in the exercise of reasonable care that (1) the use of the subject Immotor GO electric scooter may be harmful or injurious to the user, and (2) that risk of harm and injury was not obvious to the user.

16. On the aforementioned date, while Plaintiff was using the subject Immotor GO electric scooter for the purpose for which it was intended, and as a proximate result of the said negligence and carelessness of the Defendant Immotor, Plaintiff was suddenly and without warning ejected from the subject Immotor GO scooter and thrown to the ground, thereby causing serious and severe injuries to the Plaintiff as herein alleged.

17. As a direct and proximate result of the said negligence and carelessness of Defendant Immotor, Plaintiff has sustained injuries, damages, and losses, and suffered severe and excruciating pain and distressing mental anguish as a result of said injuries. Plaintiff has also suffered general shock and trauma as a result of the said negligence and carelessness of the Defendant Immotor. Plaintiff has suffered, and for a long period of time to come will continue to suffer, said pain and mental anguish as a result of said injuries.

18. As a direct and proximate result of the said negligence and carelessness of Defendant Immotor, Plaintiff has incurred, and will incur, loss of income, wages, profits and

commissions, a loss of earning capacity, a diminishment of earning potential, and other pecuniary losses, the full nature and extent of which are not yet known to Plaintiff.

19. Plaintiff's damages and injuries were the legal and proximate result of the actions and inactions of the Defendant Immotor, who owed a duty to Plaintiff in designing, manufacturing, warning about, and distributing the Immotor GO electric scooter.

20. Because the acts and/or omissions of Defendant Immotor were either committed by or authorized, ratified, or otherwise approved in a deliberate, cold, callous, malicious, intentional, and/or unreasonable manner, as fully set forth herein, causing injury and damages to Plaintiff, and were done with a conscious disregard of Plaintiff's rights and safety, Plaintiff requests the assessment of punitive damages against Defendant in an amount appropriate to punish or set an example of Defendant.

COUNT II
(Strict Product Liability: Defective or Improper Design)

21. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

22. Defendant Immotor designed, engineered, developed, manufactured, fabricated, assembled, equipped, tested, inspected, repaired, retrofit, labeled, advertised, promoted, marketed, supplied, distributed, wholesaled, and sold the subject Immotor GO electric scooter, which was intended to be used as a means of transportation and commuting in urban environments.

23. Defendant Immotor marketed the subject Immotor GO electric scooter which was designed so that it was not reasonably safe.

24. Defendant Immotor knew that the subject Immotor GO electric scooter was to be purchased and used without inspection for defects by Plaintiff and the general public.

25. The subject Immotor GO electric scooter was unsafe for its intended use by reason of defects in its manufacture, design, testing, components and constituents, so that it would not safely serve its purpose, but would instead expose the users of said product to serious injury because of the failure of Defendant Immotor to properly guard and protect the users of the Immotor GO electric scooter from the defective design of said product.

26. Defendant Immotor designed the subject Immotor GO electric scooter defectively, causing it to fail to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner.

27. When the subject Immotor GO electric scooter unexpectedly failed, it did so as a result of the design defects that existed within the subject Immotor GO electric scooter at the time it was manufactured.

28. The risks inherent in the design of the subject Immotor GO electric scooter outweigh significantly any benefits of such design.

29. The defects in the subject Immotor GO electric scooter were a substantial factor in bringing about Plaintiff's injuries.

30. At the time of the occurrence, the subject Immotor GO electric scooter was being used by Plaintiff for the purpose and in the manner it was intended.

31. Plaintiff was not aware of the aforementioned defects at any time prior to the injuries caused by the subject Immotor GO electric scooter and could not, by the exercise of reasonable care, have discovered the defects and their perceived danger, nor could Plaintiff have avoided the injury.

32. As a legal and proximate result of the aforementioned defects of the subject Immotor GO electric scooter, Plaintiff sustained the injuries and damages set forth herein.

33. Because the acts and/or omissions of Defendant Immotor were either committed by or authorized, ratified, or otherwise approved in a deliberate, cold, callous, malicious, intentional, and/or unreasonable manner, as fully set forth herein, causing injury and damages to Plaintiff, and were done with a conscious disregard of Plaintiff's rights and safety, Plaintiff requests the assessment of punitive damages against Defendant in an amount appropriate to punish or set an example of it.

COUNT III
(Strict Liability: Failure To Warn)

34. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

35. Defendant Immotor knew that the subject Immotor GO electric scooter, and its component parts, would be purchased and used without inspection for defects in the design of the vehicle.

36. The subject Immotor GO electric scooter was defective when it left the control of Defendant Immotor.

37. Defendant Immotor knew or should have known of the latent dangers resulting from the foreseeable uses of the Immotor GO electric scooter, whose defective design, manufacturing, and lack of sufficient warnings caused them to have an unreasonably dangerous propensity to cause catastrophic injuries.

38. Defendant Immotor failed to adequately warn of the substantial dangers known or knowable at the time of the defective Immotor GO electric scooter's design, manufacture, and distribution.

39. Defendant Immotor failed to provide adequate warnings, instructions, guidelines or admonitions to members of the consuming public, including Plaintiff, of the design and manufacturing defects, which Defendant Immotor knew, or in the exercise of reasonable care should have known, to have existed in the subject Immotor GO electric scooter, and its component parts.

40. Defendant Immotor knew that these substantial dangers are not readily recognizable to an ordinary consumer and that consumers would purchase and use these products without inspection.

41. At the time of Plaintiff's injuries, the subject Immotor GO electric scooter was being used in the manner intended by Defendant Immotor, and in a manner that was reasonably foreseeable by Defendant Immotor as involving substantial danger that was not readily apparent to its users.

42. Plaintiff's damages and injuries were the legal and proximate result of the actions and inactions of Defendant Immotor, which owed a duty to Plaintiff in designing, manufacturing, warning about, and distributing the subject Immotor GO electric scooter.

43. Because the acts and/or omissions of Defendant Immotor were either committed by or authorized, ratified, or otherwise approved in a deliberate, cold, callous, malicious, intentional, and/or unreasonable manner, as fully set forth herein, causing injury and damages to Plaintiff, and were done with a conscious disregard of Plaintiff's rights and safety, Plaintiff requests the assessment of punitive damages against Defendant in an amount appropriate to punish or set an example of it.

DAMAGES

44. Plaintiff continues to undergo extensive rehabilitation and medical treatment.

45. As a result of the subject Immotor GO electric scooter's mechanical failure(s),

Plaintiff has suffered numerous medical issues, including, but not limited to:

- a. Concussion;
- b. Fractured left hand;
- c. Facial lacerations;
- d. Jaw dislocation;
- e. Left shoulder laceration;
- f. Knee lacerations;
- g. Scarring; and
- h. Inability to perform basic chores.

46. The acts and omissions of Defendant Immotor were the direct and proximate cause of Plaintiff's injuries and damages.

47. As a direct and proximate result of the subject Immotor GO electric scooter's defect and resulting failure, Plaintiff suffered—and will continue to suffer—non-economic damages including, but not limited to, pain and suffering, loss of enjoyment of life, inconvenience, emotional stress, and impairment of quality of life.

48. As a direct and proximate result of the subject Immotor GO electric scooter's defect and resulting failure, Plaintiff suffered—and will continue to suffer—temporary and permanent impairment, physical impairment, and disfigurement.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Victor Medina respectfully prays for judgment against Defendant Immotor, LLC in an amount to be determined by the trier of fact for his losses, damages and harm, economic and noneconomic, for punitive and statutory damages, and for all costs, attorneys fees, expert witness fees, filing fees, pre- and post-judgment interest, and such other further relief as the Court may deem appropriate, just, and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

Dated: September 11, 2018

Respectfully submitted,

HILLIARD MARTINEZ GONZALES, LLP¹

By: /s/ Robert C. Hilliard
Pending Pro Hac Vice Admission
Robert C. Hilliard
Texas State Bar No. 09677700
Federal ID No. 5912
bobh@hmglawfirm.com
719 S. Shoreline Blvd.
Corpus Christi, TX 78401
Telephone No.: (361) 882-1612
Facsimile No.: (361) 882-3015
Attorneys for Plaintiff

And

LEVER GOTTFRIED ECKER PLLC

By: /s/ Daniel G. Ecker
Daniel G. Ecker, Esq. (DE2017)
decker@lgelegal.com
David B. Lever, Esq. (DL2501)

¹ Following the filing of this Complaint, Robert C. Hilliard, Esq., of the law firm of Hilliard Martinez Gonzales LLP, 719 S. Shoreline Boulevard, Corpus Christi, Texas 78401, 361-882-1612, Texas State Bar No. 09677700, bobh@hmglawfirm.com, together with other attorneys from such law firm, intends to seek admission *pro hac vice* in this action.

dlever@lgelegal.com
120 Bloomingdale Road, Suite 401
White Plains, New York 10605
Telephone No.: (914) 288-9191
Facsimile No.: (914) 288-9191
Attorneys for Plaintiff