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Attorneys for the Plaintiffs

14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 15 COUNTY OF LOS ANGELES

16 THERON COOPER and ALICE TRAN,
 17 individually and on behalf of all others
 18 similarly situated,

Plaintiffs,

v.

20 AMERICAN HONDA MOTOR CO., INC., a
 21 California corporation,

Defendant.

NO. BC448670

**SECOND AMENDED CLASS
 ACTION COMPLAINT FOR
 INJUNCTIVE RELIEF AND
 RESTITUTION**

CLASS ACTION

JURY TRIAL DEMANDED

Judge: Hon. William F. Highberger

Department: 307

Date:

Time:

BY FAX

1
2 **I. INTRODUCTION**

3 1.1 Plaintiffs Theron Cooper and Alice Tran bring this action for themselves and on
4 behalf of all similarly situated persons who purchased or leased vehicles with defective visors
5 (as defined below) designed, manufactured, marketed, advertised, warranted, distributed, sold
6 and/or leased by Defendant American Honda Motor Company, Inc. (“Honda” or “Defendant”).

7 1.2 The vehicles at issue in this lawsuit include the following models and makes
8 sold or leased in the United States, the Commonwealth of Puerto Rico, U.S. Virgin Islands,
9 Guam, or Saipan (the “Affected Vehicles”):
10

11 **2006-08 Civic: All**

12 **2009 Civic 2-Door:**

13 **From VIN 2HGFG1...9H500001**
thru 2HGFG1...9H523805

14 **2009 Civic 4-Door:**

15 **From VIN 19XFA1...9E000061**
thru 19XFA1...9E007094

16 **From VIN 2HGFA16...9H30001**
thru 2HGFA16... 9H339069

17 **From VIN 2HGFA16...9H500001**
thru 2HGFA16...9H511509

18 **From VIN 1HGFA1... 9L000008**
thru 1HGFA1... 9L025282

19 **From VIN JHMFA1...9S200024**
thru JHMFA1...9S200060

20
21 **2009 Civic Si 2-Door:**

22 **From VIN 2HGFG2...9H700001**
thru 2HGFG2...9H702924

23 **2009 Civic Si 4-Door:**

24 **From VIN 2HGFA5...9H700001**
thru 2HGFA5...9H704687

25 **2009 Civic GX:**

26 **From VIN 1HGFA4...9L000001**
thru 1HGFA4...9H001442

27 **2006-08 Civic Hybrid: ALL**

1 the three-year, 36,000-mile warranty. Approximately two years later the replacement visor also
2 split while Plaintiff Cooper was driving. This time the visor was out of warranty. Mr. Cooper
3 paid \$55.61 out of pocket for a replacement visor.

4 2.2 Plaintiff Alice Tran is a California citizen who resides in San Francisco County,
5 California. In 2009, Plaintiff Tran purchased a used 2008 Honda Civic EX 4-door sedan from a
6 private, non-Honda seller in Sacramento, California. Ms. Tran's Honda contains visors on the
7 drivers' and passengers' side of the vehicle. The defect has not yet manifested itself in Ms.
8 Tran's vehicle.
9

10 2.3 Defendant Honda is a corporation organized under the laws of the State of
11 California and headquartered in Torrance, California. Honda is the U.S. sales, marketing, and
12 distribution subsidiary of its Japanese parent company, Honda Motor Co., Ltd.

13 **III. JURISDICTION AND VENUE**

14 3.1 Jurisdiction. This Court has jurisdiction over Honda because it maintains its
15 principal headquarters in California; is registered to conduct business in California; has
16 sufficient minimum contacts in California; or otherwise intentionally avails itself of the markets
17 within California through the promotion, sale, marketing, and distribution of its vehicles to
18 render the exercise of jurisdiction by this Court proper and necessary. Moreover, Honda's
19 wrongful conduct (as described herein) emanates from California and affects consumers in
20 California. Most, if not all, of the events complained of below occurred in or emanated from
21 Honda's headquarters located in Torrance, California.
22

23 3.2 Venue. Venue is proper in Los Angeles County because Honda resides in Los
24 Angeles County and a substantial part of the events or omissions giving rise to Plaintiffs'
25 claims occurred in Los Angeles County.
26
27

1 **IV. APPLICABLE LAW**

2 4.1 California law applies to all claims in this action. The claims of Plaintiffs and
3 the Class members are individual claims and do not unite or enforce a single title or right to
4 which Plaintiffs and the Class have a common and undivided interest.
5

6 **V. FACTUAL ALLEGATIONS**

7 5.1 For years, Honda has designed, manufactured, marketed, advertised, warranted,
8 distributed, sold, and leased the Affected Vehicles. Upon information and belief, it has sold,
9 directly or indirectly (through dealers and other retail outlets), hundreds of thousands of
10 Affected Vehicles throughout the United States, including California.
11

12 5.2 Through various forms of media (including, but not limited to, television, print
13 ads, brochures, the Internet, on-site brochures and promotional documents, catalogs, and/or
14 product labelling) Honda marketed, advertised and warranted that each Affected Vehicle was
15 fit for the ordinary purpose for which such Affected Vehicles were used and was free from
16 defects in materials and workmanship.
17

18 5.3 In the Affected Vehicles' product guides and in other documentation, Honda
19 expressly warranted that during the warranty period — three years and/or 36,000 miles —
20 Honda would replace any part of the Affected Vehicles which failed due to a defect in materials
21 or workmanship. Honda also expressly warranted that it would provide, free of charge, all
22 costs to repair any such defective part.
23

24 5.4 Despite Honda's representations and warranties, the Affected Vehicles contain a
25 defect that causes the visors to split and hang into drivers' eyes.
26

27 5.5 Hundreds, if not thousands, of purchasers and lessees of the Affected Vehicles
have experienced problems with the defective visors. Complaints filed by consumers with the

1 7.4 Although the exact number of Class members is uncertain and can only be
2 ascertained through appropriate discovery, Plaintiffs are informed and reasonably believe the
3 number is in the thousands (if not tens of thousands) and certainly great enough such that
4 joinder is impracticable. The disposition of the claims of these Class members in a single class
5 action will provide substantial benefits to all parties and to the Court.

6 7.5 Class members can easily be ascertained from Defendants' or nonparties'
7 warranty records, sales records, and by the fact that vehicle ownership confers knowledge of
8 vehicle manufacturer, type, model, and model date.

9 7.6 The claims of the representative Plaintiffs are typical of the claims of the Class
10 in that the representative Plaintiffs, like all Class members, own vehicles that contain a design,
11 manufacture, and/or materials defect in the vehicles' visors. As a result of the defect, the visors
12 have failed and/or will fail prematurely. The representative Plaintiffs, like all Class members,
13 have been damaged by Defendant's misconduct in that they have incurred or will incur the cost
14 of repairing damage caused by the defect in the Affected Vehicles' visors or will incur the cost
15 of replacing the defective visors. Furthermore, the factual bases of Defendant's misconduct is
16 common to all Class members and represents a common thread of unfair or deceptive conduct
17 resulting in injury to all members of the Class.

18 7.7 There are numerous questions of law and fact common to Plaintiffs and the
19 Class. Those questions predominate over any questions that may affect individual Class
20 members, and include the following:

21 7.7.1 Whether the Affected Vehicles' visors manufactured by Honda are
22 defectively designed and/or manufactured such that they are not suitable for their intended use;
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1 7.7.2 Whether Defendant knew or should have known of the inherent
2 design and/or manufacturing defect in its Affected Vehicles' visors;

3 7.7.3 Whether Defendant failed to disclose to Plaintiffs and the Class the
4 inherent problems with its Affected Vehicles' visors;

5 7.7.4 Whether Defendant had a duty to Plaintiffs and the Class to disclose
6 the inherent problems with its Affected Vehicles' visors;

7 7.7.5 Whether the facts concealed and/or not disclosed by Defendant to
8 Plaintiffs and the Class are material facts;

9 7.7.6 Whether Defendant engaged in unfair competition or unfair
10 deceptive acts or practices when it concealed the limitations and failed to warn Plaintiffs and
11 Class members of the defects in its Affected Vehicles' visors;

12 7.7.7 Whether Defendant's conduct in marketing, selling, and leasing its
13 Affected Vehicles with the defective visors constitutes a violation of the Consumers Legal
14 Remedies Act, California Civil Code section 1750 *et seq.*;

15 7.7.8 Whether Defendant's conduct in marketing, selling, and leasing its
16 Affected Vehicles with the defective visors constitutes a violation of the Unfair Business
17 Practices Act, California Business & Professions Code section 17200 *et seq.*;

18 7.7.9 Whether Defendant should be declared financially responsible for
19 notifying all Class members of the problems with its Affected Vehicles' visors and for the costs
20 and expenses of repair and replacement of all such visors;

21 7.7.10 Whether Plaintiffs and the Class are entitled to compensatory,
22 exemplary, and statutory damages, and the amount of such damages, including, among other
23 things: (i) compensation for all out-of-pocket monies expended by members of the Class for
24

1 repairs of the Affected Vehicles' visors, replacement of the Affected Vehicles' visors, and loss
2 of use of the visors while Affected Vehicles were being repaired and/or replaced; (iii) the
3 failure of consideration in connection with and/or difference in value arising out of the variance
4 between the Affected Vehicles as warranted and the Affected Vehicles containing the defect;
5 and (iv) the diminution of resale value of the Affected Vehicles resulting from the defect;

6 7.7.11 Whether Plaintiffs and the Class are entitled to replacement of their
7 defective visors with non-defective visors; and

8 7.7.12 Whether Defendant should be ordered to disgorge, for the benefit of
9 the Class, all or part of the ill-gotten profits it received from the sale of Affected Vehicles with
10 defective visors, and/or to make full restitution to Plaintiffs and the members of the Class.
11

12 7.8 Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs
13 have retained counsel with substantial experience in prosecuting consumer class actions, and
14 specifically actions involving defective products. Plaintiffs and their counsel are committed to
15 prosecuting this action vigorously on behalf of the Class, and have the financial resources to do
16 so. Neither Plaintiffs nor their counsel have any interests adverse to those of the Class.
17

18 7.9 Plaintiffs and the members of the Class have all suffered or will suffer harm and
19 damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior
20 to other available methods for the fair and efficient adjudication of the controversy. Absent a
21 class action, most members of the Class likely would find the cost of litigating their claims to
22 be prohibitive and would have no effective remedy at law. Because of the relatively small size
23 of the individual Class member's claims, it is likely that only a few Class members could afford
24 to seek legal redress for Defendant's misconduct. Absent a class action, Class members will
25 continue to incur damages and Defendant's misconduct will continue without remedy. Class
26
27

1 treatment of common questions of law and fact would also be superior to multiple individual
2 actions or piecemeal litigation in that class treatment will conserve the resources of the courts
3 and the litigants, and will promote consistency and efficiency of adjudication.

4 **VIII. FIRST CLAIM FOR RELIEF**
5 **(Violation of California’s Consumers Legal Remedies Act,**
6 **California Civil Code section 1750 *et seq.*)**

7 8.1 Plaintiffs incorporate by reference the allegations contained in the preceding
8 paragraphs of this Complaint.

9 8.2 Defendant is a “person” as defined by Civil Code section 1761(c).

10 8.3 Plaintiffs and Class members are consumers who purchased the Affected
11 Vehicles.

12 8.4 By failing to disclose and concealing the fact that the Affected Vehicles’ visors
13 contain a design, materials, or manufacture defect that causes them to split and hang down
14 freely in front of the drivers’ and passengers’ line of sight, Honda violated Civil Code section
15 1770(a), as it represented that the visors in the Affected Vehicles had characteristics and
16 benefits that they do not have, and represented that the visors in its Affected Vehicles were of a
17 particular standard, quality, or grade when they were of another. (*See Civ. Code §§ 1770(a)(5)*
18 *and (7)*).

19 8.5 Defendant’s unfair or deceptive acts or practices occurred repeatedly in
20 Defendant’s trade or business, were capable of deceiving a substantial portion of the purchasing
21 public and imposed a serious financial risk on the public.

22 8.6 Defendant knew but failed to disclose that the Affected Vehicles’ visors were
23 defectively designed or manufactured, would fail prematurely when used as instructed, and
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1 were not suitable for their intended purpose of properly and effectively shielding drivers' eyes
2 from the sun.

3 8.7 Defendant was under a duty to Plaintiffs and the Class to disclose the defective
4 nature of the Affected Vehicles' visors because:

5 8.7.1 Defendant was in a superior position to know the true state of facts about
6 the safety defect in the Affected Vehicles' visors;

7 8.7.2 Plaintiffs and the Class members could not reasonably have been
8 expected to learn or discover that the Affected Vehicles' visors had a dangerous safety defect
9 until manifestation of the failure; and
10

11 8.7.3 Defendant knew Plaintiffs and the Class members could not reasonably
12 have been expected to learn or discover the safety defect;

13 8.8 In failing to disclose the defects in the Affected Vehicles' visors, Defendant
14 knowingly and intentionally concealed material facts and breached its duty not to do so.
15

16 8.9 The facts concealed or not disclosed by Defendant to Plaintiffs and the Class are
17 material in that a reasonable consumer would have considered them to be important in deciding
18 whether to purchase the Affected Vehicle or pay a lesser price. Had Plaintiffs and the Class
19 known the defective nature of the visors, they would not have purchased the Affected Vehicles
20 or would have paid less for them.

21 8.10 Plaintiffs and the Class reasonably expected the visors to function properly for
22 the life of their vehicles. That is the reasonable and objective consumer expectation for vehicle
23 sun visors.
24

25 8.11 As a direct and proximate result of Defendants' unfair or deceptive acts or
26 practices, Plaintiffs and the Class have suffered and will continue to suffer actual damages.
27

1 8.12 Plaintiffs have provided Honda with notice of its alleged violations of the CLRA
2 pursuant to Civil Code section 1782(a).

3 8.13 Honda has failed to provide appropriate relief for its violation of the CLRA.

4 8.14 Plaintiffs and the Class are entitled to compensatory, monetary, and punitive
5 damages in addition to equitable and injunctive relief.

6
7 **IX. SECOND CLAIM FOR RELIEF**

8 ***(Unlawful Business Practices, Violation of California’s Unfair Competition Law (“UCL”),***
9 ***California Business & Professions Code section 17200 et seq.)***

10 9.1 Plaintiffs incorporate by reference the allegations contained in the preceding
11 paragraphs of this Complaint.

12 9.2 California Business & Professions Code section 17200 prohibits acts of “unfair
13 competition,” including any “unlawful” business act or practice.

14 9.3 Defendant engaged in “unlawful” business practices by knowingly and
15 intentionally failing to disclose to Plaintiffs and the Class that the Affected Vehicles’ visors
16 contain a design, materials or manufacture defect that causes them to split and hang down
17 freely in front of the drivers’ and passengers’ line of sight and/or by failing to effectively repair
18 or replace defective visors.

19 9.4 Defendant’s acts and practices violated the UCL because they violate the
20 Consumer Legal Remedies Act.

21 9.5 Plaintiff and the Class reasonably expected the visors to function properly and to
22 effectively shield drivers’ and passengers’ eyes from the sun. This is the reasonable and
23 objective consumer expectation.
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1 freely in front of the drivers' and passengers' line of sight and/or by failing to effectively repair
2 or replace defective visors.

3 10.4 Plaintiffs and the Class reasonably expected the Affected Vehicles' visors to
4 properly and effectively shield drivers' and passengers' eyes from the sun. This is the
5 reasonable and objective consumer expectation.

6 10.5 Defendant knew the visors installed in the Affected Vehicles were defectively
7 designed or manufactured, would fail prematurely, and were not suitable for their intended use
8 of properly and effectively shielding drivers' eyes from the sun.

9 10.6 In failing to disclose the defects in the Affected Vehicles' visors, Defendant
10 knowingly and intentionally concealed material facts and breached its duty not to do so.

11 10.7 Defendant's "unfair" acts or practices occurred repeatedly in Defendant's trade
12 or business, and were capable of deceiving a substantial portion of the purchasing public.
13 Plaintiffs and Class members could not reasonably have protected themselves against the unfair
14 practices. There was no benefit that outweighed the harm caused by the unfair practices.
15

16 10.8 Defendant's "unfair" business acts or practices violate established public policy
17 reflected in the UCL and CLRA and are immoral, unethical, oppressive or unscrupulous.

18 10.9 As a direct and proximate result of Defendant's "unfair" and deceptive practices,
19 Plaintiffs and the Class have suffered and will continue to suffer actual damages.
20

21 10.10 Defendant has been unjustly enriched and should be required to make restitution
22 to Plaintiffs and the Class pursuant to sections 17203 and 17204 of the Business & Professions
23 Code.
24
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1 **XI. FOURTH CLAIM FOR RELIEF**

2 **(*Fraudulent Business Practices, Violation of California’s Unfair Competition Law***
3 **(“UCL”), California Business & Professions Code section 17200 *et seq.*)**

4 11.1 Plaintiff incorporates by reference the allegations contained in the preceding
5 paragraphs of this Complaint.

6 11.2 California Business & Professions Code section 17200 prohibits acts of “unfair
7 competition,” which includes any “fraudulent” business practices, or acts.

8 11.3 Defendant engaged in “unfair” business practices by knowingly and
9 intentionally failing to disclose to Plaintiffs and the Class that the Affected Vehicles’ visors
10 contain a design, materials or manufacture defect that causes them to split and hang down
11 freely in front of the drivers’ and passengers’ line of sight and/or by failing to suitably repair or
12 replace defective visors.

13 11.4 Plaintiffs and the Class reasonably expected the Affected Vehicles’ visors to
14 properly and effectively shield drivers’ and passengers’ eyes from the sun. This is the
15 reasonable and objective consumer expectation.

16 11.5 Defendant knew its Affected Vehicles’ visors were defectively designed or
17 manufactured, would fail prematurely, and were not suitable for their intended use to shield
18 drivers’ and passengers’ eyes from the sun.

19 11.6 In failing to disclose the defects in the Affected Vehicles’ visors, Defendant
20 knowingly and intentionally concealed material facts and breached its duty not to conceal
21 material facts.

22 11.7 Defendant engaged in “fraudulent” business acts and practices by failing to
23 disclose to Plaintiff and the Class members Defendant’s knowledge concerning the defects in
24 the Affected Vehicles’ visors and/or failing to repair or replace the defective visors.
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1 B. A declaration that Defendant is financially responsible for notifying all Class
2 members of the problems with its Affected Vehicles' visors;

3 C. An order enjoining Defendant from further deceptive advertising, marketing,
4 distribution, and sales and lease practices with respect to its Affected Vehicles, and to remove
5 and replace Plaintiffs' and Class members' visors with a suitable alternative product;

6 D. An award to Plaintiffs and the Class of compensatory, exemplary, and statutory
7 damages, as well as equitable and injunctive relief with respect to their claims under the
8 California's Consumers Legal Remedies Act, California Civil Code section 1750 *et seq.*;

9 E. A declaration that Defendant must disgorge, for the benefit of the Class, all or
10 part of the ill-gotten profits it received from the sale or lease of its Affected Vehicles, or to
11 make full restitution to Plaintiffs and the members of the Class;

12 F. An award of attorneys' fees and costs, as allowed by law;

13 G. An award of pre-judgment and post-judgment interest, as provided by law;

14 H. For leave to amend the Complaint to conform to the evidence produced at trial;

15 and
16

17 I. Such other or further relief as may be appropriate under the circumstances.
18

19 **IX. JURY DEMAND**

20 Plaintiffs demand a trial by jury.
21
22
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1 RESPECTFULLY SUBMITTED AND DATED this 20th day of June, 2011.

2 TERRELL MARSHALL DAUDT & WILLIE PLLC

3
4 

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Attorneys for the Plaintiffs

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 June 20, 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 20th day of June, 2011.



PROOF OF SERVICE LIST

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