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Plaintiff Jonas Sugarman

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

CV 10 5246

Case No. _____

JONAS SUGARMAN, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

DUCATI NORTH AMERICA, INC.,

Defendant.

**CLASS ACTION COMPLAINT FOR
VIOLATION OF CONSUMER
PROTECTION LAWS**

DEMAND FOR JURY TRIAL
CLASS ACTION

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PVT

1 Plaintiff Jonas Sugarman, on behalf of himself and all others similarly situated, alleges the
2 following against Defendant Ducati North America, Inc. (“Ducati”):

3 **SUMMARY OF THE CASE**

4 1. Plaintiff and the class members he proposes to represent are owners or lessees of 2004-
5 2010 Ducati motorcycles equipped with plastic fuel tanks. The plastic used in Plaintiff and class
6 members’ fuel tanks is incompatible with the motorcycles’ fuel, which causes the tanks to rapidly
7 degrade and deform and leads to a number of unsafe conditions. Among other things, as the plastic
8 degrades and deforms, the fuel tanks interfere with the full range of steering, leak fuel onto the engine,
9 and destabilize the motorcycle’s weight distribution—often to the point that the motorcycle cannot be
10 safely operated after only a few thousand miles of use.

11 2. Ducati is covering the defect in its plastic fuel tanks under its warranties, but in
12 conducting these warranty repairs Ducati has chosen not to correct the defect in the tank’s material.
13 Ducati instead installs a replacement tank made of the same incompatible material, which likewise
14 begins degrading and deforming upon contact with the motorcycles’ fuel. As a result, Plaintiff and other
15 Ducati owners are repeatedly exposed to unsafe conditions as their fuel tanks repeatedly degrade and
16 deform.

17 3. Based on chemical principles well known in the industry, materials testing, warranty
18 data, customer complaint data, and replacement part sales data, Ducati knew or should have known that
19 its plastic fuel tanks were incompatible with the motorcycles’ fuel. Ducati nonetheless continued to sell
20 Ducati motorcycles with defective plastic fuel tanks for several years, even while making plans behind-
21 the-scenes to use compatible aluminum fuel tanks on future model years. Ducati did not tell its
22 customers at the time of sale that the tanks were incompatible and would create a number of unsafe
23 conditions as they degraded and deformed. Nor did Ducati inform its customers that the problem would
24 reoccur even after warranty repairs since Ducati was, as a matter of policy and practice, installing
25 replacement fuel tanks made of the same incompatible material.

26 4. Plaintiff now brings this action under the consumer protection statutes of the State of
27 California—where Ducati is headquartered and from where the conduct and non-disclosures at issue in
28 this case were orchestrated—for failing to disclose material safety-related facts about its motorcycles

1 and for employing the unfair practice of conducting fuel tank repairs using the same defective parts.
2 Plaintiff seeks equitable relief requiring Ducati to disclose that its plastic fuel tanks are incompatible
3 with the motorcycles' fuel to all existing and prospective customers, and to replace those incompatible
4 fuel tanks with fuel tanks that will not degrade or deform upon contact with fuel. In addition, Plaintiff
5 has provided notice to Ducati that it is in breach of its warranty obligations to the class and has violated
6 the California Consumers Legal Remedies Act, and will amend this complaint to seek corresponding
7 damages unless Ducati promptly corrects those violations.

8 PARTIES

9 5. Plaintiff Jonas Sugarman is a citizen of Florida and the owner of a 2009 Ducati 1198
10 motorcycle.

11 6. Defendant Ducati is a California corporation with its principal place of business
12 in Cupertino, California. Ducati is the American subsidiary of the Italian motorcycle manufacturer
13 Ducati Motor Holding S.p.A. Ducati is responsible for marketing, distribution, sales, customer service,
14 and warranty service of Ducati motorcycles sold within the United States.

15 JURISDICTION AND VENUE

16 7. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28
17 U.S.C. § 1332(d), as the proposed class consists of more than 100 class members whose aggregated
18 claims exceed \$5,000,000, exclusive of interests and costs.

19 8. Venue is proper in this district under 28 U.S.C. § 1391(b), as Defendant Ducati resides in
20 this district and a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in
21 this district.

22 INTRADISTRICT ASSIGNMENT

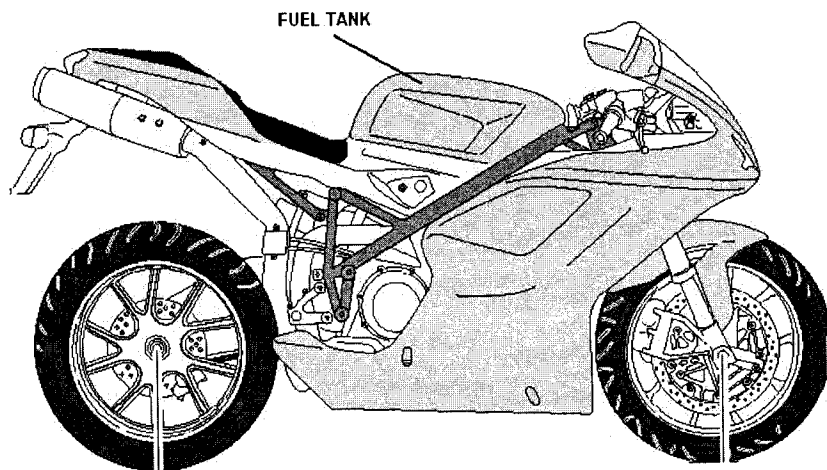
23 9. Assignment is proper to the San Jose division of this District under Local Rule 3-2(c), as
24 a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in Santa Clara
25 County.

26 COMMON FACTUAL ALLEGATIONS

27 The Fuel Tank Defect

28 10. Starting in the 2004 model year, Ducati began marketing and selling motorcycles

1 equipped with plastic fuel tanks. These fuel tanks are among the most visible and prominent
2 components of the motorcycle, positioned directly in front of the rider and centered on the motorcycle's
3 frame to ensure even weight distribution.



14 11. The illustration above is taken from Plaintiffs' Owner's Manual, and shows the position
15 and relative size of the fuel tank in Ducati motorcycles.

16 12. Each 2004-2010 Ducati motorcycle equipped with a non-metal fuel tank used the same
17 plastic fuel tank material. The problem is that the plastic material is defective, as it is incompatible with
18 the fuel used in the motorcycles; i.e., highway vehicle fuel sold at United States gas stations.

19 13. When in contact with the motorcycles' fuel, the material used in Ducati's 2004-2010
20 plastic fuel tanks degrades, which in turns leads to deformation of the fuel tanks, variously described by
21 Ducati owners as dimpling, wrinkling, flattening, and spreading.

22 14. The deformation of Ducati's plastic fuel tanks creates significant safety hazards,
23 including:

- 24 • sudden shifts in weight distribution that can throw the driver off balance;
- 25 • interference with steering of the motorcycle; and
- 26 • fuel leaks onto the engine that pose a fire hazard.

27 15. Shifts in Weight: As the motorcycle's plastic fuel tank degrades and deforms, it loses its
28 uniform shape and also separates from its mounting brackets. The result is that the weight of the fuel is

1 not uniformly distributed across the motorcycle frame and also can shift suddenly as the tank moves on
2 the frame. This lack of stability is dangerous, as it makes the motorcycle more difficult to control and
3 can throw the driver off balance.

4 16. Interference with Steering: As the illustration above shows, the fuel tank is close to the
5 motorcycle's handlebars. As the fuel tanks' plastic material degrades, the overall shape of the tank
6 deforms and shifts into areas where the steering mechanism is supposed to have free reign. The fuel
7 tank can thus collide with the steering mechanism while the driver attempts to steer, impeding the
8 driver's ability to control the motorcycle and turn the front wheel through its full range.

9 17. Fuel Leaks: Deformation of the fuel tank also leads to separation from the fuel pump,
10 which results in leaking fuel. The fuel tank is positioned above the motorcycle's engine, meaning that
11 leaking fuel poses a serious combustion hazard.

12 18. Ducati owners have been so concerned about the safety hazards posed by their plastic
13 fuel tanks that over 240 have taken the time to lodge complaints with the National Highway Traffic
14 Safety Administration.

- 15 • Fuel tank on motorcycle has expanded and buckled. It is no longer being held
16 in place by the "pucks" at the front of the tank. ... The tank shifts back and
17 forth when riding the bike. My biggest concern is that the tank could shift and
18 throw off my balance under hard cornering, leading to a loss of control. Ducati
19 north america (dna) has been replacing these tanks for other owners, but the
20 replacement tanks suffer from the same issue. Because of the lack of a true
21 long term solution, I have not gone through the process of requesting a
22 replacement yet. It would take a lot of effort, and be a short term solution at
23 best.
- 24 • Expanding and leaking plastic motorcycle fuel tank. Presents fire danger and
25 ill fitment and attachment to the frame.
- 26 • The fuel tank has apparently stretched out in width to such an extent that the
27 front mount no longer secures the tank. As a consequence the tank is loose and
28 held in place only by the rear securing bolt, which is totally inadequate and
wasn't designed to hold the tank on its own. I feel this is a very dangerous
situation and a potential death trap.
- My motorcycle has a plastic gas tank which has been expanding. The outside
dimensions of the tank have increased and it now the handlebars hit it on
turning and it presses against the ignition switch but what is more worrying is

1 the fact that when hit a moderate bump on the road, the tank becomes
2 unlatched and requires me to relatch it to prevent the tank from becoming
loose. ... I am very concerned as to the safety of this motorcycle now.

- 3
- 4 • My motorcycle has a plastic gas tank which has begun to expand. The outside
5 dimensions of the tank have increased and it now does not sit correctly in the
6 frame, the handlebars hit it on turning. ... I am very concerned as to the safety
7 of this motorcycle now. The tank's swelling has made it so the handlebars do
8 not turn correctly.
 - 9 • My motorcycle has a plastic gas tank that has started to expand. The outside
10 dimensions of the tank have increased to point that the original rubber guards
11 no longer touch the frame. The handlebars hit the tank when attempting a full
12 turn to the right - this did not happen before. ... I am extremely concerned
13 about the safety of my motorcycle as I do not know when my gas tank could
14 split open.
 - 15 • The composite fuel tank on my 2006 ducati multistrada 620 has warped and
16 become distorted. ... The tank has become so warped that fuel actually leaks
17 from around the fuel pump when the motorcycles is filled over half way. This
18 has become a health and safety hazard, as the bike has become unsafe to ride
19 due to the danger of fire/explosion resulting from the warped tank. ... I have
20 tried to contact ducati multiple times about this issue, and everytime I am told
21 to contact a dealer - a dealer who isn't able to help because ducati won't issues
22 a recall for a widely known problem with fuel tanks.
 - 23 • 2006 ducati mts 620 began to steadily leak fuel from bottom of fuel tank at the
24 fuel pump flange. This allowed fuel to drip onto hot exhaust, which could have
25 caused a fire.

26 **Ducati's Failure To Disclose or Correct The Defect**

27 19. Ducati has long known or should have known that the plastic material used in its fuel
28 tanks is incompatible with the motorcycles' fuel. Standard pre-release field testing would have revealed
the problem, as the fuel tanks begin showing signs of the incompatibility, in the form of wrinkling,
dimpling, and other deformations within a short period of time after use, and often degrade and deform
to the point that the motorcycle cannot be safely operated within a few months or few thousand miles of
use. The fact that the plastic material Ducati was using degraded when in contact with fuel was also
well-documented in the motor vehicle industry and Ducati should have been aware that it was not
suitable for use in a fuel tank.

1 20. In addition, Ducati had exclusive access to information about the plastic fuel tanks
2 through its materials testing data, warranty data, customer complaint data, and replacement part sales
3 data, among other sources of aggregate information about the problem. In contrast, the defective nature
4 of the plastic fuel tanks were not known or reasonably discoverable by Plaintiff and class members prior
5 to purchase and without experiencing the defect first hand and exposing themselves to an unreasonable
6 safety risk.

7 21. Consumers were complaining about deformation of the plastic fuel tanks and lodging
8 safety complaints with NHTSA by 2006. Behind the scenes, Ducati also developed an aluminum fuel
9 tank that was compatible with the motorcycles' fuel and would not degrade and deform in its presence.

10 22. Despite Ducati's knowledge that its plastic fuel tanks degraded and deformed in the
11 presence of the motorcycles' fuel, posing a number of safety hazards to motorcycle owners, Ducati did
12 not disclose those material facts to Plaintiff and class members before they purchased their motorcycles.

13 23. Nor has Ducati disclosed the material incompatibility and resultant safety implications at
14 any other time, including when customers specifically complained. Ducati has instead concealed the
15 incompatibility by denying that there is a known or widespread problem and by repairing class
16 members' deformed fuel tanks using the same plastic fuel tanks.

17 24. The defect in the fuel tanks' material is covered by at least two of Ducati's warranties:
18 (1) its standard warranty, under which "Ducati guarantees all its bikes for a period of 24 months from
19 registration, with unlimited mileage"; and (2) its federally-mandated emissions control system warranty,
20 under which Ducati warrants that each of its motorcycles "is free from defects in material and
21 workmanship which will cause such motorcycle to fail to conform with applicable regulations of the
22 United States Environmental Protection Agency or the California Air Resources Board for a period of
23 use of 30,000 kilometers (18,641 miles) or 5 (five) years from the date of initial retail delivery,
24 whichever first occurs."

25 25. Ducati has been covering the cost of repairing its fuel tanks under warranty, but its
26 repairs are not designed to correct the fuel tanks' defective material. Instead, Ducati's repair practices
27 are designed to conceal the fuel tanks' fundamental incompatibility with the motorcycles' fuel and to
28 save Ducati the cost of installing a fuel tank that does not degrade or deform in the presence of fuel.

1 counsel for Plaintiff; and any Judge to whom this case is assigned as well as his or her immediate
2 family.

3 35. Numerosity of the Class – Fed. R. Civ. P. 23(a)(1). Approximately 50,000 Ducati
4 motorcycles with plastic fuel tanks have been sold within the United States, meaning that Class
5 members are far too numerous to practically join in a single action.

6 36. Existence and Predominance of Common Questions– Fed. R. Civ. P. 23(a)(2), 23(b)(3).
7 Common questions of law and fact exist as to all Class members and predominate over questions
8 affecting only individual Class members. These common questions include the following:

- 9 a. Whether the plastic fuel tanks used in Class motorcycles degrade and deform in the
10 presence of the motorcycles' fuel;
- 11 b. When Ducati knew or should have known that the plastic fuel tanks in Class
12 motorcycles were incompatible with the motorcycles' fuel;
- 13 c. Whether plastic fuel tanks in Class motorcycles pose an unreasonable safety hazard,
14 such that their incompatibility with the motorcycles' fuel is a material fact that Ducati
15 is and was obliged to disclose to Class members under California law;
- 16 d. Whether Ducati's policy and practice of repairing Class members' fuel tanks by
17 replacing them with fuel tanks that use the same incompatible plastic material
18 constitutes an unfair business practice under California's Unfair Competition Law;
- 19 e. Whether Ducati should be required to notify Class members that their motorcycle's
20 fuel tanks are incompatible with the motorcycles' fuel and cease its practice of
21 providing replacement fuel tanks that use the same incompatible material.

22 37. Typicality – Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims of the
23 Class members because, among other things, Plaintiff purchased a Ducati motorcycle equipped with a
24 fuel tank that uses the same plastic material as was used in all Class motorcycles, and because Plaintiff
25 is pursuing claims against Ducati under California consumer protection law, which can properly be
26 applied to the claims of all Class members.

27 38. Adequacy of Representation – Fed. R. Civ. P. 23(a)(4). Plaintiff is an adequate
28 representative because his interests are aligned with those of the Class members he seeks to represent.

1 Plaintiff has retained counsel competent and experienced in complex class action litigation, and intends
2 to prosecute this action vigorously on Class members' behalf.

3 39. Superiority – Fed. R. Civ. P. 23(b)(3). The action may be certified under Rule 23(b)(3)
4 because common questions predominate as described above and because a class action is the best
5 available method for the fair and efficient adjudication of this controversy. This litigation involves
6 technical issues that will require expert testimony and targeted discovery of a sophisticated defendant,
7 and could not practically be taken on by individual litigants. In addition, individual litigation of Class
8 members' claims would be impracticable and unduly burdensome to the court system and has the
9 potential to lead to inconsistent results. A class action presents fewer management problems and
10 provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a
11 single court.

12 40. In the alternative to class certification under Rule 23(b)(3), the proposed Class may be
13 certified under Rule 23(b)(1) or Rule 23(b)(2) because:

- 14 a. the prosecution of separate actions by the individual members of the Class would
15 create a risk of inconsistent or varying adjudication with respect to individual Class
16 members which would establish incompatible standards of conduct for Ducati;
17 b. the prosecution of separate actions by individual Class members would create a risk
18 of adjudications with respect to them which would, as a practical matter, be
19 dispositive of the interests of other Class members not parties to the adjudications, or
20 substantially impair or impede their ability to protect their interests; and

21 41. Ducati has acted or refused to act on grounds generally applicable to the Class, thereby
22 making appropriate final and injunctive relief with respect to the members of the Class as a whole.

23 **CHOICE OF LAW ALLEGATIONS**

24 42. The State of California has sufficient contacts to the conduct alleged herein such that
25 California law may be uniformly applied to the claims of the proposed nationwide Class.

26 43. Ducati does substantial business in California, its principal offices are located in
27 California, and a significant portion of the proposed Class resides in California.

28 44. The conduct that forms the basis for each and every Class members' claims against

1 Ducati emanated from Ducati's headquarters in Cupertino, California.

2 45. Ducati personnel responsible for customer and dealership communications are located at
3 Ducati's California headquarters and the core decision not to disclose the fuel tank incompatibility to
4 Class members at the time of sale or otherwise was made and implemented from there.

5 46. Ducati personnel responsible for setting Ducati's repair policy and practice with respect
6 to the plastic fuel tanks are located at Ducati's California headquarters, as are the personnel responsible
7 for communicating that policy and practice to Ducati dealerships and for distributing replacement plastic
8 fuel tanks to Ducati dealerships.

9 47. The State of California has the greatest interest in applying its law to Class members'
10 claims. Its governmental interests include not only an interest in compensating resident consumers
11 under its consumer protection laws, but also what the State has characterized as a "compelling" interest
12 in using its laws to regulate a resident corporation and preserve a business climate free of fraud and
13 deceptive practices. *Diamond Multimedia Sys. v. Sup. Ct.*, 19 Cal. 4th 1036, 1064 (1999).

14 48. Were other states' laws applied to Class members' claims, California's interest in
15 discouraging resident corporations from engaging in the sort of unfair and deceptive practices alleged in
16 this complaint would be significantly impaired. California could not effectively regulate a company like
17 Ducati, who does business throughout the United States, if it can only ensure that consumers from *one*
18 of the fifty states affected by conduct that runs afoul of its laws are protected and compensated.

19
20 **FIRST CAUSE OF ACTION**

21 **(Violation of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, et. seq.)**

22 49. Plaintiff incorporates the above allegations by reference.

23 50. Ducati has violated the Consumers Legal Remedies Act (CLRA), California Civil Code
24 sections 1770(a)(5), (7), (14), and (16), by engaging in unfair methods of competition and unfair and
25 deceptive acts and practices in connection with transactions—namely, the sale of Ducati motorcycles to
26 Plaintiff and Class members—that are intended to result and have resulted in the sale and lease of goods
27 to consumers.

1 51. In connection with the sale of Ducati motorcycles to Plaintiff and Class members, Ducati
2 omitted material information about those motorcycles which it was legally obligated to disclose. Ducati
3 did not inform and has never informed Plaintiff or Class members that the plastic material used in their
4 motorcycle’s fuel tank is defective in that it degrades and deforms in the presence of the motorcycles’
5 fuel.

6 52. The incompatibility of Ducati’s plastic fuel tanks with motorcycle fuel poses an
7 unreasonable safety risk to consumers and other members of the public with whom they share the road.
8 Ducati had exclusive knowledge of the incompatibility and has actively concealed it from consumers.

9 53. As a result of Ducati’s violations of the CLRA, Plaintiff and Class members have
10 suffered damages. Plaintiff and Class members would not have purchased their motorcycles had the fuel
11 tank defect and associated safety risks been disclosed to them. In addition, Plaintiff and other Class
12 members have incurred towing costs and other costs as a result of the defective fuel tanks and are left
13 with motorcycles that pose repeated safety risks and are therefore less valuable.

14 54. Plaintiff seeks an order requiring Ducati to disclose the existence of the fuel tank defect
15 and associated safety risks to all existing and prospective customers, and to provide all Class members
16 with fuel tanks that do not degrade and deform in the presence of the motorcycles’ fuel. In addition,
17 Plaintiff has served Ducati with a demand pursuant to Civil Code section 1782, and will amend this
18 action to seek damages if Ducati does not timely remedy its CLRA violations.

SECOND CAUSE OF ACTION

(For unlawful, unfair, and fraudulent business practices under California Business and Professions Code § 17200 *et seq.*)

21 55. Plaintiff incorporates the above allegations by reference.

22 56. Ducati has violated and continues to violate California’s Unfair Competition Law, Cal.
23 Bus. & Prof. Code § 17200, *et seq.*, which prohibits unlawful, unfair, or fraudulent business acts or
24 practices.

25 57. Ducati’s acts and practices, as alleged in this complaint, constitute unlawful practices in
26 that they violate the Consumers Legal Remedies Act.

27 58. Ducati’s acts and practices, as alleged in this complaint, constitute fraudulent practices in
28 that they are likely to deceive a reasonable consumer. A reasonable consumer would not expect that the

1 fuel tank of a Ducati motorcycle would degrade and deform upon contact with the motorcycle's fuel,
2 creating a number of unsafe conditions.

3 59. Ducati's acts and practices, as alleged in this complaint, constitute unfair practices in that
4 (i) they are unethical, unscrupulous, and substantially injurious to consumers; (ii) any legitimate utility
5 of Ducati's conduct is outweighed by the harm to consumers; (iii) the injury is not one that consumers
6 reasonably could have avoided; and/or (iv) the conduct runs afoul of the public safety policy embodied
7 in the Highway Safety Act and the policies underlying the CLRA, which seeks to protect consumers
8 against unfair and sharp business practices and to promote a basic level of honesty and reliability in the
9 marketplace. In particular, it is fundamentally unfair to consumers to sell motorcycles with fuel tanks
10 that degrade and deform upon contact with the motorcycles' fuel, causing several unsafe conditions. It
11 is also fundamentally unfair to repair a defect in the fuel material by installing a replacement fuel tank
12 that uses the same defective plastic material, exposing consumers and members of the public to the same
13 unsafe conditions in the future.

14 60. As a result of Ducati's unfair, unlawful, and fraudulent business practices, Plaintiff has
15 suffered injury in fact and lost money or property. Plaintiff purchased a motorcycle he otherwise would
16 not have purchased, has incurred towing costs as a result of Ducati's practices, and is left with a
17 motorcycle that poses repeated safety risks and is therefore less valuable.

18 61. Plaintiff and Class members are entitled to equitable relief, including restitution of all
19 revenue accruing to Ducati because of its unlawful, unfair, and fraudulent practices, attorney fees and
20 costs, declaratory relief, and a permanent injunction enjoining Ducati from its unlawful, unfair,
21 fraudulent and deceitful activity.

22 TOLLING

23 62. Any applicable statute of limitations that might otherwise bar any Class member's claims
24 is tolled by Ducati's knowing and active concealment of the fact that it was selling motorcycles with
25 fuel tanks that it knew to be incompatible with the motorcycles' fuel. Ducati kept Plaintiff and the
26 members of the Class ignorant of vital information essential to the pursuit of their claims. Class
27 members could not reasonably have discovered that their fuel tanks were degrading and deforming
28

1 because of an incompatibility in the tank's plastic material, especially given Ducati's practice of denying
2 any known and widespread problem and of installing replacement tanks made of the same material.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on his own behalf and on behalf of the Class, prays for judgment as
5 follows:

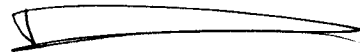
- 6 a. For an order certifying the proposed Class and appointing Plaintiff and his counsel to
7 represent the Class;
- 8 b. For an order requiring Ducati to disclose the existence of the fuel tank defect and
9 associated safety risks to all existing and prospective customers, and to provide all Class
10 members with fuel tanks that do not degrade and deform in the presence of the
11 motorcycles' fuel, or such other injunctive relief as the Court may deem proper;
- 12 c. For an award of restitution to Plaintiff and Class members, or other equitable relief as the
13 Court may deem proper;
- 14 d. For an award of reasonable attorney fees and costs of suit, including expert witness fees;
15 and
- 16 e. For such other and further relief as this Court may deem just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a jury trial on all claims so triable.

19
20 Dated: November 18, 2010

Respectfully Submitted

21
22 By: 
23 Dylan Hughes

24 Eric H. Gibbs
25 Geoffrey A. Munroe
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