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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 LOS ANGELES COUNTY – CENTRAL DISTRICT
10 STANLEY MOSK COURTHOUSE

11 KEVIN CHANG, an individual,

Case No.: BC516637

12 Plaintiff

COMPLAINT

13 v.

14 DUCATI NORTH AMERICA, INC., a
15 California corporation;
16 PRO-ITALIA MOTORS, INC., a
California corporation; and
DOES 1 through 10,

1. VIOLATION OF SONG-BEVERLY CONSUMER WARRANTY ACT;
2. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY;
3. NEGLIGENCE; AND
4. STRICT LIABILITY

17 Defendants.
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1 SUMMARY

2 1. This is a negligence and breach of warranty lawsuit relating to a defective
3 Ducati 1198 S motorcycle (the "Motorcycle"). Since Plaintiff's purchase of the
4 Motorcycle, it all times suffered from a dangerous defect that causes the transmission to
5 lock up while it is being ridden. Plaintiff twice took it in for repair of this defect, but the
6 Motorcycle's seller and warrantor were unable to fix the problem, and both times
7 returned it to him without remedying the dangerous condition. The defect ultimately
8 caused a serious accident, in which Plaintiff suffered physical injuries and property
9 damage.
10

11 2. Plaintiff is entitled to compensatory and punitive damages for his injuries,
12 pain and suffering, and property damage, resulting from the seller's and warrantor's
13 negligence, strict liability, and breaches of the implied warranty of merchantability.
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15 3. Additionally, Plaintiff demanded that the motorcycle's warrantor
16 repurchase or replace the Motorcycle because of the warrantor's inability to remedy its
17 defects, but the warrantor refused. The warrantor's refusal to repurchase or replace the
18 Motorcycle, notwithstanding its inability to remedy its defects, amounts to a willful
19 violation of California's Song-Beverly Consumer Warranty Act. Accordingly, Plaintiff is
20 also entitled to a refund of the Motorcycle's purchase price and a civil penalty.
21

22 PARTIES

23 4. Plaintiff Kevin Chang is an individual residing in Monterey Park,
24 California.

25 5. Defendant Ducati North America, Inc. ("Ducati") is a California
26 corporation that does business throughout California, including in Los Angeles County.
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1 6. Defendant Pro-Italia Motors, Inc. (hereafter "PIM"), is a California
2 corporation. Its principal place of business in California 3319 North Verdugo Road,
3 Glendale, California.

4 7. Plaintiff does not know the true names and capacities, whether corporate,
5 partnership, associate, individual or otherwise of Defendants sued herein as Does 1
6 through 10, inclusive, under the provisions of section 474 of the California Code of Civil
7 Procedure. Defendants Does 1 through 10, inclusive, are in some manner responsible
8 for the acts, occurrences and transactions set forth herein, and are legally liable to
9 Plaintiff. Plaintiff will seek leave to amend this Complaint to set forth the true names
10 and capacities of the fictitiously named Defendants together with appropriate charging
11 allegations when ascertained.
12

13 8. All acts of corporate employees as alleged were authorized or ratified by an
14 officer, director or managing agent of the corporate employer.
15

16 FACTS

17 9. On or about February 24, 2010, Plaintiff purchased that certain 2010
18 Motorcycle with vehicle identification number ZDM1XBLW6AB026219 (the
19 "Motorcycle") from PIM.

20 10. Plaintiff's purchase of the Motorcycle from PIM was accompanied by
21 Ducati's express warranty and Ducati's and PIM's implied warranty of merchantability.
22

23 11. Thereafter, during the applicable warranty periods, the Motorcycle
24 manifested a dangerous defect that causes its transmission to lock up while it is being
25 driven (the "Defect").

26 12. On at least two occasions while the warranties were in effect, Plaintiff
27 returned the Motorcycle to PIM for repair of the Defect.

28 13. PIM is one of Ducati's authorized repair facilities.

1 22. Plaintiff is a "buyer" of consumer goods under the California Lemon Law.

2 23. The foregoing defects and nonconformities to warranty manifested
3 themselves within the applicable express warranty period. The nonconformities
4 substantially impair the use, value and/or safety of the Motorcycle.

5 24. Plaintiff delivered the motorcycle to Ducati's authorized repair facility for
6 repair of the nonconformities on numerous occasions.

7 25. Ducati's authorized repair facility was unable to conform the Motorcycle to
8 the applicable express warranties after a reasonable number of attempts.

9 26. By failure of Ducati to remedy the defects as alleged above, or to issue a
10 refund or replacement, Ducati is in breach of its obligations under the California Lemon
11 Law.
12

13 27. Plaintiff is entitled to justifiably revoke acceptance of Motorcycle under
14 the California Lemon Law.

15 28. Under the California Lemon Law, Plaintiff is entitled to reimbursement of
16 all payments made towards the Motorcycle (less the amount directly attributable to
17 Plaintiff's use of the Motorcycle prior to discovery of the nonconformities).
18

19 29. Plaintiff is entitled to damages resulting from Ducati's failure to comply
20 with its obligations under the California Lemon Law.

21 30. Plaintiff is entitled under the California Lemon Law to recover as part of
22 the judgment a sum equal to the aggregate amount of costs and litigation-related
23 expenses, including attorney's fees, reasonably incurred in connection with the
24 commencement and prosecution of this action.
25

26 31. Plaintiff is entitled, in addition to the other amounts recovered, to a civil
27 penalty of up to two times the amount of actual damages because Ducati willfully failed
28 to comply with its responsibilities under the California Lemon Law.

1 SECOND CAUSE OF ACTION

2 Breach of Implied Warranty of Merchantability

3 (Against All Defendants)

4 32. Plaintiff incorporates by reference the allegations in paragraphs 1 through
5 31.

6 33. Plaintiff's purchase of the Motorcycle was accompanied by Ducati's and
7 PIM's implied warranty of merchantability.

8 34. The implied warranty of merchantability means and includes that the
9 goods will comply with each of the following requirements: (1) they would pass without
10 objection in the trade under the contract description; (2) they are fit for the ordinary
11 purposes for which such goods are used; (3) they are adequately contained, packaged,
12 and labeled; and (4) they conform to the promises or affirmations of fact made on the
13 container or label.

14 35. Because the Motorcycle was sold to Plaintiff with a serious transmission
15 defect that manifested itself within the period of the implied warranty and which
16 substantially reduces its safety and performance, it (1) would not pass without objection
17 in the trade under the contract description, (2) was and is not fit for the ordinary
18 purposes for which such goods are used, (3) was not adequately contained, packaged,
19 and labeled, and (4) did not conform to the promises or affirmations of fact made on the
20 container or label.

21 36. Plaintiff has rightfully rejected and/or justifiably revoked acceptance of
22 the Motorcycle, and is entitled under the California Lemon Law to rescind the purchase
23 contract and to restitution of all money paid towards the purchase contract. This
24 Complaint also, again, hereby rejects and revokes acceptance of the Motorcycle.
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1 37. Plaintiff has been proximately damaged by Ducati's and PIM's violations
2 of the California Lemon Law, including its failure to comply with its obligations under
3 the implied warranty of merchantability.

4 38. Plaintiff is entitled to the remedies provided by the California Lemon Law,
5 including the remedies set forth in Civil Code Section 1794, and including his attorney's
6 fees, costs, and expenses.
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8 THIRD CAUSE OF ACTION

9 Negligence

10 (Against All Defendants)

11 39. Plaintiff incorporates by reference the allegations in paragraphs 1 through
12 38.

13 40. At all times mentioned herein, Ducati and PIM were engaged in the
14 business of designing, manufacturing, testing, distributing, selling, inspecting,
15 repairing, marketing, constructing, labeling, and advertising of motorcycles, including
16 the Motorcycle.
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18 41. At all times mentioned herein, Ducati and PIM had a duty of care in the
19 designing, manufacturing, testing, distributing, selling, inspecting, repairing, marketing,
20 constructing, labeling, and advertising of motorcycles, including the Motorcycle.
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22 42. At all times herein mentioned, Ducati and PIM had a duty to warn all users
23 of their motorcycles of the attendant risks of harm, said risks of harm being at all times
24 known and/or foreseeable to Ducati and PIM.

25 43. At all times herein mentioned, Ducati and PIM knew, or in the exercise of
26 reasonable care should have known, that if the Motorcycle not properly designed,
27 manufactured, tested, distributed, sold, inspected, repaired, marketed, constructed, and
28

1 labeled, for the use and purpose for which the Motorcycle was intended, the Motorcycle
2 was likely to cause injuries to owners, passengers, and users of the Motorcycle.

3 44. On or about May 12, 2013, Plaintiff was using the Motorcycle in the
4 manner in which it was intended to be used. At that time and prior thereto, Ducati and
5 PIM negligently and carelessly manufactured, designed, constructed, equipped, tested,
6 installed, repaired, assembled, maintained, and handled the Motorcycle so that it was
7 defective and unsafe when used and operated in the manner for which it was intended.
8

9 45. The Motorcycle's Defect existed at the time it left Ducati's and PIM's
10 control.

11 46. As a direct and legal result of the Motorcycle's Defect, Plaintiff was injured
12 by the Motorcycle while it was being used in the manner for which it was intended, the
13 risk of which was at all times known and foreseeable to Ducati and PIM. Plaintiff is
14 entitled to general damages, in an amount to be proven at trial, for his physical injuries,
15 pain and suffering, mental suffering, medical expenses, property damage, lost earnings,
16 and lost earning capacity.
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18 FOURTH CAUSE OF ACTION

19 Strict Liability

20 (Against All Defendants)

21 47. Plaintiff incorporates by reference the allegations in paragraphs 1 through
22 46.
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24 48. The Motorcycle was defective in its design and/or its manufacture.

25 49. Ducati was the manufacturer of the Motorcycle.

26 50. PIM was the seller and distributor of the Motorcycle.

27 51. The Motorcycle's Defect existed when it left PIM's and Ducati's possession.

28 52. The Defect was the cause of Plaintiff's injury.

1 53. Plaintiff's injury resulted from his reasonably foreseeable use of the
2 Motorcycle.

3 54. Plaintiff is entitled to general damages, in an amount to be proven at trial,
4 for his physical injuries, pain and suffering, mental suffering, medical expenses,
5 property damage, lost earnings, and lost earning capacity.
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7 PRAYER FOR RELIEF

8 Plaintiff prays for judgment against Defendants, as follows:

- 9 1. For general damages of \$75,000, or such other amount as proven at trial,
10 and punitive damages;
11 2. For punitive damages;
12 3. For rescission of the Motorcycle's purchase contract and restitution of all
13 monies expended by Plaintiff towards such contract;
14 4. For a civil penalty under the California lemon law equal to twice Plaintiff's
15 general damages;
16 5. For prejudgment interest at the legal rate;
17 6. For attorney's fees, costs of suit, and out-of-pocket expenses; and
18 7. For such other and further relief as the Court deems just and proper under
19 the circumstances.
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23 VACHON LAW FIRM
24 Attorney for Plaintiff Kevin Chang

25 Date: July 26, 2013

26 _____
27 Michael R. Vachon, Esq.
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