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AMERICAN HONDA MOTOR CO., INC.

ORIGINAL FILED

AUG 08 2011

LOS ANGELES
SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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COUNTY OF LOS ANGELES, CENTRAL CIVIL WEST

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THERON COOPER and ALICE TRAN,

individually and on behalf of all others

11

similarly situated,

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Plaintiff,

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v.

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AMERICAN HONDA MOTOR CO., INC., a

15

California corporation,

16

Defendant.

CASE NO. BC448670

(Assigned to the Honorable William F.
Highberger, Department 307)

**DEFENDANT AMERICAN HONDA
MOTOR CO., INC.'S JOINDER IN
PLAINTIFFS' MOTION FOR FINAL
SETTLEMENT OR CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF ROY M. BRISBOIS**

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Date: September 16, 2011

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Time: 11:00 a.m.

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Dept.: 307

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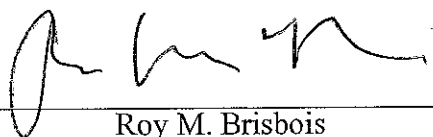
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Defendant, AMERICAN HONDA MOTOR CO., INC. hereby joins in the Motion for Final Approval of Class Action Settlement filed by plaintiffs. This Joinder is based upon the accompanying Memorandum of Points and Authorities, the supporting Declaration of Roy M. Brisbois and upon the pleadings, records and documents on file in this action. This Joinder will be periodically supplemented prior to the hearing for final approval to provide the Court with updated claims reimbursement and warranty data relevant to the settlement.

DATED: August 8, 2011

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 
Roy M. Brisbois
Attorneys for Defendant AMERICAN HONDA MOTOR CO., INC

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **IN SUPPORT OF DEFENDANT'S JOINDER IN**

3 **PLAINTIFFS' MOTION FOR FINAL SETTLEMENT APPROVAL**

4 **I. INTRODUCTION**

5 This is an action brought by plaintiffs Theron Cooper and Alice Tran on behalf of a
6 proposed class consisting of current and former owners and leasees of certain Honda Civic
7 automobiles, model years 2006 through 2009 ("Class Vehicles"). Central to all of the plaintiffs'
8 claims is the allegation that the sun visors (both driver side and passenger side) are defective in
9 manufacture and/or design causing some of them to split or come apart which may impair the
10 function of those devices. Based upon that central claim, plaintiffs' Second Amended Complaint
11 alleges five separate causes of action one of which alleges a violation of California's Consumer
12 Legal Remedies Act (*Civil Code* §1750) with the remaining four causes of action all predicated
13 upon purported violations of *California Business & Professions Code* §17200. At all times during
14 the litigation, American Honda Motor Co., Inc. ("Honda") denies that it is legally liable to
15 plaintiffs' or the purported Class for the claims asserted in the Second Amended Complaint or its
16 predecessors.

17 **II. MATERIAL TERMS OF THE PROPOSED SETTLEMENT**

18 **A. Summary of Principle Terms**

19 At the time of the original retail sale or lease of the class vehicles, the vehicles were
20 accompanied by an express warranty relating to defects in materials or workmanship occurring
21 within the period of 36 months or 36,000 miles of use, whichever first occurs. The settlement
22 extends the warranty for sun visors only to 7 years or 100,000 miles, whichever first occurs. The
23 settlement further provides that Honda reimburse Class Members for out-of-pocket expenses
24 incurred prior to the Effective Date of the Settlement for the repair or replacement of sun visors on
25 Class Vehicles subject to submission of a valid claim. There is no limitation to the number of
26 claims that may be submitted by a Class Member. If a valid claim is submitted, Class Members
27 will receive 100% reimbursement for the actual out-of-pocket cost to repair or replace the sun
28 visors regardless of whether the repair was performed by an authorized Honda dealer or an

1 independent facility. To the extent that Class Members performed their own repairs, Class
2 Members will receive 100% reimbursement for their actual out-of-pocket cost for the parts. Class
3 Members must submit the claim within two years of the repair or replacement of the sun visors or
4 within 90 days of the Effective Date of the Settlement, whichever period of time is longer.

5 **B. Warranty Extension**

6 The Settlement provides that the warranty as it relates to the sun visors is extended for 7
7 years or 100,000 miles, whichever first occurs. The time period and mileage is triggered from the
8 date the vehicle is first sold or leased to a consumer. All future replacements of visors within the
9 extended warranty period will be provided by authorized Honda dealers at no cost to Class
10 Members.

11 **C. Reimbursement**

12 The aim of the Proposed Settlement is to completely reimburse Class Members for their
13 out-of-pocket cost of replacement of sun visors that manifested the alleged defect within 7 years or
14 100,000 miles. There is no limit to the number of claims that can be submitted by a Class
15 Member. In respect to past replacements, there is no requirement that the replacement be
16 performed by an authorized Honda Dealer (future replacements will be performed free of charge
17 by authorized Honda dealers only). The claim form is a simple, one page claim that merely
18 requires the claimant to provide certain basic information and a copy of documentation
19 establishing the basis for their request for reimbursement.

20 **D. Claims Administration/Appeal Process**

21 Because of the existence of the Adjustment Program (described below), and pursuant to
22 the Court's Order of May 27, 2011 amending its Order for Preliminary Approval, responsibility
23 for administration of claim reimbursement is vested with Honda. Honda is required to provide
24 Class Counsel with quarterly written reports regarding claim decisions. Furthermore, if a Class
25 Member disagrees in whole or in part with any claim decision made by Honda, Class Members
26 may submit the claim to the reviewed by the third party administrator, Rust Consulting, Inc.
27 whose decision shall be final on the parties. Pursuant to the May 27, 2011 Order and the
28 agreement of the parties, Honda bears all costs for claim review and decisions by Rust Consulting,

1 Inc.

2 **E. Mutual Release, Dismissal and Jurisdiction of Court**

3 Section VIII of the Settlement releases the Defendant from all claims or causes of action
4 that were asserted or could have been asserted regarding the Class Vehicle's sun visors. The
5 named Plaintiffs and the Settlement Class agree to waive and relinquish all claims regarding the
6 defective sun visors including claims that they may not know or suspect to exist at the time of the
7 settlement. The Settlement Agreement provides that it shall be the exclusive remedy for all
8 Settlement Class Members who had not opted out and that the Court will retain jurisdiction to
9 enforce the terms of the Settlement (Settlement Agreement at VIII, C-D).

10 **F. Attorney's Fees/Incentive Awards**

11 Section IX of the Settlement provides that Honda agrees to pay an amount to be
12 determined by the Court in response to a petition for attorney's fees and expenses by Class
13 Counsel. As set forth in the Supporting Declaration of Roy M. Brisbois, after all terms and
14 conditions of the Settlement had been agreed upon, the parties mediated the issue of attorney's
15 fees before the Honorable Curtis E. von Kann. As a result of the mediation, Honda agreed to pay
16 reasonable attorney's fees and costs (if approved by the Court) to Plaintiffs in the amount not to
17 exceed \$430,000 and reasonable incentive payments if approved by the Court to each named
18 Plaintiffs in the amount not to exceed \$1,500.

19 **III. ADJUSTMENT PROGRAM**

20 As set forth in the Declaration of Roy M. Brisbois, the driving motivation for Honda to
21 settle the subject action was to promote the good will of its customer base. As a consequence,
22 consistent with that goal, Honda voluntarily adopted an Adjustment Program that mirrors the
23 benefits of the proposed Settlement. Specifically, regardless of whether the Settlement is or is not
24 ultimately approved, as of May 10, 2011, Honda voluntarily extended the warranty on sun visors
25 for Class Vehicles for 7 years or 100,000 miles whichever first occurs. Similarly, Honda
26 instituted a reimbursement program identical in scope and generosity to the reimbursement
27 program specified in the Settlement Agreement. As set forth below, Honda is currently honoring
28 warranty claims for the sun visors based upon the extended warranty and is processing

1 reimbursement claims consistent with the Settlement. The Adjustment Program will remain in
2 place regardless of the outcome of the subject litigation.

3 **IV. THE COURT HAS BROAD DISCRETION TO DETERMINE WHETHER THE**
4 **SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE AS A WHOLE**

5 As this court is well aware, the standard for measuring whether a proposed Class Action
6 settlement should be approved is whether it is fair, adequate and reasonable as a whole. Wershba
7 v. Apple Computer, Inc., 91 Cal.App. 4th 224, 235 (6th App. Dist. 2001); 7-Eleven Owners for Fair
8 Franchising v. Southland Corp., 85 Cal. App. 4th 1135, 1145 (1st App. Dist. 2000); Dunk v. Ford
9 Motor Co., 48 Cal.App. 4th 1794, 1801 (4th App. Dist., 1996) In making a determination, the
10 discretion of the court is broad and will only be reversed for a clear abuse of discretion. Wershba,
11 91 Cal.App. 4th at 235; 7-11 Owners, 85 Cal.App. 4th at 1145-46; Dunk, 48 Cal.App. 4th at 1801-
12 02. As the Dunk court noted, in exercising discretion a court should give “due regard ...to what is
13 otherwise a private consensual agreement between the parties.” Dunk, 48 Cal.App. 4th at 801.
14 “The inquiry must be limited to the extent necessary to reach a reasoned judgment that the
15 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
16 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
17 concerned.” Id. “Ultimately, the court’s determination is nothing more than an amalgam of
18 delicate balancing, gross approximations and rough justice.” Id.

19 **V. THE STANDARD BY WHICH THE PROPOSED SETTLEMENT SHOULD BE**
20 **MEASURED**

21 In California, the standard by which this court should measure the proposed settlement is
22 straightforward. As set forth in 7-Eleven Owners for Fair Franchising v. Southland Corp., 85 Cal.
23 App. 4th, 1135(2000), the court must consider whether:

24 “(1) The settlement is reached through arm’s-length bargaining; (2)
25 investigation and discovery are sufficient to allow counsel and the
26 court to act intelligently; (3) counsel is experienced in similar
27 litigation; and (4) the percentage of objectors is small.”

28

1 Id. at 1146, (quoting Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1802
2 (1996)).

3 Analysis of each of the standards set forth above supports approval of the proposed settlement.

4 **A. Arms-Length Negotiations**

5 As set forth in the Declarations of counsel, extensive arms-length negotiations were
6 conducted. The negotiations were frank, candid and conducted at arms-length. The issue of
7 attorneys fees were never raised until long after all terms and conditions of the settlement had been
8 agreed upon.

9 **B. Investigation and Discovery**

10 Extensive investigation and discovery was conducted prior to reaching a proposed
11 settlement. Because the discovery and investigation conducted is set forth in detail in Plaintiffs
12 Motion for Preliminary Approval and Plaintiffs Memorandum of Points and Authorities in
13 Support of the Motion for Final Agreement, it need not be reiterated in this Joinder. Nevertheless,
14 the investigation and discovery by Class Counsel was extensive and appropriate given the nature
15 and limited scope of the claims asserted in the subject litigation.

16 **C. Experience of Counsel**

17 The Declaration of plaintiff and defense counsel establishes that both sides are represented
18 by experienced and seasoned Class Action counsel. All parties had the benefit of being
19 represented by counsel with a wealth of experience in prosecuting or defending complex business-
20 related Class Action lawsuits.

21 **D. Percentage of Objectors**

22 The time for filing objections expires on August 26, 2011. As set forth in the attached
23 Declaration of Roy M. Brisbois, as the date of filing this Motion, defense counsel is aware of only
24 22 objections to the Proposed Settlement out of a Settlement Class exceeding 2.1 million
25 individuals. Although each of the objections will be specifically addressed when Class Counsel
26 and defense counsel file their responses to objections (due on September 6), on a preliminary basis
27 its important to note that a substantial portion of the objectors misunderstand the Settlement and
28 complain that they are not included where in fact they are covered by the terms of both the

1 Settlement Agreement and the Adjustment Program. Accordingly, the number of individuals to
2 date that have objected to the substance of the Settlement is truly de minimus.

3 **VI. CONCLUSION**

4 The Proposed Settlement provides extraordinary relief to the Settlement Class. To the
5 extent that any Class Member has had to replace a sun visor that split or came apart within 7 years
6 or 100,000 miles of the initial sale or lease of the vehicle, that Class Member receives 100%
7 reimbursement subject only to submitting a simple easily completed claim with supporting
8 documentation. To the extent that any Class Member in the future experiences a failure of the sun
9 visor, those Class Members vehicles will be covered by a warranty that has been extended to 7
10 years or 100,000 miles (whichever first occurs). The cost of Notice to the Class, claims
11 administration and payment of reasonable attorney's fees to class counsel is all born exclusively
12 by Honda and does not diminish the benefit to the Plaintiffs Class. Accordingly, it respectfully
13 submitted that the Proposed Settlement is fair, reasonable and adequate and should be approved by
14 this Court.

15 DATED: August 8, 2011

Respectfully submitted,

16 LEWIS BRISBOIS BIRSGAARD & SMITH LLP

17
18 By: 

Roy M. Brisbois
Attorneys for Defendant AMERICAN HONDA
MOTOR CO., INC.

1 **CALIFORNIA STATE COURT PROOF OF SERVICE**
2 THERON COOPER v. AMERICAN HONDA - File No. BC448670

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 At the time of service, I was over 18 years of age and not a party to the action. My
5 business address is 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012.

6 On August 8, 2011, I served the following document(s): **DEFENDANT AMERICAN
7 HONDA MOTOR CO., INC.'S JOINDER IN PLAINTIFFS' MOTION FOR FINAL
8 SETTLEMENT OR CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS
9 AND AUTHORITIES; DECLARATION OF ROY M. BRISBOIS**

10 I served the documents on the following persons at the following addresses (including fax
11 numbers and e-mail addresses, if applicable) on the attached service list:

12 The documents were served by the following means:

13 (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an
14 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
15 documents to be sent to the persons at the e-mail addresses listed above. I did not receive,
16 within a reasonable time after the transmission, any electronic message or other indication
17 that the transmission was unsuccessful.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct.

20 Executed on August 8, 2011, at Los Angeles, California.

21 
22 Antoinette T. Muriel

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