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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

11 THOMAS JOSEPH SOULLIERE, ) CASE NO.: 30-2015-00790644-CU-PL-CJC  
12 )  
13 ) ASSIGNED FOR ALL PURPOSES TO:  
14 ) JUDGE: FREDRICK P. HORN  
15 ) DEPT.: C-31  
16 )  
17 ) **FIRST AMENDED COMPLAINT FOR**  
18 ) **DAMAGES - PERSONAL INJURY**  
19 ) (1) **PRODUCT LIABILITY**  
20 ) (2) **STRICT PRODUCT LIABILITY**  
21 ) (3) **NEGLIGENCE, and,**  
22 ) (4) **BREACH OF IMPLIED**  
23 ) **WARRANTIES**  
24 ) **PRAYER FOR PUNITIVE DAMAGES**  
25 ) **JURY TRIAL IS DEMANDED**

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21 Comes now plaintiff THOMAS JOSEPH SOULLIERE, and for causes of action against the  
22 defendants, and each of them, alleges as follows:

23 **ALLEGATIONS REGARDING THE PARTIS, JURISDICTION AND VENUE**

24 1. Plaintiff Thomas Joseph Soulliere is a competent adult. As further described below,  
25 plaintiff was injured as a result of the failure of his brakes to engage when another vehicle failed to  
26 provide the right of way, causing plaintiff to lose control of his vehicle and collide into the at-fault  
27 vehicle.  
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1           2.       Defendant Suzuki Motor Corporation. (hereafter, "SMC") is a corporation that has done  
2 and is doing business within California, including in the County of Orange.

3           3.       Defendant Suzuki Motor of America, Inc. (hereafter, "SMAI") is a corporation that has  
4 done and is doing business within California, including in the County of Orange.

5           4.       Defendant Berts Mega Mall (hereafter, "Berts") is a business entity, form unknown, that  
6 has done and is doing business within California, including in the County of Orange.

7           5.       The amount in controversy exceeds the "limited jurisdiction" of the Superior Court.  
8 Accordingly, this matter is filed within the "unlimited" civil jurisdiction of this Court.

9           6.       Venue is proper in this Court, as one or more defendants resides within this County and  
10 judicial district, and/or is subject to suit in this County for having failed to designate a principal place of  
11 business within the State of California in the records of the Secretary of State, and/or that one or more  
12 tortious acts, omissions or injuries causing damage to Plaintiff occurred within this County and judicial  
13 district.

14          7.       The true names and capacities of the defendants sued under the fictitious names of  
15 "DOE 2" through "DOE 100" are not presently known to Plaintiff. Plaintiff will seek to amend the  
16 complaint to substitute the true names of said defendants in place of these fictitious names when and if  
17 those identities are ascertained.

18          8.       Plaintiff is informed and believes that the defendants named in this complaint (including  
19 those designated by fictitious name) are liable to the Plaintiff for the injuries and damages alleged in this  
20 complaint by virtue of each of said defendant's negligent acts or omissions, strict liability, product  
21 liability, vicarious or imputed liability, breach of contract or warranty, misrepresentations, and/or other  
22 legal fault.

23          9.       Plaintiff is informed and believes that at the time of the harmful acts, omissions, breaches  
24 and events alleged in this complaint, each defendant was acting as the agent, employee, servant, partner,  
25 officer, director, alter ego, and/or joint adventurer of the other, within the course and scope of that  
26 relationship, so as to render liable each such defendant's corresponding principal, employer, master,  
27 partner, or joint adventurer.

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1 medical treatment. Plaintiff continues to suffer pain, discomfort, annoyance and inconvenience due to  
2 the injuries he sustained as a result of the incident.

3 15. Plaintiff has sought and continues to seek examination, advice and treatment by and from  
4 healthcare providers as a result of the incident and its ensuing injuries. He has incurred and will incur  
5 substantial expenses and damages, including for medical examination, diagnosis, treatment, medication  
6 and physical therapy.

7 16. Plaintiff has suffered and will suffer economic and non-economic damages as a result of  
8 the injuries arising from the incident and fault of defendants, in an amount according to proof at the time  
9 of trial (or default proceedings). Plaintiff's losses include (without limitation): economic damages for  
10 healthcare related expenses as well as loss of earnings and loss of earning capacity; future medical  
11 damages related to future expected medical care and treatment; non-economic damages for pain,  
12 suffering, and inconvenience as a result of the incident, in addition to general damages.

13 **FIRST CAUSE OF ACTION**

14 (Product Liability)

15 **Against All Defendants**

16 17. Plaintiff incorporates by reference the preceding paragraphs of this Complaint into this  
17 Cause of Action and each of its Counts.

18 18. The GSXR—inclusive of its component parts, subassemblies and assemblies, and the  
19 waiver, instructions, and literature included with the product at the time of its sale—is referred to herein  
20 as the "GSXR."

21 19. The GSXR is further identified as follows: a Suzuki GSXR 600 motorcycle, also  
22 described as a "GSXR 600", a two-wheeled, engine driven gasoline-powered vehicle constructed of a  
23 metallic frame and plastic aesthetic fairing enclosing an internal combustion engine, drive chain and  
24 other mechanical components.

25 20. Plaintiff was the owner and user of the GSXR.

26 21. Plaintiff purchased the GSXR from Berts Mega Mall, in a financing transaction.  
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1           22.     Plaintiff is informed and believes that defendants Berts Mega Mall, SMC, SMAI and  
2 DOE's 2 through 25 distributed, marketed, advertised and/or sold the GSXR to the public, or otherwise  
3 placed the GSXR into the stream of commerce.

4           23.     Plaintiff is informed and believes that defendants Berts Mega Mall, SMC, SMAI and  
5 DOE's 25 through 40 promoted, marketed, solicited on behalf of, and provided access to the GSXR.

6           24.     Plaintiff is informed and believes that defendants Berts Mega Mall, SMC, SMAI and  
7 DOE's 41 through 55 promoted, marketed, inspected, tested, maintained, certified, provided access to  
8 and/or approved the GSXR as safe and fit for public consumption.

9                                 **COUNT ONE**

10                                (Strict Liability)

11                                **Against All Defendants**

12           25.     Plaintiff is informed and believes that each of the defendants knew the GSXR would be  
13 sold and used without inspection for defects.

14           26.     Plaintiff is informed and believes that the GSXR was defective in its design and/or  
15 manufacture when it left the control of each defendant.

16           27.     Plaintiff is further informed and believes as follows: The GSXR at the time of injury was  
17 being used in the manner intended by the defendants or in a manner that was reasonably foreseeable by  
18 defendants as involving a substantial danger not readily apparent. Adequate instructions and warnings  
19 for use of the GSXR, and sufficient warnings of the danger attendant use of the GSXR, were not given.

20           28.     Plaintiff is informed and believes that the defective nature of the GSXR—including the  
21 absence of adequate warnings and instructions—caused or contributed to the cause of the incident and  
22 the plaintiff's injuries and damages.

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1 COUNT TWO

2 (Negligence)

3 **Against All Defendants**

4 29. Plaintiff is informed and believes that defendants Berts Mega Mall, SMC, SMAI and  
5 DOE's 1 through 100 negligently designed, manufactured, assembled, inspected, tested, sold, leased,  
6 distributed, advertised, rented, maintained and/or marketed the GSXR.

7 30. Plaintiff is informed and believes that the defendants to this Count negligently provided,  
8 or failed to provide, adequate pre- and post-purchase support of the GSXR, including with regard to  
9 writing, issuing or approving instructions, manuals, warnings, notices and product literature,

10 31. Plaintiff is informed and believes that the defendants to this Count negligently provided,  
11 or failed to provide, adequate pre- and post-purchase support of the GSXR, including with regard to  
12 preventative maintenance, product recalls, software updates, hardware updates, daily maintenance, and  
13 warranty related maintenance.

14 32. Plaintiff is informed and believes that the defendants to this Count were negligent with  
15 regard to their acts and omissions concerning the issuance of, or failure to issue, instructions,  
16 information, advice, product recall and warnings necessary and advisable for the safe and reliable use of  
17 the GSXR.

18 33. Plaintiff is informed and believes that defendants SMC, SMAI and DOE's 2 through 100  
19 knew or reasonably should have known that the GSXR was dangerous or likely to be dangerous when  
20 used in a reasonably foreseeable manner.

21 34. Plaintiff is informed and believes that defendants SMC, SMAI and DOE's 2 through 100  
22 became aware of this defect after the GSXR was sold.

23 35. Plaintiff is informed and believes that defendants SMC, SMAI and DOE's 2 through 100  
24 failed to timely recall the GSXR.

25 36. Plaintiff is informed and believes that a reasonable manufacturer, distributor, and or seller  
26 under the same or similar circumstances would have timely recalled the GSXR.

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1 37. The negligence and fault of the defendants, including the failure to timely recall the  
2 GSXR, was a legal cause and substantial factor of the incident and of the injuries and damages resulting  
3 from it.

4 **COUNT THREE**

5 (Breach of Implied Warranty)

6 **Against All Defendants**

7 38. Plaintiff is informed and believes that the GSXR was not merchantable at the time of  
8 purchase.

9 39. Plaintiff is informed and believes that the GSXR was not of the same quality as those  
10 generally accepted in the trade, and/or was not fit for the ordinary purposes for which such goods are  
11 used.

12 40. Plaintiff was harmed as a result of the failure of the GSXR to have the expected qualities.

13  
14 **PRAYER FOR PUNITIVE DAMAGES**

15 **Against Defendants SUZUKI MOTOR OF AMERICA, INC. and**

16 **SUZUKI MOTOR CORPORATION**

17 41. Plaintiff incorporates by reference the preceding paragraphs of this Complaint into this  
18 prayer as if fully set forth at length herein.

19 42. Defendants Suzuki Motor Corporation (“SMC”) and Suzuki Motor of America, Inc.  
20 (“SMAI”), based upon the foregoing allegations, and the allegations hereinafter set forth, each engaged  
21 in a course of conduct which involved malice, oppression, and/or fraud.

22 43. The front brake master cylinder on the subject 2009 Suzuki GSXR motorcycle was  
23 defectively designed and/or defectively manufactured as alleged above. Specifically, the brake piston in  
24 the front brake master cylinder was subject to corrosion, which generated gas in the brake system,  
25 which, in turn reduced the braking power of the front brakes.

26 44. This brake defect caused SMC, through its wholly owned American subsidiary, SMAI, to  
27 recall approximately 210,228 Suzuki GSX-R units, including the subject 2009 Suzuki GSXR. The recall  
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1 affected all 2004-2013 Suzuki GSX-R600, 2004-2013 Suzuki GSX-R750, and 2005-2013 Suzuki GSX-  
2 R 1000 motorcycles.

3 45. On or about June 8, 2013, the Plaintiff, while riding the 2009 Suzuki motorcycle,  
4 attempted to engage the front brake of the 2009 Suzuki when another vehicle turned into his path. The  
5 front brakes failed, in that there was decreased braking power which prevented the Plaintiff from  
6 stopping before crashing into that vehicle.

7 46. The Plaintiff suffered catastrophic injuries in the June 8, 2013 crash as more fully alleged  
8 above.

9 47. SMC, through SMAI, notified the National Highway Traffic Safety Administration  
10 (“NHTSA”) of the recall on October 18, 2013 (“the Untimely NHTSA Notification”). The front brake  
11 defect, alleged above, was the defect SMC identified to NHTSA as being the problem that was the  
12 subject of the recall.

13 48. The Plaintiffs crash was a direct result of the front brake defect that was the subject of the  
14 October 18, 2013 recall.

15 49. As will be alleged with specificity below, Defendant SMC, and its wholly-owned  
16 subsidiary SMAI, was well aware, months prior to Plaintiff’s June 8, 2013 vehicular collision  
17 (“Collision”), that there existed a front brake master cylinder (“FBMC”) defect that decreased front  
18 braking power on Suzuki GSX-R’s, including the 2009 Suzuki that Plaintiff was riding at the time of the  
19 Collision.

20 50. As will be alleged with specificity below, SMC and SMAI maliciously, oppressively,  
21 and/or fraudulently (as defined by Civil Code section 3294) failed to timely notify NHTSA or the  
22 general public, including the Plaintiff, of the FBMC defect in Suzuki GSX-Rs.

23 51. The October 18, 2013 recall was the first notice or warning given by SMC and/or SMAI  
24 to the public of the alleged FBMC defect. This notice was not timely. The timing of this notice, months  
25 after discovering the alleged defect, constitutes malicious, oppressive, and/or fraudulent conduct as  
26 defined by Civil Code section 3294.



1           52.     The federal rules and regulations, as applied by NHTSA, required Defendant SMC and  
2 SMAI to notify NHTSA of the FBMC defect and/or decreased front braking power on its GSX-R  
3 motorcycles, including the 2009 Suzuki at issue, within five (5) days of identifying it.

4           53.     Defendants SMC and SMAI possessed actual knowledge of the FBMC defect associated  
5 with the 2009 Suzuki and maliciously, oppressively, and/or fraudulently delayed notification to NHTSA  
6 and thus violated federal law.

7           54.     As will be alleged below, Defendants SMC and SMAI delayed the recall of the subject  
8 GSX-Rs for financial reasons, putting their profits before the safety of the riders of their motorcycles as  
9 well as the general public and/or pedestrians who could be injured by riders of their motorcycles.

10          55.     Even after Defendants SMC and SMAI recognized the defective FBMC and associated  
11 problems, and well before issuing the Untimely NHTSA Notification, Defendant SMC quietly  
12 redesigned the FBMC for the new and forthcoming generation of GSX-Rs, but kept this hidden so as not  
13 to alert NHTSA.

14          56.     In as much as employees and/or agents of Defendants SMC and SMAI engaged in the  
15 cover-up of the defective FBMC, and thus, the nondisclosure to NHTSA of the front brake problems  
16 identified in the Untimely NHTSA Notification, at the same time, the officers, and/or directors, and/or  
17 managing agents of Defendants SMC and SMAI knowingly participated in the cover-up and/or delay  
18 and thereby condoned, ratified, or consented to the egregious conduct.

19          57.     In Defendants SMC and SMAI's Untimely NHTSA Notification, dated October 18, 2013,  
20 Defendants SMC and SMAI advise NHTSA that the first report of the front brake problem was received  
21 in May 2009. This statement by Defendants SMC and SMAI to the United States government, via  
22 NHTSA, is incorrect. The first known front brake problem actually occurred in Germany in March 2007,  
23 almost two (2) years earlier, with a GSX-R, and Defendant SMC received a report on May 15, 2007.  
24 The March 2007 incident is internally acknowledged by Defendant SMC as the first report.

25          58.     However, the 2007 brake incident and several other cases tied to the subject GSX-R front  
26 brake problem were not included in Defendants SMC and SMAI's official chronology of events in the  
27 untimely NHTSA notification.

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1           59.     In Defendants SMC and SMAI's Untimely NHTSA Notification, said Defendants were  
2 not forthright with NHTSA. Defendants SMC and SMAI advised NHTSA, through the Untimely  
3 NHTSA Notification, that there were no reports of injuries. However, Defendants SMC and SMAI were  
4 aware of at least one case where there was a loss of front brake pressure with the rider crashing into a  
5 guard rail. This information was, in fact, provided by American Suzuki Motor Corporation (which  
6 essentially became SMAI at a later date) to Defendant SMC in or around November 2012, almost one  
7 (1) year prior to the Untimely NHTSA Notification.

8           60.     Defendant SMC's design department insisted that the front brake issues were not safety  
9 issues because: (i) the loss of brake pressure occurred gradually over a long period of time and not while  
10 the vehicle was moving, and (ii) the motorcycle user can detect the brake pressure loss by doing a pre-  
11 operation inspection. In direct contrast, Defendant SMC was aware of at least five (5) cases where front  
12 brake pressure was lost while the motorcycle was moving. Additionally, Defendant SMC was also  
13 aware, based on a survey of Defendant SMC's employees in April 2013, and through the observations of  
14 Defendant SMC's employees in the company parking lot in or around June 2013, that all users do not  
15 test the front brakes before operating the Suzuki motorcycles.

16           61.     In 2011 — 2012, American Suzuki Motor Corporation, a then wholly owned American  
17 subsidiary corporation of Defendant SMC, recognized that the front brake failures/deficiencies were  
18 serious safety issues. American Suzuki Motor Corporation possessed a greater sense of urgency about  
19 the subject GSX-R front brake problems than Defendant SMC. American Suzuki Motor Corporation  
20 urged Defendant SMC to do more to investigate the front brake issue and act quickly.

21           62.     In November 2011, almost two (2) years prior to the Untimely NHTSA Notification, a  
22 report from American Suzuki Motor Corporation described the problem as an issue of sudden brake  
23 pressure loss. Further, the same report discusses from the field that bleeding the front brakes on the  
24 GSX-R solves the problem on the spot but the problems reoccur after a few days.

25           63.     In December 2012, the vice president of American Suzuki Motor Corporation advised  
26 Defendant SMC, who was visiting the United States through an SMC employee, that the front brake  
27 problem was very dangerous, that it was a recall matter, and that it was a matter which affects people's  
28 lives.

1           64.     In February 2013, American Suzuki Motor Corporation advised Defendant SMC that  
2 United States Suzuki dealerships were concerned about liability (possibility of lawsuits) because the  
3 dealerships were aware that bleeding the front brake system, alone, does not solve the problem with the  
4 front brakes, and the problem could reoccur, but that bleeding was what they were told to do when  
5 problem motorcycles were brought in for repair.

6           65.     As early as September 2012, over one (1) year prior to the Untimely NHTSA  
7 Notification, Defendant SMC, through its design department, was aware that the location of the  
8 reservoir port on the GSX-R's, including the 2009 Suzuki motorcycle at issue, (horizontally on the side  
9 of the front brake master cylinder) was a factor causing the front braking problem. Quietly, Defendant  
10 SMC, without notifying NHTSA, made a decision to change the position of the port on the front brake  
11 master cylinder in the forthcoming next model GSX-R. In this regard, Defendant SMC decided to  
12 change the design of the FBMC for the next upcoming generation of GSX-R models, but intentionally  
13 refused to officially undertake any remedies/notifications to NHTSA about the existing GSX-R vehicles,  
14 currently in the market.

15           66.     Some seven (7) months prior to the Untimely NHTSA Notification, an email dated March  
16 15, 2013, indicates that Defendant SMC did not attempt to recover as many problem GSX-Rs as  
17 possible to facilitate the cause investigation due to the desire for secrecy.

18           67.     Instead, Defendant SMC operated on the belief that it should not arouse suspicion in  
19 customers and dealers. The same email also advises that the recovery rate will increase if a bulletin is  
20 issued, but that the bulletin regarding the redesign of the FBMC cannot be issued to the public because it  
21 must be submitted to NHTSA. This evidences intentional conduct by Defendant SMC to cover up the  
22 known brake defect on the subject GSX-R for reasons of profit.

23           68.     As further evidence of intentional conduct to cover up and delay the recall of the FBMC  
24 problems on the subject GSX-Rs, a draft service manual bulletin about GSX-R750L4 and GSX-R600M  
25 (new generation GSX-R models) described a design change in the structure of the new front brake  
26 master cylinder. Defendant SMC was concerned that, if the bulletin was issued, a copy would be sent to  
27 NHTSA and it would be clear that the structure of the FBMC was changed while the recall was delayed.  
28

1 Intentionally, Defendant SMC made a decision to withhold the issue of the bulletin about the FBMC  
2 changes for the new GSX-R models.

3 69. As early as September 2012, some nine (9) months before Plaintiff was injured in the  
4 Collision, Defendant SMC's design department made a decision to change the location of the FBMC  
5 reservoir port for the next forthcoming generation of GSX-Rs claiming the change was solely for  
6 improvement. However, Defendants SMC and SMAI did not issue a recall on the existing FBMCs,  
7 which were in the market, until October 2013.

8 70. In February 2013, months before the Collision, a management level employee of  
9 Defendant SMC advised that the recall could not be conducted in the spring because Suzuki dealers in  
10 the United States are extremely busy. Thus, the Suzuki dealers would be busy with the sales season, and  
11 the sales of Defendant SMC's products (which are imported by Defendant SMAI) would be adversely  
12 affected by the recall. Accordingly, the recall must be delayed.

13 71. Months before the Collision, in March 2013, Defendant SMC visited Nissin's (the brake  
14 manufacturer's) plant in China and discovered issues with respect to the front brake piston in the FBMC.

15 72. The FBMC piston, on the subject GSX-R, undergoes a coating process before the front  
16 brake system is assembled. In the production process, Defendant SMC discovered that air pockets were  
17 forming in the spring hole of the FBMC piston leaving an exposed and uncoated area.

18 73. Even though Defendants SMC and SMAI were aware of this problem as early as May  
19 2013, and ultimately made decisions to rectify the front brake piston coating problem, Defendants SMC  
20 and SMAI still did not issue the Untimely NHTSA Notification (through SMAI) until October 2013,  
21 some six (6) months later.

22 74. Internal SMC documents indicate that, in 2011 - 2103, despite knowing of a structural  
23 FBMC defect, Defendant SMC, deceptively, sought to blame the riders of its motorcycles for the issue  
24 by pinning the brake problems on poor bleeding and/or maintenance. This is malicious, oppressive,  
25 and/or fraudulent conduct on the part of Defendant SMC.

26 75. In an email exchange between SMC management in April 2013, after Defendant SMC  
27 knew of the FBMC defect, but long before the Untimely NHTSA Notice, an SMC manager / officer  
28 acknowledges that the FBMC defect was a serious safety issue. He further acknowledges that an active

1 response and recall is warranted. He notes, however that the public and dealers believe that this is a  
2 maintenance issue and are unaware of true nature of defect. He then goes on to conduct a cost-benefit  
3 analysis of conducting a recall, in light of the fact that the motorcycle riding and purchasing public does  
4 not know that there is anything structurally wrong with the FBMC of Suzuki GSX-Rs. He describes the  
5 legal consequences of not conducting a recall. However, he also lists a number of merits of not  
6 conducting a recall, and demerits of conducting recall. In doing so, he states that if a recall is not  
7 implemented "Suzuki will not incur costs." As negative effects of conducting a recall he notes, inter alia,  
8 (1) enormous costs, (2) lawsuits for past accidents, (3) effects on race sponsorships, and (4) deterioration  
9 of Suzuki's sale image. As alleged above, a recall was not conducted until several months later,  
10 evidencing a delay of the recall, in violation of federal law, which was undertaken for financial motives  
11 at the risk of motorcycle riders, like the Plaintiff, who were unaware of the FBMC defect.

12 76. Nissin, the brake manufacturer, met with Defendant SMC executives on August 9, 2013,  
13 to discuss the FBMC braking deficiencies. At this time Defendant SMC and SMAI delayed notification  
14 of the defect to NHTSA, permitting Nissin more time, Nissin advising SMC that it was not convinced  
15 that the recall was logical.

16 77. In addition, Nissin further requested that Defendant SMC provide until the end of  
17 December 2013 to conduct more tests, and Defendant SMC agreed even though Defendant SMC was  
18 aware that the front brake issues affected the life, safety and rights of persons exposed to the defective  
19 FBMCs on the subject GSX-Rs.

20 78. Even though Nissin was pushing for a delay or total avoidance of the NHTSA recall,  
21 Defendants SMC and SMAI were simultaneously motivated by financial gain.

22 79. Defendants SMC and SMAI intentionally delayed the recall beyond the spring of 2013 so  
23 as not to interfere with sales of Suzuki units during the peak sales season, and thereby reduce their  
24 income. This is malicious, oppressive, and/or fraudulent conduct on the part of SMC and SMAI.

25 80. Defendants SMC and SMAI failed to comply with federal law by untimely issuing the  
26 Untimely NHTSA Notification, even after the China trip where problems were discovered in the coating  
27 process. As a manufacturer (SMC) and importer (SMAI), both Defendants were required under  
28 NHTSA's regulatory scheme to timely issue a notification to NHTSA. They both failed to do so, all the

1 while knowing that the dangerous, safety-related defect would be detrimental to human lives if not  
2 addressed, and said failure was malicious, oppressive, and/or fraudulent conduct.

3 81. Defendant SMC knew for almost two (2) years prior to the Untimely NHTSA  
4 Notification that bleeding the brakes by dealers or owner/operators would not remedy the defect but  
5 continued to pursue this course of action/blame the customer until the end. This is malicious, oppressive,  
6 and/or fraudulent conduct on the part of SMC.

7 82. Defendant SMC redesigned the FBMC months and months before the Untimely NHTSA  
8 Notification, but kept it quiet so as not to arouse suspicion by customers and NHTSA. This is malicious,  
9 oppressive, and/or fraudulent conduct on the part of SMC.

10 83. SMC and SMAI knew that their failure to notify NHTSA and the public of the FBMC  
11 defect alleged above, and their other acts and omissions described in this Count, were wrongful conduct.

12 84. SMC and SMAI knew that there was a high probability that its failure to notify NHTSA  
13 and the public of the FBMC defect alleged above, and their other acts and omissions described in this  
14 Count, would result in injury or death to people riding GSX-R's, including the Plaintiff.

15 85. SMC and SMAI knew that there was a high probability that its failure to notify NHTSA  
16 and the public of the FBMC defect alleged above, and their other acts and omissions described in this  
17 Count, would result in injury or death to citizens and/or pedestrians by people riding GSX-R's when  
18 their front brake became ineffective or inoperative.

19 86. The failure of SMC and SMAI to notify NHTSA and the public of the FBMC defect  
20 alleged above, and their other acts and omissions described in this Count, was conduct so reckless or  
21 wanting in care that it constituted a willful and knowing disregard of the rights or safety of others.

22 87. The aforementioned conduct, of the officers and/or managers and/or officials and/or  
23 employees and/or agents of Defendants SMC and SMAI, as well as the corporate entities of Defendants  
24 SMC and SMAI, evidence malicious, oppressive, and/or fraudulent conduct, to which all of the  
25 aforementioned participated, which ultimately resulted in damage to Plaintiff.

26 88. Based upon the foregoing, Defendants SMC and SMAI are liable for punitive damages to  
27 Plaintiff in an amount to be determined by the jury.

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**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment in his favor and against each of the defendants, as follows:


1. General damages according to proof at the time of trial;
2. Medical and other special damages, past, present and future, according to proof at the time of trial;
3. Loss of earnings and loss of earning capacity, according to proof at the time of trial;
4. For punitive damages, according to proof at the time of trial;
5. Costs of suit incurred herein;
6. For prejudgment interest as may be applicable under the law and facts, including pursuant to sections 3287, 3288, and 3291 of the Civil Code, and section 998 of the Code of Civil Procedure; and,
7. For such other and further relief as the court may deem just and proper.

**A JURY TRIAL IS HEREBY DEMANDED**

DATED: DECEMBER 6, 2017

HODES MILMAN LIEBECK, LLP

By:



T. GABE HOUSTON, ESQ.

ATTORNEY FOR PLAINTIFF THOMAS JOSEPH SOULLIERE

**PROOF OF SERVICE**  
STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18, employed in the County of Orange, State of California, and not a party to the within action; my business address is 9210 Irvine Center Drive, Irvine, California 92618.

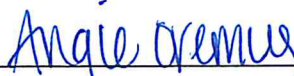
On January 12, 2018, I served a copy of the foregoing document described as: **NOTICE OF MOTION AND MOTION FOR ORDER GRANTING LEAVE TO FILE FIRST AMENDED COMPLAINT** on the party or parties named below, by placing true copies thereof enclosed in sealed envelopes, and sent as follows:

Lori A. Schweitzer, Esq.  
BECHERER KANNETT & SCHWEITZER  
1255 Powell Street  
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BY FIRST CLASS MAIL as follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on the same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY FACSIMILE (Rule 2008): I caused a true copy thereof to be transmitted by facsimile on or about \_\_\_\_\_ a.m./p.m. The transmission was reported as complete and without error, and the transmission report was properly issued by the transmitting facsimile machine.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 12, 2018, at Irvine, California.

  
\_\_\_\_\_  
Angie Oremus