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Document Type: **CIVIL ACTION - MISC**

Document Desc: **SUMMONS + COMPLAINT**

Plaintiff

Morris Harold E.

Defendant

Stan's Harley-Davidson, Inc.
Harley-Davidson Motor Company Group,
LLC
Robert Bosch LLP

Recorded Information:

Index #: 000354-2021

State of New York
County of Livingston

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A handwritten signature in cursive script that reads "Andrea K. Bailey".

Acting Livingston County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF LIVINGSTON

Index No:
Date Purchased:

-----X
HAROLD E. MORRIS,

Plaintiff,

SUMMONS

-against-

Plaintiff designates
Livingston County
as the place of trial.

STAN'S HARLEY-DAVIDSON, INC.,
HARLEY-DAVIDSON MOTOR
COMPANY GROUP, LLC and
ROBERT BOSCH LLC,

Basis of venue is the Plaintiff's
residence

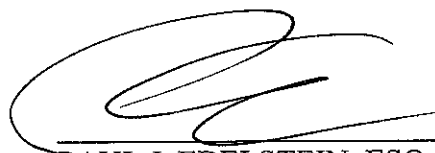
Defendants.
-----X

The Plaintiff resides at:
1510 Federal Highway
Caledonia, N.Y. 14423

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or Answer, Judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York
May 3, 2021



PAUL J. EDELSTEIN, ESQ.
THE EDELSTEINS, FAEGENBURG & BROWN, LLP
Attorneys for Plaintiff
26 Broadway, Suite 901
New York, N.Y. 10004
Tel. (212) 425-1999

Defendants' Addresses:

STAN'S HARLEY-DAVIDSON, INC.
4425 West Saile Drive
Batavia, N.Y. 14020

Serve Via Secretary of State of New York

HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC
3700 West Juneau Avenue
Milwaukee, WI 53208

Serve Via Secretary of State of Wisconsin

ROBERT BOSCH LLC
38000 Hills Tech Drive
Farmington Hills, MI 48331

Serve Via Secretary of State of New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF LIVINGSTON

-----X
HAROLD E. MORRIS,

Index No:

Plaintiff,

-against-

**VERIFIED
COMPLAINT**

STAN'S HARLEY-DAVIDSON, INC.,
HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC and
ROBERT BOSCH LLC,

Defendants.
----- X

Plaintiff, by his attorneys THE EDELSTEINS, FAEGENBURG & BROWN, LLP,
complaining of the Defendants, respectfully alleges as follows:

1. That at all times hereinafter mentioned and prior thereto, the Plaintiff
HAROLD E. MORRIS was a resident of the County of Livingston, State of New York.

2. That at all times hereinafter mentioned, the Defendant STAN'S HARLEY-
DAVIDSON, INC., was and still is a domestic corporation duly organized and existing under and
by virtue of the laws of the State of New York.

3. That at all times hereinafter mentioned, the Defendant HARLEY-
DAVIDSON MOTOR COMPANY GROUP, LLC was and still is foreign limited liability
corporation organized in the State of Wisconsin and duly authorized to do business in the State
of New York.

4. That at all times and places hereinafter mentioned, the Defendant
HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC regularly solicited business in the
State of New York.

5. That at all times and places hereinafter mentioned, the Defendant HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC regularly conducted business in the State of New York.

6. That at all times and places hereinafter mentioned, the Defendant HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC received substantial revenue from goods used or consumed in the State of New York.

7. That at all times and places hereinafter mentioned, the Defendant HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC received substantial revenue from services rendered in the State of New York.

8. That at all times hereinafter mentioned, the Defendant ROBERT BOSCH LLC was and still is foreign limited liability corporation organized in the State of Delaware and duly authorized to do business in the State of New York.

9. That at all times and places hereinafter mentioned, the Defendant ROBERT BOSCH LLC regularly solicited business in the State of New York.

10. That at all times and places hereinafter mentioned, the Defendant ROBERT BOSCH LLC regularly conducted business in the State of New York.

11. That at all times and places hereinafter mentioned, the Defendant ROBERT BOSCH LLC received substantial revenue from goods used or consumed in the State of New York.

12. That at all times and places hereinafter mentioned, the Defendant ROBERT BOSCH LLC received substantial revenue from services rendered in the State of New York.

13. That at all times and places hereinafter mentioned, the Defendant HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC was and is in the business of designing, testing, manufacturing, assembling, marketing, selling, distributing, inspecting, repairing and servicing certain motorcycle products including a certain product known as the 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle for sale to and use by consumers and members of the public.

14. That at all times and places hereinafter mentioned, the Defendant ROBERT BOSCH LLC was and still is in the business of designing, testing, manufacturing, assembling, marketing, selling, distributing, supplying, installing, inspecting, repairing and servicing certain "Trike Traction Control System" software.

15. That at all times and places hereinafter mentioned, the Defendant ROBERT BOSCH LLC, manufactured, assembled, sold, distributed and supplied the aforesaid "Trike Traction Control System" software for the aforesaid 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle.

16. That at all times hereinafter mentioned, the Defendant HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC sold, distributed and delivered the aforesaid 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle to various retailers and dealerships.

17. That at all times and places hereinafter mentioned, the Defendant STAN'S HARLEY-DAVIDSON, INC. was and is in the business of selling, distributing, marketing, assembling, testing, inspecting, repairing and servicing certain motorcycle products including a certain product known as the 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle for sale to and use by consumers and members of the public.

18. That commencing on or about October 5, 2018 the Defendants HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC, ROBERT BOSCH LLC and STAN'S HARLEY-DAVIDSON, INC. received notifications and reports that the "Trike Traction Control System" software component for the 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle activated unexpectedly thereby causing the vehicle to veer off its intended course and crash resulting in damage and injuries.

19. That on or about December 4, 2018, the Defendant HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC sold, distributed and delivered a certain 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle bearing VIN Number 1HD1MAF12KB853603 to the Defendant STAN'S HARLEY-DAVIDSON, INC.

20. That on or about December 12, 2018, the Defendant STAN'S HARLEY-DAVIDSON, INC. sold the aforesaid 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle bearing VIN: 1HD1MAF12KB853603 to the Plaintiff HAROLD E. MORRIS for the sum of \$36,949.00.

21. That on February 18, 2019, the Plaintiff HAROLD E. MORRIS was operating his aforesaid 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle on Sears Road in LaBelle, Florida in the manner intended and/or foreseeably used, when the product suddenly, inexplicably, unexpectedly and without warning malfunctioned and failed and the brakes locked causing the vehicle to swerve into the opposite lane of the roadway, off the roadway and down an embankment; causing the Plaintiff and his longtime girlfriend passenger Pamela M. SinClair to be ejected, sustain serious personal injuries and severely damage the vehicle.

22. That on or about April 1, 2019, the Plaintiff HAROLD E. MORRIS delivered his aforesaid 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle to the Defendant STAN'S HARLEY-DAVIDSON, INC. for purposes of having said Defendant inspect, test, repair and service the motorcycle in connection with extensive damage sustained in the aforesaid accident including but not limited to the body, brake and steering systems and replacement of the vehicle's frame.

23. That on or about May 10, 2019, the Defendant STAN'S HARLEY-DAVIDSON, INC. returned the motorcycle to the Plaintiff HAROLD E. MORRIS and that the cost of repairing the motorcycle was approximately \$25,000.00.

24. That on or about November 18, 2019, the Defendant HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC authorized a recall of certain 2019-2020 Trike motorcycles built between March 12, 2018 and November 5, 2019 with defective traction controls stating that the "Trike Traction Control System" software component manufactured by the Defendant ROBERT BOSCH LLC may respond incorrectly to a faulty rear wheel speed sensor signal by activating one of the rear brakes and that unintended activation of one of the rear brakes could lead to an unexpected change in vehicle direction, which may increase the risk of a crash.

25. That on or about November 22, 2019, the Defendant HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC notified its various retailers and dealerships including the Defendant STAN'S HARLEY-DAVIDSON, INC. of the aforesaid defect and recall.

26. That on or about December 3, 2019, the Plaintiff HAROLD E. MORRIS received an "Important Safety Recall Owner Notification" (Harley-Davidson Recall No. 0175; NHTSA Recall No. 19V843) pertaining to the aforesaid recall from the Defendant HARLEY DAVIDSON MOTOR COMPANY GROUP, LLC.

27. That on or about December 16, 2019, the Plaintiff HAROLD E. MORRIS notified the "Harley-Davidson Customer Service Department" of his intention to file a claim in connection with the aforementioned safety recall for reimbursement of medical bills incurred by himself (approximately \$53,000.00) and his passenger Pamela M. SinClair (approximately \$99,000.00) in connection with the aforesaid February 18, 2019 accident.

28. That on or about December 17, 2019, the "Harley-Davidson Customer Service Department" contacted the Plaintiff HAROLD E. MORRIS acknowledging his aforesaid claim and requesting information and documentation pertaining to same, which the Plaintiff complied with.

29. That on or about December 17, 2019, the Plaintiff HAROLD E. MORRIS delivered his aforesaid 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle to the Defendant STAN'S HARLEY-DAVIDSON, INC. in accordance with the aforesaid safety recall notification for repairing and updating the defective Trike Traction Control System software component and to inspect, test, diagnose, repair and service the vehicle's brake system.

30. That in the course of conducting the above work, the Defendant STAN'S HARLEY-DAVIDSON, INC. found diagnostic trouble codes pertaining to the motorcycle's rear brake configuration and anti-brake system (ABS) and that said Defendant "cleared" the aforementioned trouble codes but did not test drive the vehicle.

31. That on or about December 19, 2019, the motorcycle was returned to the Plaintiff HAROLD E. MORRIS.

32. That commencing on or about January 2, 2020, the Plaintiff HAROLD E. MORRIS was in communication with Pam Heinrich (Heinrich Law LLC), attorney and claims manager for the Defendant HARLEY DAVIDSON MOTOR COMPANY GROUP, LLC. regarding his aforementioned safety recall claim including providing information and documentation regarding same.

33. That on or about January 29, 2020, the Plaintiff HAROLD E. MORRIS received a letter from Pam Heinrich (Heinrich Law LLC), attorney and claims manager for the Defendant HARLEY DAVIDSON MOTOR COMPANY GROUP, LLC. denying his claim and stating that:

“Having reviewed the accident report and other information we obtained, including your statements to customer service, there is no evidence that the subject trike experienced the recall condition. The conditions necessary for the issue only occur at much lower speeds. Furthermore, your trike did not have diagnostic codes indicative of the recall condition (a faulty rear wheel speed signal.)”

34. That on June 6, 2020, the Plaintiff HAROLD E. MORRIS was operating his aforesaid 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle, with Pamela M. SinClair as a passenger on State Route 219 in Hamlin Township, Pennsylvania in the manner intended and/or foreseeably used, when the product again suddenly, inexplicably unexpectedly and without warning malfunctioned and failed causing the vehicle to swerve into the opposite lane of travel and off the roadway where it struck an embankment and overturned resulting in severe and catastrophic personal injuries to the Plaintiff and the death of Pamela M. SinClair.

35. That on January 26, 2021, experts on behalf of the Plaintiff and the Defendants HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC. and STAN'S HARLEY-DAVIDSON, INC. conducted a visual non-destructive/non-invasive inspection of the Plaintiff's aforesaid 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle at "Wally's Super Service" storage and automotive repair facility in Johnsonburg, Pennsylvania.

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST THE DEFENDANTS FOR NEGLIGENCE**

36. The Plaintiff HAROLD E. MORRIS repeats, reiterates and realleges each and every allegation contained in paragraphs "1" to "35" herein, with the same force and effect as though same were more fully set forth at length herein.

37. That the Defendants owed a duty to consumers and the Plaintiff to design, test, manufacture, assemble, market, sell, distribute, inspect, repair and service a product free from defects in material or workmanship that is safe and functional.

38. That the Plaintiff's subject 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle was defective and unreasonably dangerous because the product malfunctioned and catastrophically failed in that the "Trike Traction Control System" software component responded incorrectly to a faulty rear wheel speed sensor signal by activating one of the rear brakes thereby causing and/or contributing to the aforesaid accidents of February 18, 2019 and June 6, 2020.

39. That the Defendants are liable to the Plaintiff for failing to exercise reasonable care in designing, testing, manufacturing, assembling, marketing, selling, distributing, inspecting, repairing and servicing the Plaintiff's defective 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle.

40. That the aforesaid malfunctioning of the Plaintiff's defective 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle was foreseeable to the Defendants.

41. That the aforesaid accidents of February 18, 2019 and June 6, 2020 were caused solely and wholly by the carelessness, negligence and recklessness of the Defendants, jointly and/or severally, their agents, servants and/or employees, in the designing, testing, manufacturing, assembling, marketing, selling, distributing, inspecting, repairing and servicing of the Plaintiff's 2019 Harley-Davidson FLHTCUTG Trike-Tri Glide Ultra motorcycle; in creating a motorcycle which was subject to such foreseeable occurrences and in failing to provide proper instructions or warnings; in designing, manufacturing, assembling and distributing, repairing and servicing a motorcycle which was unfit for its intended purpose and placing into the stream of commerce, not once but twice, an inherently and unreasonably dangerous product when used in the ordinary and usual manner; in designing, manufacturing, assembling, distributing, repairing and servicing a motorcycle, which was unfit for its intended purposes and was dangerous and unsafe in that it would suddenly, unexpectedly and without warning malfunction and fail causing the vehicle to lose control and crash; in failing to warn properly of the dangerous character and quality of the aforesaid motorcycle; in using defective materials; in failing to warn of its proper use; in failing to properly test and inspect the product during the manufacturing and assembly process; in negligently and carelessly warranting, representing, and advertising that the motorcycle was safe and free of danger when used in the customary and usual manner; in failing to give proper instructions, warnings and cautions; in failing to properly repair, service and maintain the motorcycle, which endangered the life and limb of its users; in improperly manufacturing, designing, assembling and placing into the stream of commerce the subject motorcycle; in misrepresenting the safety of the subject motorcycle; in negligently and improperly designing,

testing, manufacturing, assembling, distributing, installing, inspecting, repairing and servicing the motorcycle's "Trike Traction Control System," vehicle wheel speed sensors, brakes and braking system; in failing to provide proper instructions or warnings regarding the "Trike Traction Control System," vehicle wheel speed sensors, brakes and braking system; in negligently designing, testing, manufacturing, assembling, distributing, inspecting, repairing and servicing the motorcycle in a way that would allow it to suddenly, unexpectedly and without warning malfunction and fail causing the vehicle to lose control and crash; in negligently designing, testing, manufacturing, assembling, distributing, installing, inspecting, repairing and servicing the motorcycle's computer and software system; in allowing the said computer and software system to send incorrect messages to the motorcycle's braking system; in failing to test the motorcycle in a way that would not suddenly, unexpectedly and without warning malfunction and fail causing the vehicle to lose control and crash; and in failing to comply with the applicable laws, rules, regulations and accepted motorcycle industry standards governing the proper and safe designing, testing, manufacturing, assembling, distributing, inspecting, repairing, servicing and recalling of motorcycles.

42. That the Defendant motorcycle manufacturer HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC and the Defendant motorcycle component manufacturer ROBERT BOSCH LLC were negligent in failing to timely, adequately and properly notify, warn, and instruct retailers, consumers and members of the public including the Plaintiff about the aforesaid motorcycle product defect and safety recall.

43. That the Defendant motorcycle manufacturer HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC and the Defendant motorcycle component manufacturer ROBERT BOSCH LLC were negligent in failing to introduce proper working corrective measures, repairs and guidelines in order to address the aforesaid motorcycle product defect and safety recall.

44. That the Defendant motorcycle manufacturer HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC and the Defendant motorcycle component manufacturer ROBERT BOSCH LLC were negligent in failing to provide proper instructions to the Defendant/retailer STAN'S HARLEY-DAVIDSON, INC. to correct and repair the defect that was the subject of the safety recall involving the Plaintiff's motorcycle.

45. That the Defendant motorcycle manufacturer HARLEY-DAVIDSON MOTOR COMPANY GROUP, LLC knowingly, wrongfully, negligently and intentionally denied the Plaintiff's safety recall claim arising from the aforesaid February 18, 2019 accident and that in doing so, lulled the Plaintiff into a false sense of security, thereby allowing the vehicle to be placed back into the stream of commerce, which ultimately resulted in the aforesaid subsequent catastrophic fatal accident of June 6, 2020.

46. That the Defendant/retailer STAN'S HARLEY-DAVIDSON, INC. was negligent in undertaking to repair the extensive irreparable damage to the Plaintiff's motorcycle from the aforesaid February 18, 2019 accident and that in doing so, lulled the Plaintiff into a false sense of security, thereby allowing the vehicle to be placed back into the stream of commerce.

47. That the Defendant/retailer STAN'S HARLEY-DAVIDSON, INC. was negligent in failing to properly service and repair the extensive damage that was sustained by the Plaintiff's motorcycle in the February 18, 2019 accident including the vehicle's brake and steering systems thereby causing and/or contributing to the subsequent fatal accident of June 6, 2020.

48. That the Defendant/retailer STAN'S HARLEY-DAVIDSON, INC. was negligent in failing to properly service and repair the aforesaid defective "Trike Traction Control System," speed sensor signals, brakes and braking system that were the subject of the safety recall involving the Plaintiff's motorcycle and failed to test drive the vehicle on December 17, 2019.

49. That in addition to the negligence of the Defendants as aforesaid, the Plaintiff claims and relies on the doctrine of *Res Ipsa Loquitur* in that the facts and circumstances giving rise to the February 18, 2019 and June 6, 2020 accidents are such that they would not have happened in the absence of negligence and that the design, manufacture, servicing and repair of the subject motorcycle were within the exclusive control of the Defendants at the time the negligence occurred. The Plaintiff had no control over the method or manner in which the motorcycle product was designed or manufactured, serviced and repaired and it came into the Plaintiff's possession in the same condition it was in when it left the control of the Defendants.

50. That by reason of the foregoing culpable conduct, gross negligence, carelessness and recklessness of the Defendants, their agents, servants and/or employees, jointly and/or severally, the Plaintiff HAROLD E. MORRIS sustained grave, life-threatening, catastrophic permanent injuries including fractures of the skull, cervical and lumbar spine, chest, ribs, subarachnoid hemorrhaging and traumatic brain injury with severe and exquisite on-going conscious pain and suffering, mental anguish and distress; that he has and continues to require hospitalization, rehabilitation, medical care and treatment with continuing severe and exquisite pain and suffering and disability; that he has been unable to attend to his usual social and daily life activities; that he has been obliged to expend and will expend in the future, immeasurable sums of money for hospital and medical and rehabilitative care, life care attention and expenses; that upon information and belief, all of his injuries are of a permanent nature; that he has suffered and will continue to suffer a loss of enjoyment of life and permanent catastrophic disability with ongoing exquisite pain and suffering, mental distress, anguish and irreparable lifelong impairment of his normal daily life, social and familial activities and enjoyment of life.

51. That the cause of action herein falls within one or more of the exceptions set forth in Article 16 of the CPLR.

52. That by reason of the foregoing, the Plaintiff HAROLD E. MORRIS has been damaged by the Defendants, in a sum which exceeds the jurisdictional limits of all lower Courts.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST
THE DEFENDANTS FOR BREACH OF WARRANTY**

53. The Plaintiff HAROLD E. MORRIS repeats, reiterates and realleges each and every allegation contained in paragraphs "1" to "52" herein, with the same force and effect as though same were more fully set forth at length herein.

54. That on February 18, 2019 and June 6, 2020, the Plaintiff used the subject motorcycle product of the Defendants in the manner intended and/or foreseeably intended, when the product suddenly, inexplicably, unexpectedly and without warning malfunctioned and failed causing the vehicle to lose control and crash thereby causing the severe, catastrophic and permanent injuries sustained by the Plaintiff.

55. That the Defendants expressly warranted that the subject motorcycle was fit for the purpose for which it was intended, and that the Defendants expressly warranted that said product was safe to use in every respect, and had been designed, created, assembled and manufactured safely and warranted that it was good, safe and proper to use. That relying upon said warranties, the Plaintiff proceeded to use the said product in accordance with its intended use.

56. That the Defendants impliedly warranted that the subject motorcycle product was of merchantable quality and was safe for use. Defendants were merchants with respect to the product in question and the goods were not merchantable as warranted. That relying upon said implied warranties, the Plaintiff proceeded to use the said product in accordance with its intended use.

57. That the Defendants, jointly and/or severally, their agents, servants and/or employees, designed, created, manufactured, assembled, tested, inspected, produced, marketed, distributed and sold a certain motorcycle, which caused the Plaintiff to sustain the aforementioned severe, catastrophic and permanent injuries.

58. That the Defendants warranted and provided an instruction manual, labeled its motorcycle product and provided certain instructions in said instruction manual and on its labels in connection with the use of the motorcycle product.

59. That on February 18, 2019 and June 6, 2020, the Plaintiff while using the motorcycle product in accordance with its intended use and pursuant to the written instructions set forth in the aforesaid instruction manual and labels, was caused to suffer severe, catastrophic and permanent injuries.

60. That the aforesaid accidents were caused solely and wholly by reason that the Defendants breached their warranty of merchantability and fitness for intended use of the said motorcycle product which warranties were both express and implied.

61. That the cause of action herein falls within one or more of the exceptions set forth in Article 16 of the CPLR.

62. That by reason of the foregoing, the Plaintiff HAROLD E. MORRIS has been damaged by the Defendants, in a sum which exceeds the jurisdictional limits of all lower Courts.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST
THE DEFENDANTS FOR FAILURE TO WARN**

63. The Plaintiff HAROLD E. MORRIS repeats, reiterates and realleges each and every allegation contained in paragraphs "1" to "62" herein, with the same force and effect as though same were more fully set forth at length herein.

64. That on February 18, 2019 and June 6, 2020, the Plaintiff used the subject motorcycle product of the Defendants in the manner intended and/or foreseeably intended, when the product suddenly, inexplicably, unexpectedly and without warning malfunctioned and failed causing the vehicle to lose control and crash thereby causing the severe, catastrophic and permanent injuries sustained by the Plaintiff.

65. That at all times hereinafter mentioned, the Defendants designed, manufactured and distributed the subject motorcycle in question, knowing and intending it to be used by members of the public.

66. That on February 18, 2019 and June 6, 2020, the Plaintiff was making use of the aforesaid motorcycle in a manner which the Defendants knew and intended to be used and/or in a manner foreseeable by the Defendants.

67. That the subject motorcycle was defective, and that said defects caused severe, catastrophic and permanent injuries sustained by the Plaintiff.

68. That the subject motorcycle was defective and unreasonably dangerous because there was a lack of adequate warning signs and notices that the product could suddenly, inexplicably, unexpectedly and without warning malfunction and fail causing the vehicle to lose control and crash.

69. That on February 18, 2019 and June 6, 2020, the Plaintiff used the motorcycle product for the purpose and use normally intended.

70. That on February 18, 2019 and June 6, 2020, while the Plaintiff was using the said motorcycle product, said product malfunctioned and failed causing the vehicle to lose control and crash thereby causing severe, catastrophic and permanent injuries sustained by the Plaintiff.

71. That upon information and belief, the subject motorcycle was defective in that, among other things, it was made of improper and defective material; it was improperly designed; it was improperly manufactured; it failed to have adequate and proper warnings or instructions; it was not safe to be used for the purposes intended; it was inherently and/or unreasonably dangerous; it would cause severe, catastrophic and permanent injuries while being used and was otherwise defective.

72. That the Defendants knew or should have known of the dangerous nature of the motorcycle product, components and equipment involved and by virtue of their business, knew or should have known of the need to provide adequate warnings concerning the use of same.

73. That the Defendants are liable to the Plaintiff for failing to exercise reasonable care in determining the accuracy of information provided or failing to exercise reasonable care in communicating untrue information regarding the safety and functionality of the subject motorcycle. The Plaintiff relied on such information and such reliance was foreseeable by the Defendants.

74. That the Defendants had a duty to give reasonable warning of the danger involved in the use of its motorcycle product and failed to provide members of the public, including the Plaintiff of the dangers involved.

75. That the Plaintiff's severe, catastrophic and permanent injuries were caused solely by the Defendants' negligence in failing to warn the Plaintiff of the defect condition and dangers inherent in the operation of the subject motorcycle.

76. That the Defendants knew or should have known of the dangerous nature of the motorcycle product, components and equipment involved and by virtue of their business, knew or should have known of the need to provide adequate warnings concerning the use of same.

77. That the Defendants had a duty to give reasonable warning of the danger involved in the use of their motorcycle product and failure to provide members of the public, including the Plaintiff, notice of the dangers involved.

78. That the cause of action herein falls within one or more of the exceptions set forth in Article 16 of the CPLR.

79. That by reason of the foregoing, the Plaintiff HAROLD E. MORRIS has been damaged by the Defendants, in a sum which exceeds the jurisdictional limits of all lower Courts.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST
THE DEFENDANTS IN STRICT PRODUCT LIABILITY**

80. The Plaintiff HAROLD E. MORRIS repeats, reiterates and realleges each and every allegation contained in paragraphs "1" to "79" herein, with the same force and effect as though same were more fully set forth at length herein.

81. That on February 18, 2019 and June 6, 2020, the Plaintiff used the subject motorcycle product of the Defendants in the manner intended and/or foreseeably intended, when the product suddenly, inexplicably, unexpectedly and without warning malfunctioned and failed

causing the vehicle to lose control and crash thereby causing the severe, catastrophic and permanent injuries sustained by the Plaintiff.

82. That on February 18, 2019 and June 6, 2020, the Plaintiff was severely, catastrophically and permanently injured by using the subject motorcycle according to the instructions that accompanied the product in the manner intended and foreseen by the Defendants. The motorcycle was defective and unsafe for its intended purposes at the time it left the control of the Defendants manufacturers and at the time it was sold by the Defendant/retailer. The defect(s) was/were a proximate cause of the Plaintiffs injuries and damages.

83. That upon information and belief, on the market at the time of the subject February 18, 2019 and June 6, 2020 accidents, there existed several products with feasible alternative designs which better and more safely controlled the "Traction Control System," speed sensor signals, computer, software, brakes and braking systems of the subject motorcycle to make the motorcycle inherently safer.

84. That upon information and belief, these alternative designs made no meaningful difference in cost or efficiency and were made from readily available parts, controls, computer programs and systems.

85. That by reason of the foregoing, the Defendants, their agents, servants and/or employees are liable to the Plaintiff in strict liability and/or strict product liability.

86. That the cause of action herein falls within one or more of the exceptions set forth in Article 16 of the CPLR.

87. That by reason of the foregoing, the Plaintiff HAROLD E. MORRIS has been damaged by the Defendants, in a sum which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A FIFTH CAUSE OF ACTION AGAINST

THE DEFENDANTS IN STRICT LIABILITY

88. The Plaintiff HAROLD E. MORRIS repeats, reiterates and realleges each and every allegation contained in paragraphs "1" to "87" herein, with the same force and effect as though same were more fully set forth at length herein.

89. That on February 18, 2019 and June 6, 2020, the Plaintiff used the said motorcycle product of the Defendants in the manner intended and/or foreseeably intended, when the product the suddenly, inexplicably, unexpectedly and without warning malfunctioned and failed causing the vehicle to lose control and crash thereby causing the severe, catastrophic and permanent injuries sustained by the Plaintiff.

90. That on February 18, 2019 and June 6, 2020, the Plaintiff sustained severe, catastrophic and permanent injuries by using the subject motorcycle according to the instructions that accompanied the product in the manner intended and foreseen by the Defendants. The subject motorcycle was defective and unsafe for its intended purposes at the time it left the the control of the Defendants manufacturers and at the time it was sold by the Defendant/retailer. The defect(s) was/were a proximate cause of the Plaintiff's injuries and damages.

91. That while the "Traction Control System," speed sensor, brakes and braking system on the subject motorcycle were designed to activate and operate under normal riding conditions with proper use, this particular motorcycle suddenly, inexplicably, unexpectedly and without warning malfunctioned and failed, causing the vehicle to lose control and crash because of a flaw in the design and manufacture of the product itself as compared to other such motorcycles.

92. That had adequate quality control and testing been performed by the Defendants, the aforesaid manufacturing defects would have been detected.

93. That by reason of the foregoing, the Defendants, their agents, servants

and/or employees are liable to the Plaintiff in strict liability and tort, and/or strict product liability.

94. That the cause of action herein falls within one or more of the exceptions set forth in Article 16 of the CPLR.

95. That by reason of the foregoing, the Plaintiff HAROLD E. MORRIS has been damaged by the Defendants, in a sum which exceeds the jurisdictional limits of all lower Courts.

AS AND FOR A SIXTH CAUSE OF ACTION AGAINST THE DEFENDANTS FOR PUNITIVE DAMAGES

96. The Plaintiff HAROLD E. MORRIS repeats, reiterates and realleges each and every allegation contained in paragraphs "1" to "95" herein, with the same force and effect as though same were more fully set forth at length herein.

97. That at the times herein alleged, the Defendants jointly and severally acted with gross negligence, recklessness, willful conduct, wanton and conscious disregard of the rights and safety of the Plaintiff HAROLD E. MORRIS and members of the public and that based upon the foregoing, the Plaintiff requests and is entitled to an award of punitive and exemplary damages.

WHEREFORE, the Plaintiff HAROLD E. MORRIS demands Judgment against the Defendants, jointly and/or severally herein on all causes of action, in a sum exceeding the jurisdictional limits of all lower Courts, which would otherwise have jurisdiction, together with the costs and disbursements of this action.

Dated: New York, New York
May 3, 2021



PAUL J. EDELSTEIN, ESQ.
THE EDELSTEINS, FAEGENBURG & BROWN, LLP
Attorneys for Plaintiff

26 Broadway, Suite 901
New York, N Y. 10004
Tel. (212) 425-1999

ATTORNEY VERIFICATION

STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

I, PAUL J. EDELSTEIN, an attorney duly admitted to practice in the Courts of New York State, state that I am the attorney for the Plaintiff in the within action. I have read the foregoing Complaint thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by the Plaintiff is that the Plaintiff resides in another County other than where I maintain my office. The grounds to my belief as to all matters not stated upon my own knowledge are documents and facts in the file maintained in this office.

I affirm that the foregoing statements are true under the penalties of perjury.

Dated: New York, New York
May 3, 2021


PAUL J. EDELSTEIN