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15  
 16 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
 17 **SAN JOSE DIVISION**

18 JONAS SUGARMAN and QUANG LE, on behalf  
 19 of themselves and all others similarly situated,

20 Plaintiffs,

21 v.

22 DUCATI NORTH AMERICA, INC.,

23 Defendant.

Case No. CV 10-5246-JF (PSG)

24 **STIPULATION TO APPOINTMENT OF**  
**GIRARD GIBBS LLP AS INTERIM CLASS**  
**COUNSEL FOR THE PUTATIVE CLASS**  
**PURSUANT TO RULE 23(g)(3)**  
**AND NOTICE OF WITHDRAWAL OF**  
**PENDING MOTION (DOCKET NOS. 56-57)**  
**AND [PROPOSED] ORDER**

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 STIPULATION, NOTICE OF WITHDRAWAL OF MOTION & [PROPOSED] ORDER RE INTERIM  
 CLASS COUNSEL  
 CASE NO. CV 10-5246-JF (PSG)

1                    **STIPULATION AND NOTICE OF WITHDRAWAL OF MOTION ( NOS. 56-57)**

2                    IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN COUNSEL FOR ALL  
3 PARTIES as follows:

4                    WHEREAS counsel for Plaintiffs, Girard Gibbs LLP, has filed a motion, numbers 56-57 on the  
5 Court’s docket, pursuant to Fed. R. Civ. P. 23(g)(3) to be appointed as interim counsel for the putative  
6 class for the period before class certification is considered;

7                    WHEREAS Defendant Ducati North America Inc. (“Ducati”) contests that class certification is  
8 lawful or appropriate for this case and has filed a motion to strike the class allegations in the First  
9 Amended Complaint, which motion is pending;

10                    WHEREAS the parties have agreed to a stipulated resolution of Plaintiffs’ Rule 23(g)(3) motion  
11 that would provide the administrative convenience offered by interim class counsel while ensuring that it  
12 is without prejudice to any party and not intended to affect any determination of whether a class should  
13 be certified or the class allegations should be stricken;

14                    WHEREAS Fed. R. Civ. P. 23(g)(3) authorizes the Court to “designate interim counsel to act on  
15 behalf of a putative class before determining whether to certify the action as a class action”;

16                    WHEREAS counsel for Plaintiffs and counsel for Defendant have established a professional  
17 working relationship that they anticipate will be conducive to effective and efficient management of this  
18 case;

19                    WHEREAS Ducati agrees that Girard Gibbs LLP may be appointed to serve as interim counsel  
20 to act on behalf of the putative class, provided that the appointment does not affect any determination of  
21 whether a class should be certified or the class allegations should be stricken;

22                    WHEREAS the parties further agree that the appointment of Girard Gibbs LLP as interim  
23 counsel should not abridge or create any rights that Ducati or its counsel, or Plaintiffs’ counsel, have to  
24 directly communicate with putative class members in the period before class certification is determined;  
25 and

26                    WHEREAS Girard Gibbs LLP agrees to withdraw its pending motion for appointment of interim  
27 counsel, Docket Nos. 56-57, in connection with this stipulation and order,

1 NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED AND AGREED, subject to  
2 the Court's approval, that:

3 1. Plaintiffs' motion for appointment as interim class counsel, Docket Nos. 56-57, is  
4 withdrawn.

5 2. Pursuant to stipulation of the parties, Girard Gibbs LLP is appointed as interim counsel  
6 for the putative class pending the determination of class certification.

7 3. Ducati's stipulation to the interim appointment is without prejudice to any position,  
8 including its opposition to certification of a class.

9 4. This interim appointment shall not affect the Court's determination of whether a class  
10 should be certified or the class allegations should be stricken, nor should any inference be drawn from  
11 this consented-to appointment.

12 5. The interim appointment also shall not abridge or create any rights that Ducati or its  
13 counsel, or Plaintiffs' counsel, have to directly communicate with putative class members in the period  
14 before class certification is determined.

15 Dated: March 29, 2011

GIRARD GIBBS LLP

16  
17 By /s/ Eric H. Gibbs  
Eric H. Gibbs

18 Attorneys for Plaintiffs

19  
20 Dated: March 29, 2011

SIMPSON THACHER & BARTLETT LLP

21  
22 By /s/ David W. Ichel  
David W. Ichel (*pro hac vice*)  
23 dichel@stblaw.com

24 Attorneys for Defendant

25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26  
27 Dated: 4/1/11

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The Honorable Jeremy D. Fogel