

1 **Class Settlement Agreement and Release**

2  
3 This Class Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is  
4 entered into between Plaintiffs Jonas Sugarman and Quang Le, on behalf of themselves and the  
5 Settlement Class they propose to represent, and Defendant Ducati North America, Inc. (“Ducati”) to  
6 fully and finally settle all claims and litigation in *Sugarman, et al. v. Ducati North America, Inc.*, case  
7 No. 5:11-CV-05246-JF ( “this lawsuit” or “this action”) .

8 **I. BACKGROUND**

9 1. Plaintiffs filed this lawsuit on November 18, 2010, alleging that certain 2004-2011 model  
10 year Ducati motorcycles equipped with plastic Fuel Tanks were deforming upon contact with the  
11 motorcycles’ fuel. Plaintiffs’ allegations were based on their own experiences, emails and interviews  
12 with dozens of other Ducati owners, consumer reports made to the National Highway Traffic Safety  
13 Administration (NHTSA), and consumer complaints posted on internet forums devoted to Ducati  
14 motorcycles.

15 2. Plaintiffs alleged in their lawsuit three potential consequences of Fuel Tank deformation  
16 that they believed raised safety concerns that would be material to a reasonable consumer: (i) Fuel  
17 Tanks on certain models can separate from some of their mounting brackets; (ii) Fuel Tanks are close to  
18 the motorcycle’s handlebars and thus can interfere with steering; and (iii) deformation can cause fuel  
19 leakage at the connection with the fuel pump.

20 3. In addition, Plaintiffs alleged that in the case of non-covered Fuel Tanks, deformation can  
21 result in dimpling, wrinkling, flattening, or spreading (expanding) of the surface of one of the most  
22 visible and prominent components of a motorcycle. Plaintiffs have alleged that such cosmetic problems  
23 could be considered material by a reasonable consumer.

24 4. Plaintiffs alleged that both the regular 2-year Ducati Limited Warranty and the 5-year  
25 Ducati Environmental Protection Agency and California Air Resources Board Limited Emissions  
26 Warranty are applicable to such Fuel Tank deformation/expansion problems.

27 5. Ducati has contested Plaintiffs’ material claims. Ducati acknowledges that the increased  
28 addition of ethanol to gas, under certain combinations of conditions, has caused the thermoplastic Fuel

1 Tanks on some consumers' motorcycles to expand in size, generally only by very small amounts  
2 measured by just a few millimeters on a Fuel Tank that is hundreds of millimeters in surface size, and  
3 states that it has fully honored its applicable warranties by appropriate replacement or repair of any  
4 customer's Fuel Tank with a problem caused by Fuel Tank expansion. Ducati denies that it is in any  
5 way liable to Plaintiffs or other proposed Class Members in this action. Ducati denies that its 5-year  
6 Environmental Protection Agency and California Air Resources Board Limited Emissions Warranty  
7 applies to Fuel Tank expansion claims because such expansion does not involve or affect exhaust  
8 emissions intended to be covered under such warranties, but nevertheless as a matter of customer good  
9 will has to date covered, as appropriate, replacement or repair in case of problems from Fuel Tank  
10 expansion even outside the applicable 2-year Limited Warranty period. Ducati also denies that Fuel  
11 Tank expansion poses a safety hazard under any circumstances, including denial of the allegations in  
12 Section I.2 above, and states that it is not aware of any Ducati customer that has ever suffered bodily  
13 injury as a result of plastic Fuel Tank expansion.

14 6. The parties have nonetheless worked together — through formal and informal discovery,  
15 inspections of the Plaintiffs' and certain other proposed Class Members' motorcycles, independent  
16 research and investigation by both sides, and meetings between counsel and expert consultants for both  
17 sides — to identify specific plastic Fuel Tank problems of any kind (whether or not caused by Fuel Tank  
18 expansion or deformation) reported by proposed Class Members. In addition to generalized complaints  
19 of plastic Fuel Tank expansion and deformation, Fuel Tank leakage and interference allegedly related  
20 thereto, the specific problems identified by the parties vary by model family and are summarized below:

21 a. 2003-2008 Monster motorcycles manufactured with plastic Fuel Tanks, including but not  
22 limited to Monster 620, 620 dark, 620 i.e. dark, 620 i.e., M 695, M 695 dark, 800, S2R,  
23 S4R, S4R S Tricolore, S2R dark, S2R1000, and S4RS motorcycles ("Monster Class  
24 Vehicles"):

- 25 i. Longitudinal expansion of Fuel Tanks installed on some Monster Class Vehicles  
26 can result in pressure against the ignition unit, impede access to the tank latch, or  
27 affect the ability to raise or lower the Fuel Tank;

1 ii. Lateral expansion of plastic Fuel Tanks installed on some Monster Class Vehicles  
2 can cause the rubber Fuel Tank supports to shift out of position on the motorcycle  
3 frame;

4 iii. Expansion of plastic Fuel Tanks installed on some Monster Class Vehicles can  
5 result in the motorcycle handlebars contacting the Fuel Tank when fully turned;  
6 and

7 iv. Fuel leakage can occur at the fuel pump flange seal on the Fuel Tanks installed on  
8 some Monster Class Vehicles.

9 b. 2003-2009 Multistrada motorcycles manufactured with plastic Fuel Tanks, including but  
10 not limited to Multistrada 1000, 1000S, 1000 DS, 1000S DS, 1100 DS, 1100S DS, 620,  
11 620 dark, MTS 1000, MTS 1000S, MTS 1100 and MTS 1100S motorcycles  
12 (“Multistrada Class Vehicles”):

13 i. Fuel leakage can occur at the fuel pump flange seal on the Fuel Tanks installed on  
14 some Multistrada Class Vehicles; and

15 ii. The Fuel Tank can expand, making removal of the tank from the frame difficult  
16 without replacing the tank.

17 c. 2006-2010 SportClassic motorcycles manufactured with plastic Fuel Tanks, including but  
18 not limited to SportClassic Sport 1000, Paul Smart 1000, Paul Smart 1000 LE, GT  
19 Touring, GT 1000, GT 1000 Touring, GT 1000 Bicolore, Sport 1000S, Sport 1000  
20 Biposto and Sport 1000 Monoposto motorcycles (“SportClassic Class Vehicles”):

21 i. Lateral expansion of Fuel Tanks installed on SportClassic Class Vehicles can  
22 cause the Fuel Tank in some cases to become loose or detach from the front left or  
23 front right mounting bracket.

24 ii. Expansion of plastic Fuel Tanks installed on SportClassic Class Vehicles can in  
25 some cases result in the motorcycle handlebar switch gear contacting the Fuel  
26 Tank when the handlebars are fully turned.

- 1 d. 2009-2011 Streetfighter motorcycles manufactured with plastic Fuel Tanks, including but  
2 not limited to Streetfighter and Streetfighter S motorcycles (“Streetfighter Class  
3 Vehicles”):
- 4 i. Lateral expansion of Fuel Tanks installed on Streetfighter Class Vehicles can  
5 cause the Fuel Tank in some cases to contact the upper triple clamp when the  
6 handlebars are fully turned; and
  - 7 ii. Longitudinal expansion of Fuel Tanks installed on Streetfighter Class Vehicles  
8 can cause the Fuel Tank in some cases to contact the radiator cap.
- 9 e. 2007-2011 Superbike motorcycles manufactured with plastic Fuel Tanks, including but  
10 not limited to Superbike 848, 848 NH, 848 Hayden Limited, 848 evo, 1098, 1098S, 1098  
11 Tricolore, 1098R, 1098R Bayliss, 1198R, 1198, 1198S, 1198R corse SE, 1198S corse SE  
12 and 1198SP motorcycles (“Superbike Class Vehicles”):
- 13 i. Longitudinal expansion of Fuel Tanks installed on Superbike Class Vehicles can  
14 result in the Fuel Tank in some cases contacting the steering damper support  
15 (which does not impact steering); and
  - 16 ii. Fuel leakage can in some cases occur from the overflow hose due to the lack of  
17 tightness in the metal fittings for the hose inside the Fuel Tank.
- 18 f. 2009-11 Monster motorcycles manufactured with plastic Fuel Tanks, including but not  
19 limited to Monster 696, 696+, 696+ ABS, 796, 796 ABS, 1100, 1100S, 1100 ABS, 1100  
20 evo ABS, 1100S ABS, M696, M1100, and M1100 S motorcycles (“New Monster Class  
21 Vehicles”): Fuel leakage can occur from the Fuel Tank flange of Fuel Tanks installed on  
22 some New Monster Class Vehicles due to a manufacturing problem that caused the Fuel  
23 Tank supplier to produce some tanks with a too-thin flange.
- 24 g. 2007-2011 Hypermotard motorcycles manufactured with plastic Fuel Tanks, including  
25 but not limited to Hypermotard 796 matt, 796 red, 1100, 1100 evo, 1100 evo SP, 1100S,  
26 1100E and 1100SP motorcycles (“Hypermotard Class Vehicles”): The plastic panel over  
27 the Fuel Tanks installed on Hypermotard Class Vehicles has broken in some cases.  
28

- 1 h. 2010-11 Multistrada motorcycles manufactured with plastic Fuel Tanks, including but  
2 not limited to Multistrada 1200, 1200S Sport, 1200S Touring, and 1200S Pikes Peak  
3 motorcycles (“New Multistrada Class Vehicles”): There has been fuel seepage from the  
4 fuel sensor nut on some New Multistrada Class Vehicles.
- 5 i. For the above models in (a) through (e), some Fuel Tanks have exhibited cosmetic  
6 distortions on their painted surface such as blistering, bubbling, rippling, dimpling,  
7 flattening or spreading. These cosmetic issues are not presented on the models in which  
8 the Fuel Tanks are covered with separate painted panels around them, such as the New  
9 Monster, Hypermotard and New Multistrada Class Vehicles.
- 10 j. For all of the above models in (a) through (h), except the SportClassic models listed in  
11 (c), Ducati contends that the described problems, including the cosmetic distortions  
12 described in (i), occur on only a very small percentage of motorcycles. For the Superbike  
13 models listed in (e), Ducati further contends that any leakage from the overflow hose is  
14 minute and occurs beneath the bike and thus does not present a safety problem. For the  
15 SportClassic models listed in (c), Ducati contends that the rear tank mounting bracket  
16 keeps the Fuel Tank firmly affixed to the bike even when expansion causes the tank to  
17 come loose from the front mounting brackets and therefore no safety issue is presented;  
18 Ducati also contends that any contact between the handlebar switch gear and the Fuel  
19 Tank does not affect in any material way the turning capability of the motorcycle in  
20 operation.

21 7. The repairs provided for in this Settlement Agreement are intended to address the issues  
22 identified by the parties. Ducati has developed replacement parts and repairs for that purpose and  
23 exchanged information regarding the replacement parts and repairs that Plaintiffs’ Class Counsel and  
24 Plaintiffs’ expert consultant have reviewed.

25 **II. DEFINITIONS**

26 1. Class Counsel: The law firm of Girard Gibbs LLP, which was appointed interim class  
27 counsel in this action by Order dated March 29, 2011, and who the parties will propose be appointed  
28 class counsel as part of the Preliminary Approval Order.

1           2.     Class Vehicle: Any of the Ducati motorcycles specified in the definition of the  
2 Settlement Class.

3           3.     Defense Counsel: The law firm Simpson Thacher & Bartlett, LLP.

4           4.     Effective Date: The first date after the Court enters a Final Order and Judgment and all  
5 appellate rights with respect to the Final Order and Judgment, other than those related to any award of  
6 attorneys' fees and expenses or service awards, have expired or been exhausted in such manner as to  
7 affirm the Final Order and Judgment.

8           5.     Final Order and Judgment: An order approving this Settlement Agreement pursuant to  
9 Federal Rule of Civil Procedure 23(e)(2) and dismissing this action with prejudice, substantially in the  
10 form attached hereto as Exhibit B.

11          6.     Fuel Tank: The plastic container holding fuel on the motorcycle. On Monster,  
12 Multistrada, SportClassic, Streetfighter and Superbike Class Vehicles, the Fuel Tank is painted and  
13 uncovered. On New Monster, Hypermotard and New Multistrada Class Vehicles, the Fuel Tank is  
14 unpainted and rests below covering panels that are not part of the Fuel Tank.

15          7.     Notice: Notice to Settlement Class Members of this lawsuit, the proposed settlement and  
16 their rights and obligations related thereto as set forth in Section IV.B below. The content of the Notice  
17 is attached hereto as Exhibit C.

18          8.     Preliminary Approval Order: An order preliminarily approving this Settlement  
19 Agreement and directing dissemination of notice of the settlement to Settlement Class Members,  
20 substantially in the form attached hereto as Exhibit A.

21          9.     Released Claims: Any and all claims, causes of action or obligations of any nature  
22 whatsoever (including claims that have been or could have been asserted against the Released Parties in  
23 this action or in any other complaint, action, or litigation in any other court, tribunal or forum), known or  
24 unknown, arising from or related to any of the Fuel Tank-related problems alleged in Plaintiffs' First  
25 Amended Complaint or identified in Section I.6 above, except for the obligations undertaken under this  
26 Settlement Agreement.

1           10.    Released Parties: Ducati and its parent company, Ducati Motor Holdings S.p.A., and any  
2 of their affiliates, employees, directors, officers, shareholders, consultants, Fuel Tank suppliers, dealers,  
3 agents, attorneys, successors and assigns.

4           11.    Settlement Class: All residents of the United States who, as of the date of the  
5 Preliminary Approval Order, own any 2003-2011 Ducati Monster, Multistrada, SportClassic,  
6 Streetfighter, Superbike or Hypermotard model family motorcycle manufactured with a plastic fuel tank,  
7 including but not limited to the following model and model year motorcycles: 2003-2008 Monster 620,  
8 620 dark, 620 i.e. dark, 620 i.e., M695, M695 dark, 800, S2R, S4R, S4R S Tricolore, S2R dark,  
9 S2R1000 and S4RS motorcycles; 2009-2011 Monster 696, 696+, 696+ ABS, 796, 796 ABS, 1100,  
10 1100S, 1100 ABS, 1100 evo ABS, 1100S ABS, M696, M1100, and M1100 S motorcycles; 2003-2009  
11 Multistrada 1000, 1000S, 1000 DS, 1000S DS, 1100 DS, 1100S DS, 620, 620 dark, MTS 1000, MTS  
12 1000S, MTS 1100 and MTS 1100S motorcycles; 2010-2011 Multistrada 1200, 1200S Sport, 1200S  
13 Touring and 1200S Pikes Peak motorcycles; 2006-2010 SportClassic Sport 1000, Paul Smart 1000, Paul  
14 Smart 1000 LE, GT Touring, GT 1000, GT 1000 Touring, GT 1000 Bicolore, Sport 1000S, Sport 1000  
15 Biposto and Sport 1000 Monoposto motorcycles; 2009-2011 Streetfighter and Streetfighter S  
16 motorcycles; 2007-2011 Superbike 848, 848 NH, 848 Hayden Limited, 848 evo, 1098, 1098S, 1098  
17 Tricolore, 1098R, 1098R Bayliss, 1198R, 1198, 1198S, 1198R corse SE, 1198S corse SE and 1198SP  
18 motorcycles; and 2007-2011 Hypermotard 796 matt, 796 red, 1100, 1100 evo, 1100 evo SP, 1100S,  
19 1100S, 1100E and 1100SP motorcycles. Excluded from the Settlement Class are Ducati; any affiliate,  
20 parent, or subsidiary of Ducati; any entity in which Ducati has a controlling interest; any officer,  
21 director, or employee of Ducati; any successor or assign of Ducati; anyone employed by counsel for  
22 Plaintiffs in this action; and any Judge to whom this case is assigned as well as his or her immediate  
23 family.

24           12.    Settlement Class Member: Any person who falls within the definition of the Settlement  
25 Class and who does not validly opt out of the Settlement Class pursuant to the procedure set forth in the  
26 Preliminary Approval Order.

1 **III. SETTLEMENT CONSIDERATION**

2 **A. Notice of Issues and Available Repairs; CAFA Notice**

3 1. Pursuant to Section IV.B below, Ducati shall provide Notice to Settlement Class  
4 Members of, *inter alia*, this lawsuit, this proposed settlement, the issues identified by the parties  
5 (summarized in Section I.6) and the extended warranties, repairs and replacements available under this  
6 settlement.

7 2. Ducati shall comply with the requirements of 28 U.S.C. § 1715(b) and serve notice of the  
8 proposed settlement upon the appropriate federal official and the appropriate State official of each State  
9 in which a class member resides. Ducati shall also provide copies of its submissions to Class Counsel.

10 3. Ducati shall bear all cost and expenses in connection with providing Notice to the Class,  
11 providing CAFA Notice and administering the settlement, but solely as provided for herein.

12 **B. Extended Fuel Tank Warranty Periods For Class Vehicles**

13 1. For any Class Vehicle brought in for repair of any of the Fuel Tank problems identified  
14 in this Settlement Agreement, except for purely cosmetic problems which are addressed in Section  
15 III.B.2 immediately below and Section III. I below, the 2-year Ducati Limited Warranty period for the  
16 appropriate repairs or replacements shall be extended for each Class Vehicle to the longer of (a) 6 years  
17 after the date of original new motorcycle purchase or (b) 18 months after the Effective Date of this  
18 settlement. In addition, any such repair or replacement made pursuant to this Section III.B.1 will be  
19 warranted for 12 months after such repair or replacement is made. (“Extended Fuel Tank Warranty  
20 Period”)

21 2. For Fuel Tank surface defects on Monster, Multistrada, SportClassic, Streetfighter and  
22 Superbike Class Vehicles that are purely cosmetic such as blistering, bubbling, rippling, dimpling,  
23 flattening or spreading resulting from Fuel Tank expansion or an original manufacturing defect, or  
24 scratches caused by interference from Fuel Tank expansion that is otherwise repaired under this  
25 Agreement, the 2-year Ducati Limited Warranty period for the repairs or replacements, subject to the  
26 limitations set forth in Section III.I below, shall be extended for each Class Vehicle to the longer of (a)  
27 5 years after the date of original new motorcycle purchase or (b) 18 months after the Effective Date of  
28 this settlement. In addition, any such repair or replacement made pursuant to this Section III. B. 2 will

1 be warranted for 6 months after such repair or replacement is made. (“Cosmetic Extended Fuel Tank  
2 Warranty Period”).

3 3. For the Fuel Tank issues identified and released in this Settlement Agreement and  
4 alleged in the First Amended Complaint, no other warranty except the 2-year Ducati Limited Warranty  
5 as extended by the Extended Fuel Tank Warranty Period and the Cosmetic Extended Fuel Tank  
6 Warranty Period shall apply. These warranty extensions (a) are subject to the terms and conditions  
7 contained in the original 2-year Ducati Limited Warranty for the applicable Class Vehicle and (b) shall  
8 be transferable with title of the motorcycle for all Settlement Class Members, provided that the  
9 transferee of title agrees to all of the terms and conditions of this Settlement Agreement, including but  
10 not limited to the release of the Released Parties from the Released Claims set forth in Section IV.D of  
11 this Settlement Agreement.

12 **C. Repairs For Monster Class Vehicles During the Extended Fuel Tank Warranty Period**

13 1. For any Monster Class Vehicle exhibiting fuel leakage at the fuel pump flange seal and  
14 presented for repair during the Extended Fuel Tank Warranty Period with an original factory-equipment  
15 O-ring installed at the fuel pump flange seal, Ducati will replace the O-ring with an X-Ring designed to  
16 prevent any such leakage.

17 2. For any Monster Class Vehicle exhibiting Fuel Tank pressure against the ignition unit,  
18 impeded access to the tank latch, difficulty raising or lowering the Fuel Tank, or misalignment of the  
19 rubber tank supports and presented for repair during the Extended Fuel Tank Warranty Period, Ducati  
20 will install a new Fuel Tank fitting kit. Ducati designed this fitting kit to reposition the Fuel Tank  
21 further back on the motorcycle frame so that any expansion of the Fuel Tank does not crowd the ignition  
22 unit, impede access to the tank latch, or affect the ability to raise or lower the Fuel Tank, and so that the  
23 side rubber supports will continue to fit the frame.

24 3. For any Monster Class Vehicle presented for repair during the Extended Fuel Tank  
25 Warranty Period in which installation of the fitting kit described in Section III.C.2 results in preventing  
26 the closing or locking of the seat, Ducati will install a slightly shorter seat that has been designed to  
27 eliminate the problem without affecting rider comfort.  
28

1           4.     For any Monster Class Vehicle exhibiting contact between the Fuel Tank and the  
2 handlebars and presented for repair during the Extended Fuel Tank Warranty Period, Ducati will adjust  
3 the steering full stroke stoppers to prevent any such contact.

4 **D.     Repairs For Multistrada Class Vehicles During the Extended Fuel Tank Warranty Period**

5           1.     For any Multistrada Class Vehicle presented for repair during the Extended Fuel Tank  
6 Warranty Period with an original factory-equipment O-ring at the fuel pump flange seal, Ducati will  
7 replace the O-ring with the X-Ring specified in RCL-10-005.

8           2.     For any Multistrada Class Vehicle for which, due to Fuel Tank expansion, the Fuel Tank  
9 cannot be removed without damage during motorcycle repair in the Extended Fuel Tank Warranty  
10 Period, Ducati will install a replacement Fuel Tank.

11 **E.     Repairs for SportClassic Class Vehicles During the Extended Fuel Tank Warranty Period**

12           1.     For any SportClassic Class Vehicle exhibiting Fuel Tank expansion causing looseness at  
13 the front attachments and presented for repair during the Extended Fuel Tank Warranty Period, Ducati  
14 will install a fastener kit designed to ensure continuing attachment at the front fittings of the Fuel Tank,  
15 as described in SVC-10-026.

16           2.     For any SportClassic Class Vehicle exhibiting contact between the Fuel Tank and the  
17 handlebar switch gear and presented for repair during the Extended Fuel Tank Warranty Period, Ducati  
18 will adjust the steering full stroke stoppers or otherwise adjust the handlebars to prevent any such  
19 contact .

20 **F.     Repairs for Streetfighter Class Vehicles During the Extended Fuel Tank Warranty Period**

21           For any Streetfighter Class Vehicle exhibiting Fuel Tank expansion resulting in contact between  
22 the Fuel Tank and the upper triple clamp or radiator cap and presented for repair during the Extended  
23 Fuel Tank Warranty Period, Ducati will install a new Fuel Tank designed with slightly reduced  
24 dimensions to prevent such contact.

25 **G.     Repairs for Superbike Class Vehicles During the Extended Fuel Tank Warranty Period**

26           1.     For any Superbike Class Vehicle exhibiting Fuel Tank expansion resulting in contact  
27 between the Fuel Tank and the steering damper support and presented for repair during the Extended  
28

1 Fuel Tank Warranty Period, Ducati will install a new Fuel Tank designed with a slightly shorter length  
2 to prevent such contact.

3 2. For any Superbike Class Vehicle exhibiting fuel leakage from the fuel overflow hose  
4 which is not caused by fuel overfill and presented for repair during the Extended Fuel Tank Warranty  
5 Period, Ducati will replace the Fuel Tank.

6 **H. Repairs For New Monster, Hypermotard and New Multistrada Class Vehicles During the**  
7 **Extended Fuel Tank Warranty Period**

8 1. For any New Monster, Hypermotard or New Multistrada Class Vehicle exhibiting either  
9 (i) functional interference between the Fuel Tank and other motorcycle parts due to Fuel Tank  
10 expansion or (ii) fuel leakage due to an original manufacturing defect in the Fuel Tank and presented for  
11 repair during the Extended Fuel Tank Warranty Period, Ducati will provide the necessary repairs or  
12 replace the Fuel Tank, as appropriate to repair the problem.

13 **I. Repairs During the Cosmetic Extended Fuel Tank Warranty Period**

14 For any Monster, Multistrada, SportClassic, Streetfighter, or Superbike Class Vehicle with a  
15 painted plastic Fuel Tank exhibiting surface blistering, bubbling, rippling, dimpling, flattening, or  
16 spreading resulting from Fuel Tank expansion or an original manufacturing defect, or exhibiting  
17 surface scratches resulting from interference otherwise repaired under this Agreement, and presented  
18 for repair during the Cosmetic Extended Fuel Tank Warranty Period, Ducati will replace the Fuel Tank  
19 only if the following conditions are met: (i) the surface imperfection is greater than 3 millimeters in  
20 size and is easily and clearly visible to a passerby and (ii) there is not some other greater damage to the  
21 Fuel Tank not caused by expansion or original manufacturing defect such as damage from an accident,  
22 motorcycle fall, other impact or wear and tear. Surface imperfections caused by wear and tear are not  
23 covered by the Cosmetic Extended Fuel Tank Warranty. Only the original Ducati 2-year warranty shall  
24 apply to surface imperfections smaller than 3 millimeters in size in accordance with the original  
25 warranty terms and conditions. There are no such surface imperfection issues on New Monster,  
26 Hypermotard and New Multistrada Class Vehicles because the Fuel Tanks on these models are not  
27 painted or exposed.  
28

1 **J. Other Expansion-Related Repairs During the Extended Fuel Tank Warranty Period**

2 Ducati will repair or replace any original Ducati OEM parts or accessories installed on Class  
3 Vehicles that are damaged or no longer fit on a Class Vehicle as a result of Fuel Tank expansion during  
4 the Extended Fuel Tank Warranty Period.

5 **K. Procedure To Obtain Repair or Replacement**

6 1. To obtain any of the repairs or a tank replacement provided for in this Class Settlement  
7 Agreement, the owner of an eligible Class Vehicle must present the Class Vehicle for repair at an  
8 authorized Ducati dealership. The name and location of qualifying Ducati dealerships can be obtained at  
9 [www.ducatiusa.com](http://www.ducatiusa.com).

10 2. The Ducati dealership will make the initial determination of whether a Class Vehicle  
11 qualifies for a free repair or replacement under this Settlement Agreement, and for which repair(s) it  
12 qualifies or whether replacement is warranted.

13 3. Although Ducati will act promptly in performing its obligations under this Settlement  
14 Agreement, most replacement parts must be special ordered by the dealership from Italy and it may take  
15 a number of weeks to arrange for delivery before the replacement can be made.

16 **L. Dispute Resolution Process**

17 1. If a Settlement Class Member disagrees with the dealership's determination under this  
18 Settlement Agreement, the Settlement Class Member may initiate a dispute resolution process by  
19 contacting Ducati Customer Service in writing. Contact information for Ducati Customer Service shall  
20 be provided in the Notice.

21 2. Upon initiation of a dispute resolution process, both the Settlement Class Member and  
22 Ducati shall in good faith attempt to informally resolve the dispute. The process will be non-binding  
23 and the Settlement Class Member may terminate the process at will.

24 3. After first contacting Ducati Customer Service, the Settlement Class Member may initiate  
25 binding arbitration review of any unresolved dispute by submitting, within ninety (90) days after Ducati  
26 Customer Service has provided a written response found to be unsatisfactory by the Settlement Class  
27 Member, a written request for arbitration to Ducati Customer Service. Ducati shall promptly provide  
28 copies of all such requests to Class Counsel.

1 4. Arbitration review shall be conducted by a BBB AUTO LINE arbitrator, using written  
2 submissions and allowing for a hearing appearance in person or by telephone if requested by either  
3 party, who shall have the authority only (i) to determine whether the Settlement Class Member is  
4 entitled to one or more of the repairs by a Ducati dealer specified in this Settlement Agreement and (ii)  
5 to apportion the costs of the arbitration solely as specified in Section III.L.6 below.

6 5. The arbitrator's decision shall be final and non-appealable.

7 6. Ducati and the customer shall each be responsible for one-half of the costs of the BBB  
8 AUTO LINE arbitration review, which must be paid directly to BBB AUTO LINE in advance, but  
9 neither side shall be responsible for the other's counsel fees, if any, except that the arbitrator can impose  
10 all costs of BBB AUTO LINE arbitration review, but not counsel fees, on Ducati if the arbitrator finds  
11 that the customer's appeal was meritorious or on the Settlement Class Member if the arbitrator  
12 determines that the Settlement Class Member acted in bad faith.

13 **IV. SETTLEMENT APPROVAL PROCESS**

14 **A. Preliminary Approval of Settlement**

15 Promptly after execution of this agreement, counsel for the parties shall present this Settlement  
16 Agreement to the Court for review and jointly seek entry of a Preliminary Approval Order substantially  
17 in the form attached as Exhibit A.

18 **B. Notice to Class Members**

19 1. For purposes of mailing class Notice, Ducati shall determine the name, model(s) of  
20 Ducati motorcycle(s) owned, and most current mailing address of all Settlement Class Members who  
21 can be reasonably identified through the use of R.L. Polk & Company ("Polk") by providing Polk a list  
22 of VIN numbers for all Class Vehicles, with authorization from the Court for State registration  
23 authorities to release such addresses for all current and last known registered owners. Ducati shall  
24 directly request such data from the State of Oklahoma. Ducati shall, at minimum, follow the same  
25 procedures that it uses to identify vehicle owners for notification in connection with a NHTSA recall.

26 2. The form of Notice to be mailed to Settlement Class Members is attached hereto as  
27 Exhibit C. Within 60 days after entry of the Preliminary Approval Order, or such date thereafter as is  
28 reasonably necessary to obtain the names and addresses of all United States registered owners of Ducati

1 Class Vehicles as of the date of the Preliminary Approval Order (the “ Notice Date”), Ducati shall mail  
2 or cause to be mailed by first class mail the Notice to each identified Settlement Class Member.

3 3. Ducati shall report to Class Counsel the number of notices originally mailed to  
4 Settlement Class Members; the number of notices initially returned as undeliverable; the number of  
5 additional notices mailed after any search for a changed address for a returned notice; and the number of  
6 those additional notices returned as undeliverable.

7 4. Class Counsel will develop and maintain a settlement website that will contain all  
8 settlement agreement documents, notices to Settlement Class Members and Court Orders concerning the  
9 proposed settlement, a list of important dates, and any other information to which the parties may agree.  
10 The Notice mailed to class members will include the address of the settlement website and a telephone  
11 number so that Settlement Class Members may communicate with Class Counsel.

12 **C. Final Approval of Settlement**

13 If this Settlement Agreement is preliminarily approved by the Court, counsel for the parties  
14 shall jointly seek entry of a Final Order and Judgment substantially in the form attached hereto as  
15 Exhibit B.

16 **D. Release By Settlement Class Members**

17 1. Upon the Effective Date, each Settlement Class Member, individually and on behalf of  
18 any successors, assigns, heirs and representatives, shall be deemed to have, and by operation of the Final  
19 Order and Judgment shall have, released, waived, and discharged Ducati and its parent company, Ducati  
20 Motor Holding S.p.A., and any of their affiliates, employees, directors, officers, shareholders,  
21 consultants, Fuel Tank suppliers, dealers, agents, attorneys, successors and assigns (the “Released  
22 Parties”) from any and all claims, causes of action or obligations of any nature whatsoever (including  
23 claims that have been or could have been asserted against them in this action or in any other complaint,  
24 action, or litigation in any other court, tribunal or forum), known or unknown, arising from or related to  
25 any of the Fuel Tank-related problems alleged in Plaintiffs’ First Amended Complaint or identified in  
26 Section I.6 above except for the obligations undertaken under this Settlement Agreement (the “Released  
27 Claims”).  
28

1           2.       The Released Claims include known and unknown claims. Settlement Class Members  
2 hereby expressly, knowingly, and voluntarily waive the provisions of Section 1542 of the California  
3 Civil Code, which provides as follows:

4           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
5           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
6           AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR  
7           HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH  
8           THE DEBTOR.

9           3.       Settlement Class Members expressly waive and relinquish any and all rights and benefits  
10 that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the  
11 California Civil Code, or any other law of any state or territory that is similar, comparable, or equivalent  
12 to Section 1542, to the fullest extent that they may lawfully waive such rights or benefits pertaining to  
13 the Released Claims. In connection with such waiver and relinquishment, the Settlement Class  
14 Members hereby acknowledge that they are aware that they or their attorneys may hereafter discover  
15 claims or facts in addition to or different from those that they now know or believe exist with respect to  
16 Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of  
17 the Released Claims known or unknown, suspected or unsuspected, that they have against the Released  
18 Parties. In furtherance of such intention, the release herein given by the Settlement Class Members to  
19 the Released Parties shall be and remain in effect as a full and complete general release notwithstanding  
20 the discovery or existence of any such additional different claims or facts. Plaintiffs, on behalf of  
21 themselves and the Settlement Class, expressly acknowledge that they have been advised by their  
22 attorney of the contents and effect of Section 1542, and with knowledge, they hereby expressly waive  
23 whatever benefits they may have had pursuant to such section.

24           4.       Upon the Effective Date: (a) this Settlement Agreement shall be the exclusive remedy  
25 for any and all Released Claims of Settlement Class Members; and (b) the Settlement Class Members  
26 shall be permanently barred and enjoined from initiating, asserting, or prosecuting against the Released  
27 Parties in any federal or state court or tribunal or otherwise any and all Released Claims.

28           5.       Notwithstanding the foregoing, claims for personal (*i.e.*, bodily) injuries are not released.

1 **E. Release by Ducati**

2 Upon the Effective Date, Ducati and Ducati Motor Holding S.p.A., shall be deemed to have,  
3 and by operation of the Final Order and Judgment shall have, released Plaintiffs and Class Counsel  
4 from any and all claims or causes of action that were or could have been asserted arising from or related  
5 to the filing, prosecution, or settlement of this action except for obligations undertaken under this  
6 settlement.

7 **F. Plaintiffs' Application For Attorneys' Fees, Expenses, and Class Representative Service**  
8 **Awards**

9 1. Plaintiffs will apply to the Court under California law for an order awarding Class  
10 Counsel reasonable hourly rate attorneys' fees and reimbursement of their litigation and settlement  
11 expenses not to exceed in total \$835,000, and awarding named Plaintiffs (Jonas Sugarman and Quang  
12 Le) and two additional class members who submitted to vehicle inspections and provided other  
13 information to Class Counsel in this action (Jerrick Torres and Frank White) reasonable service awards  
14 not to exceed \$1500 per person ("Fee Application"). The attorneys' fees, subject to the maximum  
15 amount set forth above, will be based on the amount of time class counsel reasonably expended working  
16 on this action. Such fees, expenses and service payments as are awarded by the Court will be paid by  
17 Ducati. Such payment by Ducati will be in lieu of statutory or other fees Plaintiffs and their attorneys  
18 might otherwise have been entitled to recover, and this amount shall be inclusive of all fees and  
19 expenses of Class Counsel in this action. The parties negotiated attorneys' fees, expenses, and service  
20 awards only after reaching an agreement upon the consideration provided to the Settlement Class.

21 2. Within ten (10) calendar days after the later of the Final Order and Judgment approving  
22 this settlement and the Court's award on the Fee Application, Ducati will transfer the amount awarded  
23 by the Court on the Fee Application into an interest-bearing escrow account at JPMorgan Chase, N.A. or  
24 such other major bank as may be agreed upon by Class Counsel and Ducati in accordance with escrow  
25 terms acceptable to Ducati and Class Counsel that include, *inter alia*, (a) a provision prohibiting  
26 withdrawal of any of said funds without written approval from both Ducati and Class Counsel before the  
27 occurrence of one of the events set forth in clauses (b), (c) and (d) of this paragraph; (b) a provision that  
28 if the Final Order and Judgment is reversed or modified on appeal, in whole or in part, such that this

1 Settlement Agreement and the settlement provided herein is terminated or becomes null and void  
2 pursuant to Sections V.3 and V.4 below, all amounts paid by Ducati into the escrow account plus any  
3 interest earned on said funds shall be paid to Ducati from the escrow account within ten (10) calendar  
4 days; (c) a provision that if the Final Order and Judgment is affirmed, but the award on the Fee  
5 Application is reversed, vacated or modified on appeal, then Ducati shall be paid the amount reflecting  
6 the reduction in the Fee Application award effected by the reversal, vacatur or modification plus any  
7 interest earned on said sum from the escrow account within ten (10) calendar days; and (d) a provision  
8 that within ten (10) calendar days after the date on which all appellate rights with respect to the Final  
9 Approval Order and Judgment entered at the Fairness Hearing have expired or been exhausted, the  
10 amount awarded, plus accrued interest, will be paid from the escrow account by wire transfer to Class  
11 Counsel for the benefit of Class Counsel and the recipients of service awards. Escrow account fees, if  
12 any, of the escrow account bank shall be deducted from the sums paid from the account either to Ducati  
13 or Class Counsel, as the case may be, in proportion to the amount paid to each, if any, pursuant to  
14 clauses (b), (c) or (d) above.

15 3. In no event will the Fee Application awards reduce the benefits to the Class provided for  
16 in this agreement.

17 4. The procedure for and the grant or denial or allowance or disallowance by the Court of  
18 the Fee Application are not part of the class settlement, and are to be considered by the Court separately  
19 from the Court's consideration of the fairness, reasonableness, and adequacy of the class settlement.  
20 Any order or proceedings relating to the Fee Application, or any appeal from any order related thereto or  
21 reversal or modification thereof, will not operate to terminate or cancel this agreement, or affect or delay  
22 the Effective Date of this agreement, except that in no event shall Class Counsel seek nor accept more  
23 than the maximum amount of fees and expenses as set forth above in Section IV.F.1.

24 **G. Objections and Opt-Outs by Settlement Class Members**

25 1. Any Settlement Class Member who intends to object to the fairness, reasonableness, or  
26 adequacy of the settlement must (a) file such written objection with the Court and (b) mail by U.S. mail  
27 a copy of the objection to Class Counsel and Defense Counsel at the address set forth below postmarked  
28 no later than the date specified in the Preliminary Approval Order:

1           As to Class Counsel:

2           Eric H. Gibbs  
3           Girard Gibbs LLP  
4           601 California Street, Suite 1400  
5           San Francisco, CA 94108

6           As to Defense Counsel:

7           David W. Ichel  
8           Simpson Thacher & Bartlett LLP  
9           425 Lexington Avenue  
10          New York, New York 10017

11           2.       Any objection must be in writing, signed by the Settlement Class Member, set forth the  
12           objecting Settlement Class Member's full name, current address, telephone number, and the model and  
13           model year of Ducati Class Vehicle owned, state all objections and the reasons for each objection, and  
14           state whether the objecting class member intends to appear at the Fairness Hearing either with or without  
15           separate counsel. If the Settlement Class Member intends to appear at the Fairness Hearing with  
16           separate counsel, the objection must identify all attorneys who will separately represent the Class  
17           Member. In addition, the objection must affirmatively state that the objector and the objector's separate  
18           counsel have not objected to any other class action settlement in any court in the United States in the  
19           previous five years, or else list any such objections submitted by the objector or the objector's separate  
20           counsel. No member of the Settlement Class shall be entitled to be heard at the Fairness Hearing  
21           (whether individually or through separate counsel) or to object to the settlement, and no written  
22           objections or briefs submitted by any member of the Settlement Class shall be received or considered by  
23           the Court at the Fairness Hearing, unless written notice of the objecting class member's intention to  
24           appear at the Fairness Hearing and copies of any written objections and/or briefs shall have been filed  
25           with the Court and served on Class Counsel and Defense Counsel on or before the date specified in the  
26           Preliminary Approval Order. Members of the Settlement Class who fail to file and serve timely written  
27           objections in the manner specified above shall be deemed to have waived all objections and shall be  
28           foreclosed from making any objection (whether by appeal or otherwise) to the settlement.

          3.       Members of the Settlement Class may elect to opt out of the settlement, relinquishing  
          their rights to benefits hereunder. Members of the Settlement Class who opt out of the settlement will

1 not release their claims pursuant to this Settlement Agreement. Putative settlement class members  
2 wishing to opt out of the settlement must send a request for exclusion to the address designated in the  
3 Notice and Preliminary Approval Order by U.S. Mail including their name, address, telephone number  
4 and signature, and Ducati model, model year and VIN number for each class vehicle owned, along with  
5 a clear statement communicating that they elect to be excluded from the Settlement Class, do not wish to  
6 be a Settlement Class Member, and elect to be excluded from any judgment entered pursuant to the  
7 settlement. Any request for exclusion or opt out must be postmarked on or before the opt out deadline  
8 provided in the Court's Preliminary Approval Order. The date of the postmark on the return mailing  
9 envelope shall be the exclusive means used to determine whether a request for exclusion has been timely  
10 submitted. Members of the Settlement Class who fail to submit a valid and timely request for exclusion  
11 on or before the date specified in the Court's Preliminary Approval Order shall be bound by all terms of  
12 this Settlement Agreement and the Final Order and Judgment, regardless of whether they have requested  
13 exclusion from the settlement.

14 4. Any member of the Settlement Class who submits a timely request for exclusion or opt  
15 out may not file an objection to the settlement and shall be deemed to have waived any rights or benefits  
16 under this Settlement Agreement.

17 5. Not later than three (3) business days after the deadline for submission of requests for  
18 exclusion or opt out, Class Counsel shall provide to Defense Counsel a complete opt out list together  
19 with copies of the opt out requests.

20 6. On the date set forth in the Preliminary Approval Order, or on such other date as shall be  
21 set by the Court, a Fairness Hearing shall be conducted to determine final approval of the settlement  
22 provided for herein, including whether to enter the Final Order and Judgment substantially in the form  
23 attached to this Settlement Agreement as Exhibit B. Upon final approval of the settlement by the Court  
24 at or after the Fairness Hearing, the parties shall present the Final Order and Judgment, substantially in  
25 the form attached to this Settlement Agreement as Exhibit B, to the Court for approval and entry.  
26  
27  
28

1 **V. SCOPE AND EFFECT OF CERTIFICATION OF THE SETTLEMENT CLASS AND**  
2 **EFFECT OF NON-APPROVAL OR TERMINATION OF THE SETTLEMENT**

3 1. For purposes of settlement only, the parties and their counsel agree that the Court should  
4 make preliminary findings and enter the Preliminary Approval Order (substantially in the form attached  
5 as Exhibit A) granting provisional certification of the Settlement Class subject to final findings and  
6 ratification in the Final Order and Judgment, and appointing named Plaintiffs as the representatives of  
7 the Settlement Class and Class Counsel as counsel for the Settlement Class.

8 2. Ducati does not consent to certification of the Settlement Class for any purpose other than  
9 to effectuate the settlement of this action. If this Settlement Agreement is terminated pursuant to its  
10 terms or otherwise pursuant to agreement of the parties, or the Effective Date for any reason does not  
11 occur, the order certifying the Settlement Class for purposes of effectuating this Settlement Agreement,  
12 and all preliminary and/or final findings regarding that class certification order, shall be automatically  
13 vacated upon notice of the same to the Court, the action shall proceed as though the Settlement Class  
14 had never been certified pursuant to this Settlement Agreement and such findings had never been made,  
15 and the action shall return to the procedural status quo before the Settlement Agreement.

16 3. In the event the terms or conditions of this Settlement Agreement, other than terms  
17 pertaining to attorneys' fees, costs, expenses, and/or service awards to the named Plaintiffs, are  
18 materially modified by any court, either party in its sole discretion to be exercised within fourteen (14)  
19 days after such a material modification may declare this Settlement Agreement null and void. For  
20 purposes of this paragraph, material modifications include but are not limited to any modifications to the  
21 definitions of the Settlement Class, Settlement Class Member, or Released Claims, changes to the  
22 Notice plan, and/or any modifications to the terms of the settlement consideration.

23 4. If the settlement as provided for in this Settlement Agreement is not approved in a Final  
24 Order and Judgment or for any reason the Effective Date does not occur, no consideration of any kind  
25 shall be provided pursuant to this Settlement Agreement, this Settlement Agreement shall become null  
26 and void and the parties shall proceed with the litigation as if no settlement has occurred.

1 **VI. MISCELLANEOUS PROVISIONS**

2 **A. Effect of Exhibits**

3 The exhibits to this Agreement are an integral part of the settlement and are expressly  
4 incorporated and made a part of this Agreement.

5 **B. No Admission**

6 This Agreement is for settlement purposes only. Neither the fact of, nor any provision  
7 contained in this agreement, nor any action taken hereunder, shall constitute or be construed as an  
8 admission of the validity of any claim or any fact alleged in this action or of any wrongdoing, fault,  
9 violation of law, or liability of any kind on the part of Ducati or an admission by Ducati of any claim or  
10 allegation made in any action or proceeding against Ducati or that any person has sustained any damage  
11 by reason of any of the facts complained of in this action. Ducati does not consent to certification of  
12 the Settlement Class for any purpose other than to effectuate the settlement of the action, and reserves  
13 all its right to contest the certification of any class in this action for any purpose other than to  
14 effectuate this settlement. If this Settlement Agreement is terminated and becomes null and void, this  
15 settlement and this Settlement Agreement shall have no further force or effect and shall not be offered  
16 in evidence or used in the action or any other proceeding. This Settlement Agreement and this  
17 settlement shall not be offered or be admissible in evidence against Ducati or cited or referred to in any  
18 action or proceeding, except in an action or proceeding brought to enforce its terms.

19 **C. Entire Agreement**

20 Except for any other written agreements as may be entered into by counsel for the parties  
21 contemporaneously herewith and thereafter filed with the Court, this Agreement represents the entire  
22 agreement and understanding among the parties and supersedes all prior proposals, negotiations,  
23 agreements, and understandings relating to the subject matter of this agreement. The parties  
24 acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty,  
25 inducement, negotiation, or understanding concerning any part or all of the subject matter of this  
26 agreement has been made or relied on except as expressly set forth in this agreement. No modification  
27 or waiver of any provisions of this agreement shall in any event be effective unless the same shall be in  
28 writing and signed by the person or party against whom enforcement of the Agreement is sought.

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

**D. Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any party who has signed it, and all of which shall be deemed a single agreement.

**E. Arm’s-Length Negotiations**

The parties have negotiated all of the terms and conditions of this Agreement at arm’s length. All terms, conditions, and exhibits in their exact form are material and necessary to this agreement and have been relied upon by the parties in entering into this agreement.

**F. Good Faith**

The parties acknowledge that prompt approval, consummation, and implementation of this Agreement is essential. The parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this agreement, shall promptly perform their respective obligations hereunder, and shall attempt to resolve any dispute that may arise under this agreement in good faith and in an expeditious manner.

**G. Continuing Jurisdiction**

The parties agree the Court may retain continuing and exclusive jurisdiction over them, including all Settlement Class Members, for the purpose of the administration and enforcement of this Agreement.

**H. Binding Effect of Settlement Agreement**

This Agreement shall be binding upon and inure to the benefit of the parties, their representatives, heirs, successors and assigns.

**I. Extensions of Time**

The parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement without further notice (subject to Court approval as to court dates).

**J. Service of Notice**

Whenever, under the terms of this Agreement, a person is required to provide service or written notice to Ducati or Class Counsel, such service or notice shall be directed to the individuals and

1 addresses specified below, unless those individuals or their successors give notice to the other parties in  
2 writing of a new notice recipient:

3 As to Plaintiffs or Class Counsel:

4 Eric H. Gibbs  
5 Girard Gibbs LLP  
6 601 California Street, Suite 1400  
7 San Francisco, CA 94108

8 As to Ducati:

9 David W. Ichel  
10 Simpson Thacher & Bartlett LLP  
11 425 Lexington Avenue  
12 New York, New York 10017


13 **K. Authority to Execute Settlement Agreement**

14 Each counsel or other person executing this agreement or any of its exhibits on behalf of any  
15 party hereto warrants that such person has the authority to do so.

16 IN WITNESS HEREOF, the parties have caused this Agreement to be executed, by their duly  
17 authorized attorneys, as of the date(s) indicated on the lines below.

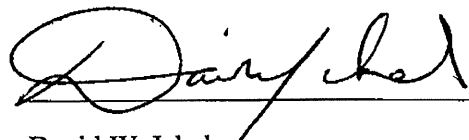
18 ON BEHALF OF PLAINTIFFS:

19 Dated: August 8, 2011

20   
21 Eric H. Gibbs  
22 GIRARD GIBBS LLP  
23 601 California Street, Suite 1400  
24 San Francisco, CA 94108

25 ON BEHALF OF DUCATI:

26 Dated: August 8, 2011

27   
28 David W. Ichel  
SIMPSON THACHER & BARTLETT LLP  
425 Lexington Avenue  
New York, New York 10017