

**ORIGINAL FILED**

**AUG 08 2011**

**LOS ANGELES  
SUPERIOR COURT**

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8 *Attorneys for the Plaintiffs*

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES**

11 THERON COOPER and ALICE TRAN,  
12 individually and on behalf of all others  
13 similarly situated,

14 Plaintiffs,

15 v.

16 AMERICAN HONDA MOTOR CO., INC., a  
17 California corporation,

18 Defendant.

NO. BC448670

**DECLARATION OF STEVEN N.  
BERK IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED  
MOTIONS FOR: (1) FINAL  
APPROVAL OF CLASS  
SETTLEMENT, AND (2)  
ATTORNEYS' FEES AND  
INCENTIVE PAYMENTS**

Complaint Filed: November 1, 2010

CLASS ACTION

Judge: Hon. William F. Highberger

Department: 307

Date: Friday, September 16, 2011

Time: 11:00 a.m.

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27 **DECLARATION OF STEVEN N. BERK IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTIONS FOR: (1) FINAL  
APPROVAL OF CLASS SETTLEMENT, AND (2)  
ATTORNEYS' FEES AND INCENTIVE PAYMENTS - 1**

1 I, Steven N. Berk, hereby declare as follows:

2 1. I, Steven N. Berk, am a member in good standing of the District of Columbia  
3 Bar and the principal of Berk Law PLLC ("Berk Law"), one of the law firms serving as Class  
4 Counsel in the above-captioned action against American Honda Motor Co., Inc., ("Honda"). I  
5 make this declaration in support of Plaintiffs' Unopposed Motion for Final Approval and  
6 Unopposed Motion for Attorneys' Fees and Expenses and Incentive Payments to Named  
7 Plaintiffs.

8 2. I have served as co-lead counsel in this action throughout the litigation. My law  
9 firm Berk Law was principally responsible for the investigation that led to the filing of this  
10 case. I am thoroughly familiar with the case investigation, litigation, discovery, settlement  
11 negotiations, and settlement terms. The following statements are based on my personal  
12 knowledge of the work of my firm and the other Class Counsel firms in representing Plaintiffs  
13 and the Class. If called upon to do so, I could and would testify competently as to the facts set  
14 forth herein.

15 3. I am familiar with the procedural and substantive requirements for judicial  
16 approval of class action settlements under California and federal law. I personally have  
17 negotiated over a dozen court-approved class actions in California and throughout the United  
18 States. I believe that the settlement obtained is fair, reasonable, and adequate for the Class as a  
19 whole. The proposed settlement is the result of intensive, arm's-length negotiations between  
20 experienced attorneys who are highly familiar with class action litigation in general, and with  
21 the legal and factual issues of this case in particular.

22 4. Class Counsel's work on behalf of the class began well before the filing of the  
23 lawsuit. Plaintiff Theron Cooper contacted Berk Law in August of 2010 seeking assistance in  
24 connection with his failed sun visor. Mr. Cooper had previously attempted a self- help remedy  
25 (*i.e.*, taping the visor) that failed. Before purchasing a new visor, he checked the Internet and  
26 found scores of similar complaints from across the country. This discovery prompted him to  
27 contact Plaintiffs' counsel to determine if he had a claim for a new visor.

1           5.       Based on this call, Berk Law began investigating the case. Our efforts included:  
2 (1) interviewing numerous prospective class members to fully understand the nature of the  
3 defect and Honda's reaction to efforts at seeking reimbursement; (2) engaging an expert  
4 witness on materials and failure analysis to examine the sun visors in order to assist counsel in  
5 guiding the investigation and to provide preliminary conclusions on the nature of the defect; (3)  
6 researching the experience of the class representatives; (4) reviewing carefully all public  
7 information available on the defect; (5) analyzing any statements made by Defendant relating  
8 to the defect; (6) conducting extensive online research; (7) communicating with absent class  
9 members and analyzing the data presented by their experiences; and (8) researching and  
10 analyzing Honda's Technical Service Bulletins.

11           6.       Only after completing an investigation that involved speaking with numerous  
12 class members, retaining an expert and instructing him to perform forensic failure testing, and  
13 reaching the conclusion that the defect in the visor was widespread and common, did Class  
14 Counsel begin drafting a Complaint.

15           7.       Initially, Plaintiffs' claims against Honda in connection with its defective sun  
16 visor were filed on October 18, 2010 in Washington State Superior Court, as a proposed class  
17 action on behalf of similarly situated residents of Washington State. Prior to formal service of  
18 the Washington Complaint and as a courtesy, I contacted Roy M. Brisbois, an attorney whose  
19 firm was known to represent Honda in consumer litigation. I apprised Mr. Brisbois of the  
20 Washington filing, shared a copy of the Complaint, and asked if Mr. Brisbois would accept  
21 service for Honda.

22           8.       Subsequently, the Parties agreed it would be most efficient to litigate all claims  
23 related to the defective sun visors in a single forum, and Honda requested that this matter be  
24 litigated before this Court, *i.e.*, Los Angeles County Superior Court. Plaintiff Cooper  
25 voluntarily dismissed the Washington Complaint. On November 1, 2010, Mr. Cooper, along  
26 with California resident Alice Tran, filed the instant action in California court. Because Honda  
27 is headquartered in California, Plaintiffs sought a nationwide class under California law.

1           9.       After filing, Class Counsel continued their investigation on behalf of Plaintiffs,  
2 now with the benefit of formal discovery tools. Class Counsel obtained and reviewed a range  
3 of internal Honda documents describing the nature of the defect, its root cause, and customer  
4 complaints. Class Counsel were also able to review and question (informally and via  
5 deposition) Honda's internal documents demonstrating the improvements to the "replacement"  
6 sun visors and their impact on significantly lowering the failure rate. Class Counsel thereafter  
7 corroborated the information in these documents and tested Honda's assertions by taking the  
8 deposition of the person at Honda "most knowledgeable" about the alleged defects in the sun  
9 visors, the cause of any such defects, the warranty claim history regarding them, and any  
10 countermeasures taken by Honda to address any defect in the sun visors.

11           10.       While both parties were amenable to reaching a mutually agreeable settlement,  
12 there were numerous issues that required negotiations and resolution, including the scope and  
13 geographic reach of the proper class, the proposed relief to Class Members, and various other  
14 contingencies. Accordingly, the parties expended substantial effort on these issues, exchanging  
15 numerous draft settlement agreements and engaging in extensive negotiations. Those  
16 discussions culminated in a written settlement agreement that was executed on February 24,  
17 2011. At all times, the parties' negotiations were adversarial, non-collusive, and at arm's-  
length.

18           11.       The parties agreed that once they finalized a settlement on all Class relief, they  
19 would negotiate Plaintiffs' claim for attorney fees and costs in good faith. Accordingly, after  
20 agreeing to the Class Settlement on February 24, 2011, the parties began fee discussions.  
21 When the parties' independent negotiations failed, they retained the mediation services of  
22 JAMS and Judge Von Kann (Ret.). As part of the mediation, the parties exchanged mediation  
23 briefs and participated in a mediation session that lasted an entire day. Through that process,  
24 the parties ultimately agreed that, subject to Court approval, Honda would pay attorney fees  
25 and costs in the amount of \$430,000. In this case, the parties purposefully and carefully  
26

1 bifurcated their discussions, separating the recovery for Class Members from Plaintiffs' fees,  
2 thereby eliminating any inference of a collusive settlement.

3 12. From the time settlement was reached up through the filing of the motion for  
4 preliminary approval, Class Counsel continued to work on preparing for preliminary settlement  
5 approval and thereafter final approval. Doing so required still more negotiation on several  
6 issues including the precise class definition, the language of the Notice, the practical operation  
7 of the reimbursement and extended warranty program, and the award of attorneys' fees and  
8 costs.

9 13. Since the Notice was mailed, Class Counsel have been contacted by over 1,000  
10 class members. Numerous staff members from Berk Law PLLC and Terrell Marshall Daudt &  
11 Willie PLLC have spent scores of hours responding diligently and thoughtfully to class  
12 members with questions regarding their eligibility for relief and/or the proper method for  
13 submission of their claims materials.

14 14. In addition to preparing the Motion for Final Settlement Approval and  
15 supporting papers submitted herewith, Class Counsel anticipate substantial future work  
16 including: (1) briefing and arguing any appeals that may be taken; (2) assisting class members  
17 with the settlement claims process; (3) participating in the claims appeals process; (4)  
18 monitoring the claims process; and (5) enforcing the settlement throughout its duration.  
19 Given the size of the class, the number of people who have already contacted Class Counsel  
20 and the claims administrator, and the fact that many class members will be eligible to claim  
21 reimbursements for future sun visor failures within the seven-year extended warranty provided  
22 by this settlement, Class Counsel expect to continue to handle incoming questions on a regular  
23 basis for possibly years into the future. I would expect the Class Counsel firms to expend at  
24 least another one hundred hours of time through the expiration of the Settlement Agreement.

25 15. In preparing this Declaration, I personally reviewed the time records maintained  
26 on a contemporaneous basis by the attorneys, paralegals, and legal assistants at Berk Law. As  
27 of August 5, 2011, multiplying each timekeeper's total hours spent working on behalf of

1 Plaintiffs and the Class by his or her hourly rate yields a total lodestar of \$247,047.50 for Berk  
2 Law.

3 16. Attached to this Declaration as Exhibit A is a breakdown by timekeeper of total  
4 hours, billing rates, and individual lodestar for my law firm Berk Law.

5 17. The hourly rates of all attorneys, paralegals and legal assistants whose time is  
6 included in this application are rates that Class Counsel has charged in similar matters, and  
7 these rates have been approved by state and federal courts in many other contingent matters,  
8 including those prosecuted in Los Angeles County Superior Court. Class Counsel's rates are  
9 well in line with rates charged by other plaintiffs in contingent class action cases.


10 18. Berk Law has incurred \$10,445.70 in out-of-pocket costs and expenses in  
11 prosecuting this action. These costs and expenses—which include photocopying, legal  
12 research, travel, expert and mediation expenses, among others—were necessary to prosecuting  
13 this litigation. There was no assurance that these out-of-pocket costs and expenses would ever  
14 be repaid.

15 19. Attached to this Declaration as Exhibit B is a breakdown of costs and expenses  
16 incurred by Berk Law in prosecuting this action.

17 20. This lawsuit required my firm (with only three attorneys) to commit a significant  
18 number of hours in a short time period to investigate and resolve the claims of the Class. The  
19 case required a significant commitment by Berk Law attorneys, making them unavailable to  
20 pursue other opportunities when they were working on investigating, litigating, and settling this  
21 case. The natural result was to delay progress on other matters and interfere with the  
22 investigation and filing of other potential cases.

23 21. Plaintiffs Theron Cooper and Alice Tran each spent significant time reviewing  
24 documents and consulting with counsel about the claims in this case, and were prepared to  
25 maintain their involvement throughout the course of the litigation despite their relatively  
26 modest personal financial interest in the outcome of the case.

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct. Executed on this 5<sup>th</sup> day of August, 2011, in Washington, D.C.

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4   
5 \_\_\_\_\_  
6 Steven N. Berk

**PROOF OF SERVICE**

I am a citizen of the United States and am employed in King County, Washington. I am over the age of eighteen (18) years and not a party to this action; my business address is 936 North 34th Street, Suite 400, Seattle, Washington, 98103-8869.

On August 8, 2011, I served the preceding document by placing a true copy thereof enclosed in a sealed envelope and served in the manner and/or manners described below to each of the parties herein and addressed as on the attached list.

- BY MAIL:** I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with Terrell Marshall Daudt & Willie PLLC's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.
- BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the addressee(s) designated.
- BY OVERNIGHT COURIER SERVICE:** I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.
- BY FACSIMILE:** I caused said document to be transmitted to the telephone number(s) of the addressee(s) designated.
- BY ELECTRONIC MAIL:** I caused said document to be transmitted to the email addresses of the addressee(s) designated.

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

Executed at Seattle, Washington, on the 8th day of August, 2011.



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**PROOF OF SERVICE LIST**

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*Attorneys for Plaintiffs*

DECLARATION OF STEVEN N. BERK IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTIONS FOR: (1) FINAL  
APPROVAL OF CLASS SETTLEMENT, AND (2)  
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— EXHIBIT A —

**BERK LAW PLLC**  
**Lodestar as of August 5, 2011**

Cooper v. American Honda

	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
<b>Steve Berk - Principal</b> J.D. Boston College, 1985 Legal drafting and editing, participation in conferences with co-counsel and Honda's counsel; case-related travel for conferences; negotiating settlement and fees.	292.00	\$ 575.00	\$ 167,900.00
<b>Gouri Bhat - Partner</b> J.D. Wisconsin, 1997 Legal drafting, editing and research; communication with co-counsel and coordination of filings.	58.90	\$ 450.00	\$ 26,505.00
<b>Michael Gulland - Of Counsel</b> J.D. Northwestern, 2004 Legal drafting, editing and research. Communication with co-counsel and Honda's counsel.	115.30	\$ 350.00	\$ 40,355.00
<b>Zachary Kady - Law Clerk</b> J.D. Georgetown, 2013 (expected) Factual and legal research; communications with client, co-counsel and class members; assistance with settlement administration and class member questions.	17.75	\$ 125.00	\$ 2,218.75
<b>David Martin - Law Clerk</b> B.A. University of North Carolina, 2010 Factual and legal research; communications with client, co-counsel and class members; assistance with settlement administration and class member questions.	55.75	\$ 125.00	\$ 6,968.75
<b>Natasha Duarte - Legal Assistant</b> B.A. University of North Carolina, 2011 Communications with client, co-counsel and class members; assistance with settlement administration and class member questions.	31.00	\$ 100.00	\$ 3,100.00
<b>TOTAL</b>	<u>570.70</u>		<u>\$ 247,047.50</u>

— **EXHIBIT B** —

## BERK LAW EXPENSES

### 028 - OC - Cooper v. Honda (Civic Visor)

Case Costs - Filing	\$	631.90
Expert Costs	\$	3,161.93
Meals	\$	473.33
Outside Services	\$	3,880.57
Travel	\$	2,297.97
	\$	<u>10,445.70</u>