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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

LOGAN AND ANITA LOCKABEY; et al., as Individuals and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

AMERICAN HONDA MOTOR CO., INC., and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2010-00087755-CU-BT-CTL

CLASS ACTION

NOTICE OF ENTRY OF ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION FOR PAYMENT OF ATTORNEYS' FEES, COSTS AND CLASS REPRESENTATIVE PAYMENTS, FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE AND DENYING OBJECTORS' MOTIONS

Date: **March 16, 2012**
Time: **10:00 a.m.**
Courtroom: **C-72**
I/C Judge: **Hon. Timothy Taylor**

Complaint Filed: March 15, 2010

TO: ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 16, 2012, after holding a hearing on the parties' motion for entry of an Order Granting Final Approval of Class Action Settlement and Application for Payment of Attorneys' Fees, Costs and Class Representative Payments, and entering Final Judgment and Order of Dismissal With Prejudice, the Vise Objectors' Motion to File a Complaint in Intervention and For Payment of Objectors' Attorneys' Fees and Reimbursement of Expenses;

and Objectors Kramer and Bleetstein's Motion to Vacate Protective Order, to Compel Production of Documents and to Set Additional Date for Final Approval Hearing re: Proposed Settlement; and having denied and overruled on the record all submitted objections for the reasons set forth on the record and in the Court's Rulings dated March 16, 2012, a true and correct copy of which is attached hereto as Ex. 1; and having denied the motions filed by the above objectors as set forth above for the reasons set forth on the record and in Ex. 1; the Court entered the Order Granting Final Approval of Class Action Settlement and Application for Payment of Attorneys' Fees, Costs and Class Representative Payments, Final Judgment and Order of Dismissal With Prejudice in the above-entitled action, a true and correct copy of which is attached hereto as Ex. 2. These Orders were executed by and filed with the Court and entered on March 16, 2012.

Dated: March 16, 2012

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EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

LOGAN and ANITA LOCKABEY, et al.,

Plaintiffs,

v.

AMERICAN HONDA MOTOR CO., et al.,

Defendants.

AND RELATED CASES

[CLASS ACTION]

Case No.: 37-2010-00087755-CU-BT-CTL

Dept.: 72
Judge: Timothy B. Taylor

Action Filed: March 15, 2010

Rulings on 1) Motion for Final Approval of Class Action Settlement; 2) Motion for Award of Fees and Class Representative Enhancements; 3) Motion for Leave to Intervene and for Attorneys' Fees; and 4) Motion to Vacate Stipulated Protective Order

Hearing: March 16, 2012, 10:00 a.m.

These matters came on for hearing as shown above. Appearances were as shown in the reporter's transcript. Having previously published a tentative ruling, the court entertained thoughtful and well prepared oral argument, and took the motions under submission. The court now determines the submitted matters.

1. Background and Preliminary Approval.

These consumer class actions regarding the fuel efficiency and battery life of the Honda Civic Hybrid automobile (model years 2003-2009)("HCH") were the subject of a preliminary settlement approval on September 30, 2011. In its September 30 Order, the court set forth the following rationale for its decision to grant preliminary approval:

"A. Prefatory Matters.

"In preparing to consider this motion for preliminary approval of a class action settlement, the court first carefully studied the learned opinion of the 4th District Court of Appeal, Division 1, in *Paduano v. American Honda*, 169 Cal. App. 4th 1453 (2009), as well as Judge Phillips' comprehensive and rigorous opinion in *True v. American Honda Motor Co.*, 749 F. Supp. 2d 1052 (C.D. Cal. 2010).

"The court notes that some commentators have opined that there is an inherently impure relationship between the plaintiffs' bar and the defense bar, which should make all courts skeptical of all class action settlements. The court does not hold with this view. While there have certainly been instances of mutual back-scratching, each case must be considered on its own merits. To be sure, all courts faced with a preliminary approval request must look for indicia of collusion; the court has done so here, and finds ample indicators that the settlement proposed today for preliminary approval was the result of an arm's length process in which both sides proceeded in good faith.

"The first such indicator is the decision of Judge Phillips in *True*, whereby final approval of an earlier iteration of this settlement was withheld (without prejudice). Boiled down to its essence, the question before the court today is whether the settlement package proposed in 2011 cures the defects identified in 2010 by Judge Phillips. As is discussed more fully below, the court finds that it does.

"The second indicia is the involvement of one of the most respected mediators in California. On its own motion, the court takes judicial notice of the long record of service to the State of California of Hon. Howard B. Wiener (Ret.), first (briefly) on the trial court and then for many years on the 4th District Court of Appeal. The court has had the great good fortune to have had a personal and professional relationship for several years with Justice Wiener, and concludes that the fact that he presided over the mediation sessions which gave rise to the settlement presented for preliminary approval today is an important clue that the settlement represents a just and honorable resolution of the parties' disputes.

"Some courts have held that fairness is presumed where the settlement follows a formal mediation, especially where the mediator is a respected member of the legal community. *See Dunk v. Ford, infra,* 48 Cal.App.4th at 1802-03. On the other hand, some commentators have argued that mediators have a financial stake in seeing to it that cases settle, and advance the notion that the presence of a mediator offers no assurance that the settlement is fair. Erring on the side of caution, the court has not made any presumption in this case; but if ever there were a case in which such a presumption would be justified, it would be a case in which Justice Wiener had a key role. It is also noteworthy that Justice Wiener "closed the deal" after two other skilled mediators could not.

"The third factor is the reputation and conduct of the attorneys proposing the settlement. The court is familiar with some of them from practice and from earlier matters over which the court has presided. Others the court has come to know only from their presentations in chambers and in open court in this case. To a person, the court has found them to be candid, measured, professional and well prepared.

Proposed Class Counsel have significant track records of successful representation of consumers and other plaintiffs, while lead counsel for defendant come from a law firm which has for many years attracted some of the smartest, most able lawyers in the country.

"It is said that the trial court is in the best position to consider the dynamics of class certification and settlement (see discussion of *Linder, Shamblin and Cristler, infra*). If this is true, then readers of this decision will give deference to the court's conclusions in the paragraphs immediately above.

"B. Standards Applicable to Class Certification.

"Under Code of Civil Procedure section 382, a class action is permitted 'when the question is one of a common or general interest, or many persons, or when the parties are numerous, and it is impracticable to bring them all before the court. . . .' Class certification requires both an ascertainable class and a well-defined community of interest among class members." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 575.) " 'The "community of interest" requirement embodies three factors: (1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.' " (*Ibid.*)

"Because trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification. . . . [I]n the absence of other error, a trial court ruling supported by substantial evidence generally will not be disturbed 'unless (1) improper criteria were used [citation]; or (2) erroneous legal assumptions were made [citation].' [Citation.] Under this standard, an order based upon improper criteria or incorrect assumptions calls for reversal ' "even though there may be substantial evidence to support the court's order." ' [Citations.] *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435-436 (*Linder*).

"The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, a reviewing court has no authority to substitute its decision for that of the trial court." *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478-479; *Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 80 ["Under the abuse of discretion standard, 'a reviewing court should not disturb the exercise of a trial court's discretion unless it appears there has been a miscarriage of justice.' "].

"C. Standards for Analysis of Class Settlement.

"There are numerous cases suggesting judicial approaches to approval of class action settlements, including *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Wershba v. Apple Computer,* 91 Cal. App.4th 224, 240 (2001); and *Kullar v. Foot Locker Retail, Inc.,* 168 Cal. App. 4th 116 (2008). Under these cases, the factors considered by the court include:

1. Strength of plaintiffs' case. This is the most important factor.
2. Expense associated with taking the case to trial, *i.e.,* the avoided cost of further litigation.
3. Amount or value offered in settlement.
4. Extent of discovery completed and state of proceedings.
5. Experience and views of counsel.
6. Presence of a governmental participant.
7. Reaction of class members to proposed settlement. [This, of course, will not be known until notice of the proposed settlement has been given to the class.]

***

"Some appellate courts are suspicious of settlements reached without full-blown (and expensive) formal discovery. *See, e.g. Molski v. Atlantic Richfield*, 318 F. 3d 937 (9th Cir. 2003). This court does not share that view. Trial courts are, in this court's opinion, better able to evaluate whether there was collusion based in part on the reputation of the attorneys involved (as discussed in more detail above). Further, both counsel (but particularly defense counsel, upon whose client the main burden of discovery fall in cases of this nature) have an interest in minimizing discovery which is unnecessary and sometimes wasteful. The courts that automatically hold that cases that settle without full, formal discovery are somehow *per se* collusive may do a great disservice to the attorneys involved and to the litigants. There is no higher calling in the practice of law than to counsel a client to a successful, fair, and arm's-length settlement. *See Officers for Justice v. Civil Service Comm'n.*, 688 F.2d 615, 625 (9th Cir. 1982).

"Pursuant to *Kullar, supra,* 168 Cal.App.4th 116, a trial court is required to "receive and consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed. The court must at least satisfy itself that the class settlement is within the ballpark of reasonableness. *See Tech-Bilt, Inc. v. Woodward-Clyde Associates* (1985) 38 Cal.3d 488, 499-500. The court is called upon to consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable. *City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448-462.

"D. Ruling.

"Plaintiffs move under CRC 3.769(c) and (d) for a grant of preliminary certification of the settlement class for settlement purposes only, for appointment of plaintiffs' counsel as Class Counsel, authorizing the parties to provide notice to the class in the form presented with the moving papers, and scheduling a final approval hearing on 3/16/12 at 1:30 p.m. in D-72 of the San Diego Superior Court.

"The court finds that the Joint Declaration of Plaintiffs' attorneys Alan Mansfield and Nicholas E. Chimicles sets forth enough information about the nature and magnitude of the claims being settled, as well as the impediments to swift recovery, to permit the court to make an independent assessment of the reasonableness of the terms to which the parties have agreed. The court further finds that, although it has not been presented with detailed evidence of depositions and other formal discovery, the moving declaration contains enough information about discovery and the ongoing exchange of information for the court to reach a conclusion that the case has been adequately investigated. The interviews of several hundred class members is particularly impressive to the court.

"The court further finds that, consistent with the principles summarized in part 3B above, class certification for the purposes of settlement is appropriate, in that 1) there is both an ascertainable class and a well-defined community of interest among class members, and 2) there are too many class members to bring before the court in individual actions.

"While there is no governmental actor, the court notes that several attorneys general participated in the *True* case, and successfully opposed an earlier iteration of this settlement.

"Plaintiffs' counsel believe they have a strong case, but have also realistically analyzed the many defenses available to defendants as well as the substantial avoided cost of further litigation. They have also realistically considered the delays that are inherent in litigation.

"The Motion to Preliminarily Approve the Settlement and Direct Dissemination of Class Notice filed by plaintiffs on 9/6/11 is granted pursuant to CRC 3.769(c) and (d), as the proposed class settlement appears to be reasonable, fair, and adequate and the result of good faith negotiations. Defendant American Honda Motor Co. filed Notice on 9/19/11 it did not oppose this motion. The court finds that this settlement is qualitatively and quantitatively more advantageous to the class than the one reviewed by Judge Phillips.

"The Proposed Settlement Agreement and the Joint Declaration of Class Counsel indicates that based on a claims made basis, the potential class likely exceeds 200,000. Using only the estimated number of original purchaser Settlement Class Members, defendant AHM may need cash available in excess of $29 million just for the cash payment elements of the settlement (if all 200,000+ Settlement Class Members claim the $100 cash payment, it would exceed $20 million. Additionally, the approximately 90,000 MY2006-2008 Sub-Class Members can claim an additional $100 cash payment, which would add $9 million to the cash component.)

"Additional value is provided by the Option B Rebate Certificate program which makes these certificates transferrable and thus adds cash value to those Settlement Class Members who do not wish to purchase a new Honda vehicle.

"Furthermore, the MY 2006-2008 sub-class members are now entitled to claim an additional fully-transferrable Option B Rebate Certificate. This further enhances value. Based on the number of Settlement Class Members, AHM may need cash available to pay out in excess of $145 million on Option B Rebate Certificates alone. (All 200,000+ Settlement Class Members can claim one rebate certificate with a face value of $500. This would exceed $100 million to be paid by Honda if all certificates were redeemed. Approximately 90,000 MY 2006-2008 Sub-Class Members can claim an additional $500 rebate certificate. This would add an additional approximate $45 million if all were redeemed.) Since these are redeemed through the Settlement Administrator (Rust), separate and apart from the purchase transaction with no dealership involvement, and paid out by AHM directly (not the dealership), there appears to be no concern the dealership will inflate prices to offset the certificate's value.

"Also, while the value of the Warranty Extension for MY 2006-2008 class members' IMA batteries (which was not present in the rejected final approval in the *True* federal class action case), and the JAMS process are difficult to monetize, this part of the Settlement provides a significant benefit to the sub-class on a vehicle part that can exceed $3,000 in parts and labor to repair.

"The proposed notice is adequate. Here, the proposed notice will be sent via first class US mail to the last known address of each Class Member. Further, a website is to be established. The court has been informed that defendant believes it has good addresses for most class members given the ongoing servicing needs of the vehicles, and Rust will be required to seek to locate Class Members for whom it does not. The court finds this is the best practicable notice under the circumstances.

"The settlement is the product of arm's length negotiating. Class Members have the ability to opt out. The additional payment to the Class Plaintiffs/Representatives of $12,500 to John True, $10,000 to Gonzalo Delgado, and $5,000 each to the remaining named Plaintiffs (Logan and Anita Lockabey, Kevin Thieben, Ronda Gibble, Gary Stouch, Roy D. Sherrid, Branka Krsul, and Tomas Castrejon) is a matter for strict judicial scrutiny. No named Plaintiff will be eligible for an incentive award if he or she elects to exclude him/herself from the Settlement. Defendant AHM will pay up to $26,000 of the Named Planitiffs' Incentive Awards, the balance of which, if any, shall be paid from Class Counsel's fee and expense award. In other cases, this court has expressed doubts regarding incentive awards in excess of $5000 where those awards are disproportionate to the recovery of a "rank and file" class member. On the other hand, the court has been called upon in a variety of settings to impose substantial cost awards on unsuccessful litigants, and understands the risks associated with agreeing to be named as a class rep. The court reserves a ruling on this issue, and will require each named plaintiff to file, in connection with the final approval hearing, a declaration or affidavit summarizing that plaintiff's efforts on behalf of the class.

"Class Counsel will be requesting fees and costs not to exceed $8,474,000, at the Final Approval hearing, separate and apart from the benefits offered to the Settlement Class, to be distributed in an already-agreed-upon proportion between counsel in *True, Lockabey, Gibble, Stouch*, and *Thieben*. AHM has agreed not to contest an award of that sum. Counsel states that this fee was agreed upon only after

the basic business bargain was struck. The court reserves ruling on this issue until the final approval hearing.

"Class counsel recommends a final approval hearing date of 3/16/12 at 1:30 p.m. in D-72 of the San Diego Superior Court, and the court sets such a hearing date and imposes the other cutoff dates recommended by Class Counsel."

2. The Class Notice.

Based on the foregoing findings and the court's September 30, 2011 Orders, nearly 460,000 non-duplicative packages containing the Class Notice were sent out via first-class US Mail. [Botzet Declaration paragraphs 10-11] In addition, the Settlement Administrator created and maintained a website and a toll-free phone system relating to the settlement; both have received activity. [Botzet Decl. paragraphs 5-6; Botzet Supp. Decl. paragraphs 4-5] More than 446,000 packages containing the Class Notice were successfully delivered. [Botzet Decl. paragraphs 11-13]

There can be little doubt the Class Notice achieved wide penetration, or that the proposed settlement gained significant notoriety. The settlement was the subject of at least two articles in a California legal newspaper before the objection/opt-out deadline (Los Angeles *Daily Journal*, "Small Claims Case Shows Class-Action Angst," page 4, January 26, 2012 and Los Angeles *Daily Journal*, "Woman Wins Small-Claims Suit Against Honda, February 2, 2012). There was at least one other more recently (Los Angeles *Daily Journal*, "States Won't Oppose Honda Hybrid Gas Mileage Class Action Settlement, March 2, 2012, page 2). Honda's March 9 filing reflects there were a great many other articles, as well as radio and TV coverage. [The court did not consider any of the content of any of these articles, and did not see or hear any broadcast.] Mr. Chimicles asserted at the fairness hearing that this was the most heavily scrutinized consumer settlement he had ever been involved in.

A few of the objectors whose assertions are summarized in section 4C below claimed that the Class Notice was somehow vague or confusing in some fashion. The court re-reviewed the Notice in the form in which it was received by class members, and disagrees with this contention. It is in plain language and satisfactorily describes the

litigation and the settlement. The court finds that it more than satisfies CRC 3.766, 3.769, and Civil Code section 1781.

Ms. Peters asserted at oral argument that the court, in considering the form of the Notice, should somehow put itself in the place of a hypothetical class member opening the envelope, and assume the Notice was not carefully read by class members. The court rejects this contention. It is unsupported by any case law; moreover, the evidence before the court, in the form of numerous communications to the court summarized below, is that the class members did read the Notice with care.

3. Intervening Legal Developments Since Preliminary Approval.

On January 12, 2012, the Ninth Circuit decided *Mazza v. American Honda*, Case No. 09-55376, ___ F. 3d ___, 2012 U.S. App. LEXIS 626. The *Mazza* court, reversing the district court, found that it was not appropriate to certify a nationwide class of all consumers who purchased or leased Acura RLs equipped with a Collision Mitigation Braking System ("CMBS") during a 3 year period. In *Mazza*, plaintiffs alleged that certain advertisements misrepresented the characteristics of the CMBS and omitted material information on its limitations. The complaint stated four claims under California Law. Honda contended: (1) that plaintiffs failed to satisfy the commonality requirement; (2) that common issues of law did not predominate because there are material differences between California law and the consumer protection laws of the 43 other jurisdictions in which class members purchased or leased their Acura RLs; (3) that common issues of fact did not predominate because resolution of these claims requires an individualized inquiry into whether consumers were exposed to, and actually relied on, various advertisements; and (4) that some members of the proposed class lacked standing because they were not injured.

The Ninth Circuit panel vacated the class certification order, holding that the district court erred because it erroneously concluded that California law could be applied to the entire nationwide class, and because it erroneously concluded that all consumers

who purchased or leased the Acura RL can be presumed to have relied on defendant's advertisements, which allegedly were misleading and omitted material information. The vote was 2-1; Senior Circuit Judge Nelson dissented. On January 12, this court entered a *sua sponte* order requiring the parties to address the impact, if any, of *Mazza* on this court's September 30, 2011 Order, which provisionally certified the class.

On February 17, 2012, Honda filed its brief in accordance with the January 12 Order. Plaintiffs discussed and distinguished *Mazza* in their moving papers filed February 17 (discussed in more detail *infra*).

The court has reviewed this briefing, and is satisfied that the *Mazza* decision does not materially alter the rationale underlying the court's decision last September to certify the class for settlement purposes. If anything, the *Mazza* case is indicative of the potentially difficult road faced by plaintiffs in the absence of settlement. Procedural and substantive barriers to recovery are, of course, a key element in the consideration of the most important factor in the court's analysis: the strength of plaintiffs' case.

On February 6, 2012, the First Appellate District of the California Court of Appeal decided *Duran v. US Bank, NA,* No. A125557, Order Mod. Opin. and Denying Reh., 2012 DAR 3072. *Duran* involved a putative class of business banking officers who claimed they were misclassified by US Bank as outside sales personnel exempt from California's overtime laws, and were thus unlawfully denied overtime pay. They alleged claims under B&P Code section 17200. After lengthy pretrial proceedings, *Duran* proceeded to a bifurcated trial. The Court of Appeal not only reversed and remanded for a new trial, but also ordered the class decertified. Its central holdings were that the trial court denied US Bank due process by allowing plaintiffs to proceed with a trial plan which involved a representative sampling of plaintiffs, and disallowing defensive use of evidence challenging the individual claims of the absent class members. The court held US Bank was unfairly restricted in presenting its defense to class-wide liability. The Court went on to hold that the trial court abused its discretion in refusing to decertify the

class because the law and the evidence rendered class treatment inappropriate as individual issues predominated and were unmanageable.

While *Duran* was not a consumer case like this one, and while the court assumes that *Duran* will be the subject of a petition to the California Supreme Court, the court can easily envision several scenarios in which Honda would seek to import the successful defense themes from that case into this one. Footnote 10 of Honda's 3/9/12 Response to the Hagens Berman objection confirms this. Based on the widely disparate views of HCH owners already made known to the court (discussed *infra*), the court cannot say that such an effort might not present a serious challenge to plaintiffs in terms of obtaining non-consensual certification. Again, this is an important factor in the court's consideration of the settlement as a whole.

4. <u>The Reaction of the Class to the Settlement</u>.

A. Claim Forms.

As of February 14, almost 46,000 claim forms had been returned, which equated to a response rate of about 10%. Botzet Declaration paragraph 15. By March 7, the number of claim forms received by the Settlement Administrator had risen to 53,111. Botzet Supp. Decl. paragraph 6. By design, the deadline for submission of claims is not until six months after the "Effective Date," which is after final approval has been granted and time for appellate review has passed (and not earlier than October 15, 2012), or appeals have run their course and the settlement has become effective.

Hagens Berman contends, in a summary and unsupported fashion, that no more claim forms will come in. [3/13/12 Brief at p. 8] This supposition is contraindicated by the fact that the 7000+ forms which came in between the two Botzet declarations arrived precisely during the time when Peters and others were urging class members to do otherwise.

B. Opt-Outs.

The class notice provided that opt-outs were due not later than February 11, 2012. There were 1705 timely opt outs, equating to slightly more than 3% of the class members returning claim forms. Botzet Supp. Decl. paragraph 7. A handful of class members mistakenly sent their opt-out notifications to the court rather than to the Settlement Administrator. The parties agreed that opt-outs sent to the court before February 11 would be deemed timely received as if they had been sent to the Settlement Administrator (as they later were). The court reviewed the misdirected opt-outs to get a sense of same.

Mr. and Mrs. Murray of Santa Rosa, CA stated they wished to be excluded from the settlement class because they "want no part in support of the litigation against the Amer. Honda Motor Co. We are pleased with the Honda we bought in 2002."

Minoru Akiyoshi of Davis, CA sought exclusion from the settlement class and inclusion in the group "who drive conservatively and carefully in order to attain a MPG near 50 MPG. I have no complaints."

Clancy Hughes, a physician in Homer, AK, outlined his car's satisfactory mileage in the challenging conditions of Alaskan winters, opined that the claims "seem spurious," and concluded "I do not wish to join the class action suit and I submit to the court as a friend that in my opinion and from my experience the suit is unwarranted."

Mark Baum of Madisonville, KY outlined the reasons for his request for exclusion: "I am satisfied with my Honda's performance and battery pack both before the IMA service and after...I am very happy with both American Honda...and my dealer...."

Kent Shrack of Lawrence, KS opted out and stated his opposition to the settlement based on "simple math" applied to the 75,000 miles he expects to put on his

car in the coming years following the 10 to 12 miles per gallon drop in performance "since American Honda reprogrammed my car."

Martin Buerger of Menlo Park, CA opted out, stating he had not approached any attorney about representing him in "this unmerited suit." He asked that the court withhold fees to class counsel accordingly.

After notifying Class Counsel she felt they had "negotiated one of the best class action settlements [she had] ever seen," Ms. Peters opted out. Her situation is discussed in more detail below.

Ralph Oropesa and Nancy Lansdale of State College, PA opted out, citing the inadequacy of the settlement in light of the $8000 premium they believe they paid for their hybrid vehicle.

Thus, while it appears many of the opt-outs requested exclusion because they were dissatisfied with the settlement and did not wish to be bound by it, some did so out of an ethical conclusion that they should not participate in receiving the benefits of the settlement of a lawsuit they do not believe should have been brought in the first place. As will be seen, there are like-minded satisfied HCH owners who objected to the settlement on a similar basis. [Exhibit 10 to Honda's 3/9/12 Response to the Hagens Berman objection (discussed *infra*) provides further examples of this phenomenon.]

C. Objections.

The Class Notice provided that objections were due by February 11, 2012. The court received several timely objections to the settlement. Most were informal, consisting of letters to the court. Some were formal.

Karsten Adam of Mountain View, CA wrote that he wished to "reject to" (*sic*) this "frivolous lawsuit by the infantile complainers (named plaintiffs);" he stated his view

that plaintiffs are "cry babies" while Honda is "leading the way with quality vehicles." Adam also attacked the integrity of plaintiffs' counsel, referring to them as "greedy" and "blood sucking." Along the same lines was the objection from Keith Cyrnek of Glendale, AZ. He spoke in favor of Honda at the fairness hearing in the *True* case, and stated that the settlement is "another example of the NON-Producers wanting to suck $$$$ away from the producers" (sic).

In a distinct but related vein, some objectors challenged the ability and discernment of the court. An example is the objection received from Rudy Stefenel of Milpitas, CA. He referred to the settlement as "criminal because it is pure bullshit." He considers the court's preliminary approval (which he evidently thinks was a "verdict") an "insult to honesty and human decency," believes that the court permitted itself to be misled, and wondered "how long have you been a judge?" He also urged the court to arrange for test drivers "just like ...Myth Busters on TV."

Gerald Nicholson of Sun City, AZ also objected, stating that he considers the $8.474 million in attorneys' fees "ridiculous," the lawsuit frivolous, and noted that he purchased two Honda hybrid vehicles (2003 MY and 2006 MY), and is "extremely satisfied with the MPG of both vehicles." He even attached his gas expense log for his 2006 vehicle. His wife Lisa separately objected to the settlement, joining many of his comments.

Scott Parsons of Alamogordo, NM objected to what he said are "poor settlement terms" which he suspected were written by Honda. He also opted out of the settlement, asked the court to "delay the trial for six to eight months," and made reference to a website, www.dontsettlewithHonda.org, which evidently suggests that owners opt out of the settlement and sue Honda in small claims court. The website is run by Ms. Peters, the focus of the Los Angeles *Daily Journal* articles referenced above, who did in fact sue Honda in the Small Claims Court in Los Angeles County. Of this more below.

Erin Wiltowski of Crainville, IL objected to the settlement, claiming she averages only 37 MPG. She even attached copies of the "EPA estimate" portion of the "sticker" for her car. She stated she did not feel "the options offered in the settlement justify the daily expenses that have accrued."

Jeffrey Anderson of Burnsville, MN objected to the settlement, noting that the mileage figures on the sticker are "ESTIMATES" (sic). He, like Ms. Wiltowski, attached a copy of the sticker from his car, highlighting the language "your actual mileage will vary." He closed with the opinion that this "is a case that will enrich lawyers, not the consumer, and punish a car company for unjust reasoning" (sic).

John and Ida VanderMolen of Winthrop, WA objected to the settlement, claiming it offers "nominal benefits" in light of the fact they have already traded in their vehicle. They assert the settlement proposes "unfair and unequal treatment of class members." They indicate their willingness to withdraw their objection if the attorneys agree to modify the settlement in the manner reflected in their letter.

Gregory McClain of Redondo Beach, CA objected to the settlement because he believes "Honda obeyed the relevant laws" and "the settlement is basically legal extortion of Honda by the trial attorneys." He urged the court to reduce the "lawyers' payout" to a nominal amount.

Jeremy Schwartz of Willimantic, CT objected to the settlement, stating his satisfaction with the fuel economy he has achieved with his 2003 Civic Hybrid and noting that the settlement seems to have, as its main objective, the enrichment of a team of lawyers. He fears that the settlement will encourage similar harassment of Honda in the future, and the consequent raising of prices for vehicles for consumers.

Kathy Proya of Toronto, OH objected to the settlement, calling it a "travesty of justice" because it offers to enrich the class representatives and lawyers while offering

her "a fraction of (her) actual loss. This is based on putting 208,000 miles on her 2005 Honda Civic Hybrid and achieving less than the advertised mileage.

Erin Vitus of East Palo Alto, CA objected to the settlement. She believes the lawsuit frivolous, believes the plaintiffs are not suffering real hardship because they are not changing their driving habits, and believes the attorneys' fee award is excessive. She observed that "mileage is like diets, actual results will vary, especially based on the individual's motivation."

Christopher Day of Arlington, VA filed a very formal objection, claiming the settlement is "unjust, inequitable and unfair to members of the settlement class." He urged the court to reject the settlement in favor of a result which more closely matches the result of the award to Ms. Peters in the small claims action referenced above. He attached a copy of the Small Claims Commissioner's 25 page "Memorandum of Decision" filed 2/1/12 in LASC Case No. SBA 11S02156. On its own motion, the court takes judicial notice of the decision pursuant to Evidence Code section 452(d)(1). In *People v. Harbolt* (1997) 61 Cal.App.4th 123, 126 -127, the court discussed the limited purposes for which a court may take judicial notice of a court record:

> "Evidence Code sections 452 and 453 permit the trial court to 'take judicial notice of the *existence* of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact.' [Citations.]

The parties have advised the court that Honda has taken an appeal from the Commissioner's decision in *Peters v. Honda*, and under the rules, review will be via a trial *de novo*. CCP section 116.770(a). Accordingly, the decision is entitled to little weight at present. Moreover, class members have the right to opt out of the settlement and pursue their individual claims – as the Commissioner found Ms. Peters did. Two other putative class members who also pursued individual claims in small claims court received nothing, and these decisions are final and not subject to appeal. Anderson Decl.

paragraphs 4-5, Exs. 2, 3; CCP section 116.710(a). The court takes judicial notice of these decisions as it did with the Peters decision. Sub-class members also have the right to accept some of the benefits of the settlement and, if they wish to further pursue their disputes with Honda, engage in a binding arbitration procedure overseen by a leading ADR provider (JAMS).

Glenn Schrader, a seasoned lawyer in Oklahoma City, also filed a formal objection to the settlement. He provided a table setting forth his perception of the similarities and differences between the settlement rejected by Judge Phillips in *True* and the settlement proposed here. He believes the benefits offered by the settlement are illusory, and that certain of the settlement consideration is of either inconsequential value or no value. He also contends, based on the small claims decision in *Peters*, that "liability against Honda has been proven." He objects to the proposed attorneys' fees award of $8,474,000, and contends that class counsel should be replaced. He appeared at the fairness hearing, and addressed the court. His oral motion for leave to opt-out after the deadline is denied without prejudice.

Paul and Tamara Arlin of Covina, CA objected to the settlement, raising several points including the *Peters* small claim result. They purchased three Civic Hybrids (2004, 2006 and 2007), and believe they incurred harm as a result. They asked the court to disallow Honda's effort to "avoid responsibility using money, a large number of attorneys and greed."

Timothy Hitz of Colorado Springs, CO also objected. He, like others, cited the small claims result in *Peters*, but he acknowledged that the award to Ms. Peters was "excessive." He calculates $3073 as his own actual loss, in terms of extra fuel costs from loss of MPG since the "reprogramming of the battery circuit." He notes that the "$200 settlement offer does not come close" to this.

David Lang of Flagstaff, AZ objected, but also stated "I do not want to be excluded from this class settlement." He states his "battery is gradually failing as

evidenced by decreasing miles per gallon...especially in town." He is very worried about the declining resale value of his car.

Andrew and Leslie Newman of Los Angeles objected, but like Mr. Lang did "not exclude [themselves] from the class or subclass." They alleged that the "IMA software update mandated by Honda reduced the already disappointing fuel economy by over 10%." They also urged the court to find that the *Peters* small claims result "is testament to the insufficiency of the current proposed settlement."

Paul Seyler of Firestone, CO also objected, although he, like the Newmans and Mr. Lang, plans to "take part in the class action suit and ... abide by the final settlement determined by the court." He urged the court to require that Honda replace the batteries that fail within the reasonably expected lifespan of the car. He also contrasted the "HUGE amount of money ...that would be awarded to the lawyers" with the "pittance" to be received by the owners of the vehicles. He notes that if the class counsel had done any discovery they would have discovered that most class members would never consider buying a Honda again; thus, he argues, the rebate certificates are "ridiculous."

E Marie Colo of Lynden, WA objected. She calculates a fuel cost difference of "AT LEAST $2285.71" over the 200,000 mile life of her car, and states that is the "MINIMUM amount each one of us should get." She also takes on class counsel, stating NO ONE needs THAT MUCH MONEY! Don't be greedy. It's unbecoming." She also takes on the class representatives, stating they "shouldn't get any more than the rest of us. Don't reward people for being litigious. It sets a bad example."

Peter Schurke of Lywood, WA, an assistant principal of a high school, objected stating that his vehicle consistently averaged less than 40 mpg – 77% of the advertised mpg – until the IMA battery recall, and after that averaged only 28.9 mpg, only 59% of the advertised mpg (with an accompanying drop in performance). He notes that the $100 proposed recovery will only purchase about 28 gallons of fuel at current prices. He also refers to the rebate certificate as "insulting," inasmuch as he would never consider

purchasing another Honda. He also believes the $250 fee for arbitration is designed to discourage utilization of same, and that the fees proposed for class counsel are far out of proportion to the benefits obtained for the class.

Susan Leibowitz of Arlington, MA objected to the proposed warranty extension because it does not cover her 2002 vehicle.

Curtis Sahakian of Skokie, IL filed a formal objection. He attached to it, among other things, a copy of the *Peters* small claim decision as well as a hearsay listing of purported comments from a website. These are inadmissible. He claims his vehicle only gets 30 mpg, which he calculates to $13,125 in excess fuel costs. He also objects to what he believes are excessive attorneys' fees for class counsel.

Marjory Trott of Nantucket, MA objected on the basis that it costs $4000 to replace the IMA battery, and she was charged $5000 extra for her hybrid (over the conventionally-powered Civic). She claims the benefits to the individual class members do not approach these actual damages.

Elizabeth Sutherland of Durham, NC seeks $3000 per vehicle, which she believes is "more realistic" than the $100 proposed, and objects to the proposed attorneys' fees as out of proportion to the benefits conferred on the class.

Christian Matthews of El Cerrito, CA objected based on only obtaining 32 mpg, which he believes equates to $6000 in additional fuel costs. He equates Honda to a "con man, swindler or a thief."

Attorney Clinton Killian of Oakland, CA objects, noting that there is nothing in the settlement for him because he traded in his vehicle after the "software repair" severely damaged his car in 2010 such that he found it no longer safe to drive.

Donald Catanzaro of Lowell, AR objected, noting that the settlement offers him about 58 gallons of gas which does not begin to approach the money he has spent on extra fuel.

Melinda Collins of Royal Palm Beach, FL objects to the settlement, stating she is very happy with her Honda vehicle, which gets over 49 mpg. Her only objection is that the $100 is available only to people who are willing to state they are dissatisfied with the fuel economy. She believes the settlement causes unwarranted damage to the reputation of the HCH, and that the entire lawsuit is absurd.

Jonathon Ramos of Huntington Beach, CA objected to the settlement based on a "HUGE" problem he had with his vehicle stalling due to the faulty IMA battery. He believes he is entitled to, at a minimum, $1575.00 rather than the $100 offered in the settlement.

Thomas J. Tomaka of Atlanta focuses his objection on the attorneys' fees. He believes the actual damages to each class member are $3375, and that class counsel only obtained 5.9% of this amount for the class members. Accordingly, he argues that class counsel should only receive 5.9% of the fees requested, or $500,000.00.

Michael Belshe of Saratoga, CA objects, noting that the deleterious impact of the "software patch" was noticeable as soon as he drove his car off the lot, and that his gas mileage decreased steadily afterwards. He refers the court to the *Peters* result, and estimates his actual damages at $3600.

Nancy Cummings of Raleigh, NC filed both a claim form and an objection, stating that she suffered a 10 mpg performance reduction after the software "upgrade."

Roy Richardson of Virginia Beach, VA objected, claiming he is entitled to have his IMA battery replaced at no charge.

Vicki Moll of Ridgewood, NJ states that her car gets 40-45 mpg presently, and that the attorneys' fees for class counsel are excessive. She calculates that the amount claimed equates to 20 person/years of work on the case.

Amanda Smith of Mountain City, TN objects to the settlement on the basis that the case is unfounded, her car averages 50 mpg and has never exhibited a problem with the battery. She maintains the lawsuit is frivolous.

Steven Chung of Tujunga, CA objected based on "disturbing developments" occurring since preliminary approval (principally the *Peters* result). He believes these developments warrant a closer, skeptical examination of the settlement.

Several objections were received after the February 11 deadline. Three were received on February 14:

Jaimie Sorenson of Portland, OR wrote that she did not wish to be excluded but objects to that portion of the settlement relating to the optional rebate program. She states that she would never consider purchasing another Honda. She was not happy with her gas mileage, and this was made worse by the "horrible" treatment she received at the hands of Honda when the "software upgrade ... made [her] car unsafe." She got rid of her Honda and "will never purchase one again."

Ildiko Kovach of Silver Spring, MD objected on the basis of her car's poor (and declining) fuel economy and her loss of $4000 consisting of the premium she believes she paid for a hybrid. She reports a conversation with her dealer in which a recommendation was made to purchase a regular gasoline-powered Civic rather than a hybrid. She believes the cash offered in settlement to be grossly inadequate.

Victoria and Dennis Sedlacek of Boulder, CO objected, feeling "grossly misled" by Honda as to the efficiency of the vehicle, and complain of the consequent increased

fuel costs. They, like others, attribute this to the software updates intended to prolong the life of the car's battery.

Another objection was received on February 15 from Robert Hegarty of Orinda, CA. He attached his handwritten objection to his claim form, whereby he claimed the benefits of the settlement. He alleges he has suffered a greater economic loss than the terms of the settlement offer, and urges that the vehicle is dangerous as it "has not the necessary power to be safe." He alleges that his wife could not make the car go up one of San Francisco's famous hills "as [the] sole occupant."

Formal objections were timely received from the following counsel:

Leslie Ann Burnet of the Los Angeles law firm of Acker & Whipple, representing herself. She attaches a copy of the *Peters* decision as well as an inadmissible printout from a "green auto" blog. She argues that, in light of the result in *Peters*, plaintiffs have a strong case, and thus under *Kullar, supra,* the court should reject the settlement. She, like others, claims her Honda vehicle averages only 30 mpg. She calculates the total lost gas savings at $18,500 over a 100,000 mile life of the car. She notes that she was threatened with a voided warranty if the software upgrade was not installed, and felt compelled to agree to it. She then suffered "subpar" performance as has been described by other objectors summarized above.

Heather Peters, the successful small claims litigant referenced above, re-activated her license to practice law effective January 30, 2012, and filed a lengthy objection on behalf of Diane Kramer and Rob Bleetstein. As might be expected, she offers the Commissioner's decision in her small claims case as proof of the strength of plaintiffs' claims. She also argues that the warranty extension is worthless; that there is a "public uproar" in opposition to the settlement; that the settlement is only a minor improvement over the one rejected by Judge Phillips in *True*; that the ADR process in the settlement is unfair; that the notice to the class was infirm and unduly burdens class members; that the release contemplated by the settlement is overbroad; that the class members have not

been provided enough information to evaluate their claims; and that the attorneys' fees sought are unreasonable in comparison to the benefits conferred on the class.

Several of the declarations and other quasi-testimonial materials offered by Ms. Peters in support of her Objection are severely undercut by the Botzet Declaration attached to Honda's March 9 filings, at paragraphs 9-13.

Peter Fredman, a member of the State Bar with an office in Berkeley, CA, filed an objection on his own behalf. He is a member of the IMA battery subclass, and objects to the settlement of those claims. He provides a detailed account of the problems he faced with his own vehicle. He also states he is co-counsel with the Hagens Berman firm in the newly filed *Rego* action.

Thomas Loeser and others from the Hagens Berman firm filed an objection on behalf of class members John Rego, Ron Biermann, Caroline Khripin, Milton Pyron, Stephen Pustelnik, Rebecca Schrader and Kim Noack. Like Mr. Fredman, they do not object to the settlement of the "false advertising" claims; rather, they focus their attack on the IMA battery subclass. Most of them, along with Lani and Trever Button, also filed a competing putative class action in the US District Court for the Central District of California on the same day they filed their Objections in this court. The 291 page, 1505 paragraph complaint was submitted with the objection papers. It contains a proposed class definition which is itself 51 paragraphs long, one for each state and the District of Columbia, as follows: "During the fullest period allowed by law, all persons or entities, (*sic*) who own or lease in the state of _____ a Defective Hybrid." [Complaint pp. 25-28] "Defective Hybrid" is defined to mean "95,123 model year 2006-2008 Honda Civic Hybrids" sold in the United States. [Complaint paragraph 9] But we know from the Nicholson objection discussed above that this description is overbroad.

Hagens Berman (and, apparently, Fredman) filed the *Rego* action without first seeking from this court an order lifting or modifying the preliminary injunction embodied in paragraph 24 of the court's September 30, 2011 Order. They did so when five of their

clients had filed objections, none had opted out, and two (including the lead plaintiff, Rego) had submitted claim forms seeking the benefits of the settlement they now object to. Botzet Decl. at paragraphs 7-8. This was not only arguably the violation of a court order; it was also likely contrary to California law. *Villacres v. ABM Indus.*, 189 Cal. App. 4th 562, 587 (2011).

Hagens Berman contends in its March 13 brief that the court lacks authority to enjoin its clients from filing and pursuing the new *Rego* action (which was recently reassigned to Judge Phillips). Under law, the time to make that argument was on a motion to lift or modify the injunction. Hagens Berman chose instead to shoot first and ask questions later.

The court finds that it need not insert itself into the procedural debate undertaken by Honda and Hagens Berman, because the court is able to resolve on the merits the controversy about whether the settlement passes muster.

The court concurs with part F of Honda's March 9 brief: Hagens Berman's assertion that the parties somehow sought to avoid Judge Phillips is factually inaccurate. The parties, the undersigned and Justice Weiner all insisted on transparency in the whole process which resulted in this matter being on this court's calendar today. Hagens Berman's baseless accusation to the contrary detracts from its overall presentation.

On February 6, 2012, attorney Marianne Borselle filed an objection on behalf of Steven Vise and Richard Vise, as well as a motion for leave to intervene, supporting papers, and a proposed complaint in intervention. Attached to the Vise papers were several items, including a transcript of the 2010 fairness hearing which preceded Judge Phillips' opinion in *True*. The court read it with interest. Although the Borselle/Vice papers are confusing, their position appears to be that they agree with everything about the proposed settlement except the disposition of the attorneys' fees; and on this issue, they claim they had a hand in persuading Judge Phillips to reject the earlier settlement and therefore deserve a financial reward for having done so. In other words, they believe

they are entitled to a reward for the incremental improvement of the settlement package. They believe this should come in the form of a fee award of $50,000.00. See further discussion in section 14, *infra.*

D. Further Briefing.

On February 17, 2012, plaintiffs filed two interrelated motions: their motion for final approval, and their motion for an order approving attorneys' fees, reimbursement of expenses, and payments to class representatives. The court had expressly reserved its rulings on the fees/incentive awards toward the end of the September 30 Order quoted in section 1 above. Both motions were supported by thoughtful briefs, as well as by the following declarations:

- Joint Declaration of Nicholas Chimicles, Jonathan Cuneo and Alan Mansfield in support of Joint Motion for Final Approval of Settlement
- Declaration of Joel Botzet [of Rust Consulting] Regarding Settlement Administration
- Declaration of Hon. Howard B. Weiner (Ret.) in Support of Application for Final Settlement Approval [Justice Weiner's Declaration confirms the observations made by the court last September 30 (set forth in part 1 above) regarding his involvement and the arms' length nature of the negotiations which gave rise to the settlement.]
- Declaration of Alan Mansfield in Support of Motion for Attorneys' Fees/Expenses
- Declaration of Michael Lindsey in Support of Final Approval and Award of Fees/Expenses
- Declaration of Nicholas Chimicles in Support of Motion for Attorneys' Fees/Expenses
- Declaration of Jonathan Cuneo in Support of Motion for Attorneys' Fees/Expenses
- Declaration of James R. Hail in Support of Motion for Attorneys' Fees/Expenses
- Declarations of the following class representatives: Castrejon, Delgado, Gibble, Krsul, Sherrid, Stouch, Thieben and True. [This is all the class representatives other than the Lockabeys.]

On March 9, Class Counsel filed their Consolidated Response to the Objections. This brief was supported by: A) the Declaration of William H. Anderson; B) the [supplemental] Declaration of Michael E. Lindsey; C) the Supplemental Declaration of

Joel Botzet; D) the heretofore missing declaration of the Lockabeys, presented in joint form; E) a Reply to the objections regarding the fee requests of counsel; and F) a thick lodgment of foreign authorities. With regard to the latter submission (replicated by Honda): The court asks the parties to forebear from routinely lodging copies of federal or foreign authorities in the future. These are ordinarily available to the court on Westlaw. Counsel are encouraged to review the amendments last summer to CRC 3.1113(i) in this regard. The former rule made such lodgments mandatory; the current rule permits judicial discretion in this area. The court will advise counsel if it needs a lodgment of a non-California authority. Many trees will be saved if counsel will honor this request. Also, recent budget cuts imposed on the court make the clerk time for the handling of these lodgments quite problematic. The court will return the lodgments to counsel at the hearing.

Also on March 9, Honda submitted its responses to the Peters objection and the Hagens Berman objection. These were supported by a variety of exhibits, including a third declaration of Mr. Botzet. Hagens Berman replied on March 13and March 14.

The court has reviewed all of the foregoing pleadings and papers, as well as those discussed *infra*. There was no shortage of good briefing in this case.

The court did not consider the Borselle declaration filed March 15 or the Peters Supplemental Declaration filed March 16. Both were filed after the court published the tentative ruling. Briefing in a case must come to an end at some point. As the court held in the summary judgment context in *San Diego Watercrafts, Inc. v. Wells Fargo Bank*, 102 Cal. App. 4th308, 316 (2002), consideration of evidence offered in a manner such as the late declarations addressed here violates the other party's right to know "what issues it was to meet in order to oppose the motion. Where a remedy as drastic as summary judgment is involved, due process requires a party be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail." Similarly, here, the moving parties had the right to expect that these objectors would lay all of their evidentiary cards on the table in their earlier papers. It is noteworthy that the

same rule applies in federal court, *See Zamani v. Carnes,* 491 F.3d 990, 997 (9th Cir.2007) ("the district court need not consider arguments raised for the first time in a reply brief."), and in the courts of appeal (See *American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453 ["[p]oints raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument"]; *Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 335, fn. 8 [" '[T]he rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.' "].)

5. <u>Strengths and Weaknesses of Plaintiffs' Case</u>.

The *True* case survived an initial pleading challenge, and we have the guidance of the *Paduano* court relating to at least one defense Honda might have been expected to offer. However, to say (as many of the objectors do) that this case was a necessarily a "winner" for plaintiffs would be quite a stretch. As is clear from many of the opt-outs and objections summarized in section 4B and 4C above, there are many Honda Civic Hybrid drivers across the country who are thrilled with their vehicles. Honda would no doubt ask these people to testify in the liability phase of a trial, but the presence of these satisfied drivers is not just a potential barrier to liability. This is so because in the absence of a settlement they would no doubt also be employed by Honda to oppose class action status in the first place. The court would anticipate that Honda would argue that these satisfied owners prove that mileage and battery life are a product of individual driving habits, and thus that the individual issues overwhelm the common issues. *See Sevidal v. Target*, 189 Cal. App. 4th 905, 929 (2011). This is certainly not an argument which the court can identify at this point as frivolous – see the discussion of *Duran* and *Mazza* in section 3 above. Moreover, as even the Hagens Berman objection concedes at page 1, line 10, at least the false advertising piece of the case would face an uncertain future were it to proceed to trial. Mr. Fredman goes further, calling the false advertising case "weak at best."

Certain of the objectors point to the *Peters* small claims decision as necessarily establishing the strong factual merit of the case. The court has elsewhere addressed the non-final nature of that award, as well as the fact that two other small claims litigants received nothing and Honda prevailed. But the simpler answer is that the class members have, and have always had, the right to pursue the avenue taken (and vigorously championed) by Ms. Peters. Even those eligible subclass members who do not want to take the time or the risk associated with proceeding in small claims court can, under the terms of the settlement, accept some of its benefits and still pursue their claims against Honda in an arbitration - with no jurisdictional maximum - in which Honda pays all but $250 of the costs.

6. <u>Value of the Settlement</u>.

In the September 30 Order, the court evaluated the settlement as being potentially worth $170 million. In their moving papers filed on February 17, Class Counsel claimed a value of $87.5 million on the low end (based on claim filing experience to date), and $461.3 million on the high end (calling this a conservative estimate).

As might be expected, objectors suggest the value of the settlement is substantially less. No one has a crystal ball. But the court finds that some deference as to the calculation is properly accorded to very experienced Class Counsel, some of whom have lived with the case for more than 5 years, versus relative newcomers to the case who have only taken an interest within the last 90 days or so.

Also, the objectors' contentions that the non-cash elements of the settlement have no value are outweighed by the substantial evidence to the contrary. By way of example, the transferability component of the rebate certificates, and the robust "secondary market" for such certificates available to consumers who are not in the market for a new car or do not wish to do further business with Honda, render the certificates essentially the equivalent of cash. And, as many of the objectors point out, the IMA battery is a significant component in terms of replacement cost, so it really cannot be gainsaid that

the warranty extension has significant value. And while on the subject of the warranty, the court notes that counsel for Honda and Class Counsel more than addressed the warranty-related concerns expressed by Hagens Berman at the fairness hearing.

7. Extent of Discovery.

The court is of the view that it has been presented with sufficient information regarding the discovery and investigation undertaken by Class Counsel. The court incorporates the views it expressed on this subject last September, and concludes that the case has been the subject of adequate discovery and investigation. The court rejects Ms. Peters' contention that it should delay a ruling in this matter until she has a chance to see all of the fruits of discovery. It is she who voluntarily placed her law license on inactive status between 1/10/08 and 1/30/12, making it impossible for any clients to engage her to represent them on this matter until February 2012. Compare Peters 2/27/12 Decl. paragraph 16 and Ex. A. The delay in seeking access to the discovery is not attributable to Class Counsel or counsel for Honda.

The court also rejects the theory advanced by Peters, Hagens Berman and Fredman that the IMA claims were not properly investigated by Class Counsel. The March 9 briefing by Class Counsel, at pp. 7-9 (and supporting declarations), exposes this canard (as do the March 9 Declarations of Neil Schmidt and Livia Kiser). At oral argument, Mr. Loeser, who argued for the clients of Hagens Berman, incorrectly asserted that the IMA battery claims were added contemporaneously with the settlement. This is incorrect.

8. Views of Counsel.

Not surprisingly, Class Counsel opine that the settlement is fair and reasonable, and ought to be approved. The case law (*Dunk* and *Wershba*, both cited above, and other cases cited in the 2/17/12 moving papers) supports the conclusion that this opinion is entitled to substantial weight. As the court observed last September, Class Counsel have

a significant track record of successful representation of plaintiffs in class actions over many years. This is not their first rodeo. They have pursued these claims for 5 years plus. Again, some deference to their evaluation of the strengths and weaknesses of the case is due in this setting. By way of contrast, the case law does not support the giving of such deference to the views of objectors, particularly where several of them (Peters, Hagens Berman and Fredman) have other agendas which may justify the opposite.

9. Governmental Participant.

On February 14, 2012, the court granted the Attorney General of California's request (on her own behalf and on behalf of the AGs of several other states) for an extension of the deadline for objections (for the AGs only) to February 29. The Class Notice was sent to all state AGs, and the Attorney General of the United States, last October [Botzet Decl. at paragraph 7]; the AGs took a long second look after Ms. Peters' success in the small claims court got press and internet attention. Class Counsel did not object to the extension of the deadline for the AGs. On February 29, the AGs announced they would not seek to intervene in the case.

At oral argument, Mr. Chimicles provided significant detail concerning the efforts made by Class Counsel to meet with senior representatives of NHTSA regarding the alleged safety issues associated with the IMA batteries. The only evidence before the court is that NHTSA has not opened an investigation.

10. Ruling on Final Approval.

The court's principal concern, after reading all the papers summarized above, was whether the claims proposed to be released were so defined as to include potential personal injury claims arising from safety concerns relating to performance issues caused by the battery software patch. The Hagens Berman brief raises the safety issue in passing at page 1, line 19, and Ms. Peters raises it at paragraph 10 of her 2/10/12 declaration. Although the incidence of these concerns has been documented in the materials reviewed

by the court and described in part 4C above, it was not a central focus of any of the complaints in the actions sought to be settled. Nevertheless, Class Counsel did look into it. According to paragraph 12 of the Joint Class Counsel Declaration ("Jt. Cl. Cnsl. Decl."), no accidents or injuries have been reported that could reasonably be attributed to the software update. In addition, NHTSA, the agency charged with investigating situations like this, does not intend to pursue any sort of inquiry along these lines. *Id*; see also Anderson Decl. at paragraph 7. Moreover, the safety-related concerns could not be replicated during the test drive undertaken by plaintiffs' representatives. *Id.* More importantly, the release in question specifically excludes "claims for Personal Injury or Bodily Injury." Proposed Order at page 7, paragraph 7, lines 18-19.

A second (but no less important) concern was whether the $250 contribution to the JAMS filing fee renders the ADR alternative relating to the PUD illusory. This theme was touched on by a few objectors but was not really developed in the briefing. The cost of the arbitration may be an essential element of a fairness analysis in determining the propriety of an arbitration agreement. Although the court found no case directly on point (likely because this element of the settlement is quite unusual, Jt. Cl. Cnsl. Decl. at paragraph 25), the issue of who bears the cost of arbitration has been the subject of extensive judicial comment in other contexts. *See, e.g. Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83, 118 (2000); *Little v. Auto Stiegler, Inc.*, 29 Cal. 4th 1064, 1076, 1081-85 (2003); *Cole v. Burns Int'l Sec. Svcs.*, 105 F. 3d 1465, 1468 (DC Cir. 1997). In an employment setting, a provision which requires an employee to contribute to the costs of arbitration does not *per se* make the provision unenforceable. *Bradford v. Rockwell Semiconductor Systems, Inc.*, 238 F. 3d 549, 556-57 (4th Cir. 2001). This case-by-case approach is consistent with the approach taken by the Supreme Court in *Green Tree Financial Corp. v. Randolph*, 531 US 79, 90 (2000).

The court finds that the modest contribution of $250, with Honda bearing all other JAMS-related expenses, is a far cry from cases like *Circuit City Stores v. Mantor*, 335 F. 3d 1101, 1108 (9th Cir. 2003)(employee had to pay a $75 fee to the employer for the privilege of initiating an arbitration); *Circuit City Stores v. Adams*, 279 F. 3d 889, 894

(9th Cir. 2002)(employer and employee required to split arbitration fees); and *Guttierez v. Autowest, Inc.*, 114 Cal. App. 4th 77, 89-92 (2003)($8000 in fees exceeded consumer's ability to pay and there was no provision for a cost waiver). Here, the contribution is relatively small and there is no showing that any class member wishing to avail himself/herself of this option would be unable to pay it.

While on the subject of the ADR provision, the court finds part D on pp. 7-8 of Honda's Response to the Hagens Berman objection more persuasive on the value and attributes of the ADR option than the arguments advanced by the objectors. Those objections are overruled. Class Counsel and Honda correctly pointed out at argument that Hagens Berman's major premise – that subclass members must give up all rights under the settlement in order to use the ADR option – is a misreading of the settlement agreement.

The essence of a settlement is compromise: the "yielding of absolutes and an abandoning of highest hopes." *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998). Both sides have implicitly recognized this fact in this case, while the objectors have not. No doubt plaintiffs would have loved to have gotten more; certainly their counsel had every incentive to get as much as possible. Honda sought the dismissal of *True*, without success. Honda undoubtedly has many arrows left in its quiver, and certainly would have preferred to pay nothing. The state policy in favor of the resolution of disputes outside of court weighs heavily here, especially where the litigation is five years old and counting. While the court may not yield its duty to carefully review the settlement for indicia of collusion, it remains true that the American justice system is an adversary system which presupposes that each side will act in its enlightened best interests and decide to resolve a case only when the terms of the compromise are perceived by each side to be less risky than the risks associated with not settling. Justice and capitalism are both at work here, and in the absence of collusion or a disguised decision of class counsel to put their own interests before those of the class, it is not for the court to stand in the way of an arm's-length business transaction. This is our system, and it has stood the test of time.

The essential question before the court is whether the improvements to the settlement since Judge Phillips issued her opinion in *True* are window dressing, or whether they really address the deficiencies she identified. The court concludes the latter and not the former is true, as is cogently summarized on page 4 of Honda's Response to the Peters Objection. Indeed, the present settlement goes well beyond addressing the defects Judge Phillips identified. Therefore, the settlement is approved pursuant to CCP section 382 and CRC 3.769.

The objectors would consign the parties and the class to more litigation. Some of them complain that Ms. Peters' success in the small claims court should be used as the measuring stick, and argue that if every class member is entitled to slightly less than $10,000.00, the settlement undervalues the class members' claims. As noted in section 4C above, however, the small claims decision is entitled to little weight at the present time, and the other recent small claims results (no recovery) directly contradict the centerpiece of many objectors' arguments. Moreover, the case law is clear that a proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved at trial. *Wershba, supra,* 91 Cal. App. 4th at 246. Nor must a settlement obtain 100% of the damages sought in order to be fair and reasonable. *Id.* Rather, achieving relief that is substantially narrower under a class action does not bar class settlement approval by a court because the public interest may be served by a voluntary settlement and the avoided costs and risks of further litigation. *See id.*

Other objectors (notably Hagens Berman at page 3, line 21 and Mr. Fredman at 9:4-5) claim that there is a "spectre" or "suspicion" of collusion. But this must be shown, not vaguely suggested. Courts presume the absence of collusion unless the contrary is shown by admissible evidence. *See Munoz v. BCI Coca-Cola Bottling Company of LA*, 186 Cal. App. 4th 399 (2010); Newberg on Class Actions, section 11.51, citing cases. The court is unable to discern any evidence of collusion in the very substantial record before it; indeed, the Justice Weiner Declaration leads to the opposite conclusion. These objections lack merit, and are overruled.

11. Ruling on Class Counsels' Request for Attorneys' Fees and Expenses.

California follows the "American rule," under which each party to a lawsuit ordinarily must pay his, her or its own attorney fees. *Trope v. Katz,* 11 Cal.4th 274, 278 (1995); *Gray v. Don Miller & Associates, Inc.*, 35 Cal.3d 498, 504 (1984). Code of Civil Procedure section 1021 codifies the rule, providing that the measure and mode of attorney compensation is left to the agreement of the parties "[e]xcept as attorney's fees are specifically provided for by statute." One such statute authorizing fee awards is Civil Code section 1780(e), a provision of the CLRA, under which plaintiffs have brought this action.

The agreement between Honda and Class Counsel, which was reached only after the other terms of the proposed settlement were reached and only after Justice Weiner made a mediator's proposal, is that Honda has agreed not to oppose Class Counsel's request for fees in the amount of $8.474 million. From these fees will be deducted a portion of the incentive awards to the class members (addressed below), as well as over $333,000 in expenses, leaving a net attorneys' fee award of $8,118,960.91.

A trial court has broad discretion in determining a reasonable amount of attorney fees. *PLCM Group, Inc. v. Drexler,* 22 Cal.4th 1084, 1095 (2000). "[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. . . . The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary." *Id.*

Class Counsel claim they expended 14,319.8 hours in connection with this matter, and claim a lodestar fee of $6,407,076.35. This equates to a blended hourly rate for all timekeepers of about $447 per hour. Below the court sets forth its findings as to the

hourly rates claimed by each counsel. These findings are based in part on the court's own experience practicing law in San Diego for 20 years prior to 2005, and in part on its exposure to prevailing rates having reviewed dozens if not hundreds of fee applications, in a variety of settings, since then.

Mr. Mansfield has been practicing law since 1986 and has very substantial experience and expertise in consumer class actions. His designed rate has ranged between $550/hr. and $600/hr. during the pendency of this matter, and he worked this file on his own with a single paralegal assisting him (at much lower hourly rates). The court finds this is a reasonable rate range for a lawyer of Mr. Mansfield's vintage and experience, and finds that he staffed this matter efficiently.

Mr. Lindsey has been practicing law since 1981 and has substantial experience and expertise in litigation relating to automobiles and automobile finance, having litigated several cases which resulted in published decisions (including *Paduano, supra*). He is a sole practitioner, and has expended 612 hours at an hourly rate of $575/hr. The court finds this is a reasonable rate for a lawyer of Mr. Lindsey's vintage and experience.

Mr. Chimicles has practiced law for about 35 years and has wide and deep experience in class action litigation. His firm seeks the largest share of the lodestar, over $2.9 million. His own hourly rate during the five years he has worked on this file has ranged from $675/hr. to $750/hr. Rates of other timekeepers within his firm range from $60/hr. for legal assistants to $600/hr. for partners with less seniority. These rates are not unreasonable, but the court does perceive some inefficiency reflected in Exhibit A to Mr. Chimicles' declaration (in the form of transitory billers). These are timekeepers who spent less than 15 hours on the file since 2006 (including two who spent a quarter hour and a half hour). The deduction of this time reduces the amount properly claimed by $22,216.25 (from $2,955,521.25 to $2,933,305.00). The court notes that Mr. Chimicles took a sizeable deduction resulting from Judge Phillips' published decision in *True*.

Mr. Cuneo also has about 35 years of experience in consumer protection and class action litigation. His firm seeks the second-largest share of the lodestar, over $2.3 million. His own hourly rate has increased substantially since 2006, from $475/hr. to $750/hr. presently. Others in his firm billed at rates ranging from $150/hr. to $625/hr. [The differences in rates for paralegal time are likely reflective of the lower occupancy and other overhead costs in Haverford, PA versus Washington, DC.] Like Mr. Chimicles, Mr. Cuneo took a "haircut" for half the time spent on unsuccessfully seeking settlement approval in *True*. Also like Mr. Chimicles, he presented a table in which the court perceives the presence of some transitory billers, including several who spent less than 15 minutes on the file during the course of a given year. The court finds it is more likely than not that these timekeepers did not add value to the representation, and the court deducts their time using a similar 10 or fewer hours benchmark. The result is a reduction of $22,614.50 (from $2,332,126.60 to $2,309,512.10). The other rates charged are not unreasonable.

Mr. Hail has practiced law since 1999 and himself spent nearly 500 hours on the file at an hourly rate of $500. His firm seeks the smallest share of the lodestar. Again, it is appropriate to remove the time spent by three transitory billers (paralegal Davis and associates Bell, Chung and Fleming). With this reduction, which is in the amount of $2912.50, the court cannot say that the rates are unreasonable.

Class Counsel also seek a fee enhancement beyond the lodestar. Fee enhancements by means of multipliers or otherwise are well recognized in California. *E.g., Serrano v. Priest,* 20 Cal. 3d 25 (1977) (*Serrano III*); *Beasley v. Wells Fargo Bank,* 235 Cal. App. 3d 1407 (1991); *City of Oakland v. Oakland Raiders,* 203 Cal. App. 3d 78 (1988); *Kern River Public Access Com. v. City of Bakersfield* 170 Cal. App. 3d 1205 (1985). Under California law, the trial court begins by fixing the "lodestar" or "touchstone" reflecting a compilation of the time spent and reasonable hourly compensation of each attorney or legal professional involved in the presentation of the case. The court then adjusts this figure in light of a number of factors that militate in favor of *augmentation or diminution. Serrano III,* 20 Cal. 3d at 48-49 (emphasis by this

court). The court must consider such factors as the nature and complexity of the case, the results obtained, the amount of work involved, the available resources, the nature of the issues and the burden of discovery, the skill required and the time consumed, the court's own knowledge and experience, the time spent, and rates charged in the community for similar work. *See Contractors Labor Pool, Inc. v. Westway Contractors*, 53 Cal. App. 4th 152, 168 (1997); *see also Ghirardo v. Antonioli*, 14 Cal. App. 4th 215, 219 (1993).

The purpose of a fee enhancement is not to reward attorneys for litigating certain kinds of cases, but to fix a reasonable fee in a particular action. Statutes allowing fee awards authorize an award of *reasonable* attorney fees, not an award of reasonable fees plus an enhancement. Nonetheless, the courts recognize that some form of fee enhancement may be appropriate and necessary to attract competent representation in cases meriting legal assistance. In *Press v. Lucky Stores, Inc.*, 34 Cal. 3d 311, 322 (1983), our Supreme Court implicitly found that it would be appropriate to enhance an award by means of a multiplier " 'to reflect the broad public impact of the results obtained and to compensate for the high quality of work performed and the contingencies involved in undertaking this litigation.'" This does not mean, however, that the trial courts should enhance the lodestar figure in every case of uncertain outcome or where the work performed was of high quality. The challenge for the trial courts is to make an award that provides fair compensation to the attorneys involved in the litigation at hand and encourages litigation of claims that in the public interest merit litigation, without encouraging the unnecessary litigation of claims of little public value.

The classic situation justifying an upward adjustment of the lodestar figure was seen in the *Serrano* cases [*Serrano v. Priest,* 5 Cal. 3d 584 (1971)(*Serrano I*), *Serrano* v. *Priest,* 18 Cal. 3d 728 (1976)(*Serrano II*), and *Serrano III, supra*, 20 Cal. 3d 25]. The litigation there revolved around California's system for financing public schools. The plaintiffs succeeded in overturning the existing system, obtaining an order that it be replaced by a system designed to provide an equitable distribution of state funds between all public schools. The litigation resulted in no fund of money from which attorney fees might be paid, nor did it result in any monetary recovery by the plaintiffs. The plaintiffs

were under no obligation to pay their attorneys for their efforts. It appears that the attorneys did, however, receive some funding from charities or public sources for the purposes of prosecuting cases of the character involved in that action--a factor the court found to be relevant in determining the size of an award of fees. (*Serrano III*, *supra*, 20 Cal. 3d at p. 49, fn. 24.) Finally, an award of fees was uncertain not only because of the complexity and difficulty of the legal issues involved, but because there was no clear statutory authority for shifting attorney fees to the defendant.

The court in *Weeks* contrasted that case with the situation in *Serrano III*: "the present case is in essence a personal injury action, brought by a single plaintiff to recover her own economic damages. Weeks and her attorneys had a fee agreement by which her attorneys were assured of a portion of any recovery. In addition, because of the availability of attorney fees under the FEHA, the attorneys had reason to assume that the amount of Weeks's recovery would not limit the amount of fees they ultimately received. Thus, the risk that Weeks's attorneys would not be compensated for their work was no greater than the risk of loss inherent in any contingency fee case; however, because of the availability of statutory fees the possibility of receiving full compensation for litigating the case was greater than that inherent in most contingency fee actions." 63 Cal. App. 4th at 1174.

In the moving papers, Class Counsel seek a multiplier of 1.27, based on a proposed net award of $8,118,960.91 versus a lodestar of $6,407,076.35. As we have seen, however, inefficiency through the presence of transitory billers has reduced the lodestar to $6,359,333.10. This has the effect of increasing the multiplier to just under 1.28. The question then becomes whether this is reasonable in the context of this particular case.

One way to analyze this question is to compare the proposed net attorneys' fee award to a hypothetical contingent fee award on a hypothetical common fund. Other courts have found it useful to "cross check" fee awards in this manner. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002). As noted above, Class Counsel

claimed an overall settlement value of $87.5 million on the low end. The fees sought are less than 10% of this sum, well within what the prior case law has considered reasonable. *See Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 24 (2000); see also *Dunk, supra*, 48 Cal. App. 4th at 1804 (1996); *Wershba, supra*, 91 Cal. App. 4th at 254-55; *City of Oakland, supra*, 203 Cal. App. 3d 78.

The court views this as a case which was difficult and risky; the March 9 Supplemental Declaration of Mr. Lindsey cements this impression (as do the concessions of the Hagens Berman firm and Mr. Fredman). The court also views this as a case with significant public value which merited the "sunlight" which Class Counsel have facilitated. As Class Counsel have pointed out, there were no claims asserted against Honda by any objector until after the present settlement received preliminary approval from the court.

Given the five years of effort, the novel questions involved, the results obtained, the delay in payment, the persistence demonstrated by counsel in continuing to pursue the matter after the *True* settlement was rejected, the advancement of very significant costs and expenses, the risk associated with no payment at all, and taking into account the fact that the amount was reached upon the recommendation of a seasoned mediator and the fact that no class member would benefit from a reduction, the court approves the attorneys' fees award as prayed. In doing so, the court has not ignored the attacks on Class Counsel summarized in section 4C above. It simply disagrees with those attacks, recognizing that class counsel have performed a service to the class and deserve to be compensated for it. *See Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 838 (2001). It seems evident that there is a legislative recognition in the CLRA that a failure of courts to approve fee awards would result in fewer CLRA cases being filed – with a concomitant reduction in the utility of this important consumer protection statute. The court is not free to ignore that legislative pronouncement.

The court has reviewed the expenses claimed by counsel, finds them reasonable, and approves them as well. The costs of administration, payable to Rust, are to be paid by Honda as a matter of contract.

12. Ruling on Class Representative Enhancement Payments.

In the September 30 order, the court reserved a ruling on the class representatives' enhancement requests, noting that this "is a matter for strict judicial scrutiny." In explaining this deferral, the court noted that in other cases, it had "expressed doubts regarding incentive awards in excess of $5000 where those awards are disproportionate to the recovery of a 'rank and file' class member." On the other hand, the court has been called upon in a variety of settings to impose substantial cost awards on unsuccessful litigants, and understands the risks associated with agreeing to be named as a class representative. *See Early v. Superior Court*, 79 Cal. App. 4th 1420, 1433 (2000)(cost burden falls on class reps, not absent class members). In the September 30 Order, the court expressly required "each named plaintiff to file, in connection with the final approval hearing, a declaration or affidavit summarizing that plaintiff's efforts on behalf of the class."

Mr. Castrejon seeks a $5000 enhancement for about 35 hours of effort, consisting of providing documents to counsel, speaking to counsel on the phone, and monitoring the litigation. Castrejon Decl. at paragraph 13. This equates to about $142/hr.

Mr. Delgado seeks a $10,000 enhancement for about 90 hours of effort including providing documents, answering discovery, sitting for a deposition which was postponed several times, working with counsel over the phone, etc. This equates to about $111/hr.

Ms. Gibble seeks a $5000 enhancement for about 30 hours of effort similar to that described by Mr. Castrejon. This equates to about $166/hr. Ms. Gibble suspects she was laid off and had a hard time finding new work due to her participation in this litigation.

Ms. Krsul seeks a $5000 enhancement for about 25 hours of effort similar to that described by Mr. Castrejon and Ms. Gibble. This equates to about $200/hr.

Mr. Sherrid seeks a $5000 enhancement for about 25 hours of effort similar to that described by Mr. Castrejon, Ms. Krysul and Ms. Gibble. As with Ms. Krsul, this equates to about $200/hr.

Mr. Stouch seeks a $5000 enhancement for about 30 hours of effort similar to that described by Mr. Castrejon and others. This equates to about $166/hr.

Mr. Thieben seeks a $5000 enhancement for about 25 hours of effort similar to that described by Mr. Castrejon and others. As with Ms. Krsul and Mr. Sherrid, this equates to about $200/hr.

Mr. True seeks a $12,500 enhancement for about 125 hours of effort similar to that described by Mr. Delgado. He also attended several court hearings in the federal court. This equates to about $100/hr.

M/M Lockabey seek $5000 for about 36 hours of effort. Their declaration is unclear as to whether each of them spent 36 hours or they spent 18 hours each. The declaration is also unclear as to whether they seek $5000 each or jointly. They were not deposed, and while they say they "reserved days to be available" during the mediation sessions, they did not actually attend one.

Thus, the only two class representatives to endure a deposition, and the only class representative to attend a hearing in the litigation, and the two class representatives who by far spent the most time on their service, actually seek less per hour than other class representatives who performed less work for a shorter period of time. There is no rhyme or reason for this. While the court recognizes the need for modest enhancement payments to encourage people to come forward and serve as class representatives, there were numerous class representatives here, and thus quite a bit of overlap in terms of

"attorney interaction and consultation." Moreover, some class representatives did a lot more than others. Rank and file class members would legitimately wonder why these individuals are being treated so much more favorably than the average class member. Serving as a class representative was never meant to be a money-making proposition, and the court cannot escape the impression that the amounts sought place an unseemly emphasis on payment over service. Finally, several of the class representative declarations do not comply with CCP section 2015.5.

In light of the foregoing, the court cannot see its way clear to approve the enhancements in the amounts claimed. The court approves payments to class representatives only as follows:

True: $9,000
Delgado: $7500
Castrejon, Gibble, Krsul, Sherrid, Stouch and Thieben: $2500 each
M/M Lockabey: $2500 jointly

Total: $34,000

13. <u>Ruling on Borselle/Vise Intervention Motion/Attorneys' Fee Request</u>.

Many cases set forth the standards to be applied by courts in ruling on intervention requests made pursuant to CCP section 387. *See, e.g., Lindelli v. Town of Anselmo* (2006) 139 Cal.App.4th 1499, 1504 ["A third party may intervene (1) where the proposed intervener has a direct interest, (2) intervention will not enlarge the issues in the litigation, and (3) the reasons for the intervention outweigh any opposition by the present parties. [Citation.] The purpose of allowing intervention is to promote fairness by involving all parties potentially affected by a judgment. *Id.*

As noted in part 4C above, Vise and Borselle (and Hutsler, a frequent class action objector whose involvement was only recently disclosed) seek leave to intervene for purposes of seeking an award of attorneys' fee of $50,000.00. The motion for leave to intervene is denied, as is the fee request. There is nothing in the moving papers to

suggest that the Vise objections in *True* were the focal point of Judge Phillips' rationale (as opposed to the input of Public Counsel and the attorneys general of several states, led by California). To put it in the football vernacular, the Borselle/Vise papers claim credit for a solo tackle behind the line of scrimmage, whereas the contemporaneous evidence is that they were guilty of "piling on." There is no evidence they added any real value to the settlement, and thus no basis to award them any fees. *Consumer Cause, Inc. v. Mrs. Gooch's Nat. Markets*, 127 Cal. App. 4th 387, 398 (2005). Borselle's lack of care in approaching the court twice in successive weeks with *ex parte* applications which were based on long abrogated provisions of the California Rules of Court merely serves to cement this conclusion. Inasmuch as their claimed right to attorneys' fees is the only interest they claim to have, there is no basis to grant their intervention request. Further reasons justifying the denial of both requests are cogently set forth in plaintiffs' opposition briefs filed March 5, March 9 and March 12, 2012. The court's rulings in this section 14 do not affect the Vise objections to the settlement, which the court read and considered as noted in section 4C above.

14. Ruling on Peters/Kramer/Bleetstein Motion to Vacate Protective Order.

Denied. This motion was brought in the wrong court. Judge Phillips entered the order sought to be vacated, not the undersigned. The proper procedure would have been for Peters to seek to lift the stay imposed by Judge Phillips in *True*, and then ask Judge Phillips to vacate the Protective Order she signed on 12/21/07. This court has no authority to set aside a protective order signed by a federal judge. The fact that counsel for one of the parties (Ms. Gushue) apparently thought otherwise (Peters 2/21/12 moving papers at 2:27 – 3:4) is of no significance. Ms. Peters' oral motion to continue the fairness hearing to allow her to tardily approach Judge Phillips is denied.

Even if the motion had been brought in the right court, the court would still deny it. In *Wershba, supra*, the Court of Appeal affirmed the trial court's decision to deny an objector's discovery request where, as here, it was untimely made. 91 Cal. App. 4th at 241. In *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 748 (2009), the court

held that objectors should not be permitted to frustrate the mutual interest of the class members and the defendant to mutually resolve litigation by conducting unnecessary discovery. And there is no doubt in the court's mind that Ms. Peters' demand for access to the fruits of discovery is unnecessary for the objectors to participate meaningfully in the fairness hearing. Given the reliance of many objectors on Ms. Peters and her website, the court concludes that she has more than enough information. This impression is confirmed by several of the attachments to the Gushue Declaration filed 3/5/12 (although several are difficult to read), and by the more legible attachments to Honda's 3/9/12 Response to the Peters Objection. These excerpts from the Peters website are properly authenticated under *People v. Valdez*, 201 Cal. App. 4th 1429, 1434-35 (2011), and do not constitute inadmissible hearsay inasmuch as the court is not receiving them for the truth of the matters asserted, but merely to discern whether Ms. Peters' claim for the need for additional discovery is legitimate.

Finally, as Honda's brief and Class Counsels' brief (both filed 3/5/12) set forth in detail, Peters has failed to establish entitlement to the discovery, and has failed to justify entitlement to the delay she also seeks. Her reply papers are remarkable for their silence on the lack of success enjoyed by two other small claims plaintiffs. This leaves the court to conclude that Class Counsel are correct in asserting that Peters' demand for access to the fruits of discovery is actually a thinly disguised effort to use the discovered material to assist Peters in "begin[ning] a cottage industry of representing consumers or selling her $15 CD to them." Certainly paragraph 6 of Peters' March 9 declaration does nothing to dispel this notion. As with the ruling on the Borselle/Vice objections, this ruling does not affect Ms. Peters' objection on behalf of her clients, which the court read and considered.

The court has, contemporaneously with the signing of this memorandum, signed the Order Granting Final Approval submitted by Class Counsel at the conclusion of the fairness hearing. It is ordered filed.

The clerk is ordered to serve this ruling forthwith on lead local counsel for plaintiffs (Mr. Mansfield) and on lead counsel for Honda (Mr. Mester). They are directed to give notice of this ruling, as well as notice of the entry of the aforementioned Order Granting Final Settlement Approval, forthwith to all interested parties and counsel.

IT IS SO ORDERED.

March 16, 2012

Timothy B. Taylor
Judge of the Superior Court

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

LOGAN and ANITA LOCKABEY; TOMAS CASTREJON; JOHN TRUE; GONZALO DELGADO; KEVIN THIEBEN; RONDA GIBBLE; GARY STOUCH; ROY D. SHERRID; and BRANKA KRSUL, as individuals and on behalf of all others similarly situated, **Plaintiffs,** **v.** **AMERICAN HONDA MOTOR CO., INC., and DOES 1 through 50, inclusive,** **Defendants.**	Case No. 37-2010-00087755-CU-BT-CTL **CLASS ACTION** **ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION FOR PAYMENT OF ATTORNEYS' FEES, COSTS AND CLASS REPRESENTATIVE PAYMENTS, FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE** I/C Judge Hon. Timothy B. Taylor Dept. 72

THIS MATTER having been brought before the Court on the joint motion of LOGAN and ANITA LOCKABEY, TOMAS CASTREJON, JOHN TRUE, GONZALO M. DELGADO, KEVIN THIEBEN, RONDA GIBBLE, GARY STOUCH, ROY D. SHERRID and BRANKA KRSUL (collectively "Plaintiffs" or "Named Plaintiffs"), through their attorneys, the Court (1) having reviewed and considered the submissions of the parties in connection with preliminary and final approval of the settlement; (2) having reviewed all properly and timely filed objections and comments to the settlement and the parties' responses to such objections and comments; and (3) having held a hearing on March 16, 2012 at 10:00 a.m., at which time the Court heard and considered the arguments, comments and evidence submitted by all parties who entered appearances in these Consolidated Proceedings, including Named Plaintiffs and Defendant

American Honda Motor Co., Inc. ("AHM"); having found that the Named Plaintiffs are entitled to the relief they seek; and for good cause shown:

The Court makes the following findings of fact and conclusions of law:

1. The Court has personal jurisdiction over the Plaintiffs and all members of the Settlement Class and has subject matter jurisdiction to approve the settlement and Agreement and all Exhibits thereto;

2. With respect to the Settlement Class,[1] the Court finds and concludes, for settlement purposes only, that (a) the members of the Settlement Class (including the MY2003-2009 Class and MY 2006-2008 Subclass (collectively, "Settlement Class Members")) are so numerous as to make joinder impracticable; (b) there are questions of law and fact common to the Settlement Class, and such questions predominate over any questions affecting only individual Settlement Class Members; (c) the Named Plaintiffs' claims and the defenses thereto are typical of the claims of Settlement Class Members and the defenses thereto; (d) the Named Plaintiffs and their counsel can protect and have fairly and adequately protected the interests of the Settlement Class Members in the Lawsuits and the Consolidated Proceeding; and (e) a class action is superior to all other available methods for fairly and efficiently resolving the Consolidated Proceeding and the Lawsuits and provides substantial benefits to the Settlement Class Members and the Court. The Court therefore determines that this action satisfies the prerequisites for class certification for settlement purposes under California Code of Civil Procedure Section 382, California Civil Code Section 1781, and California Rules of Court, Chapter 6, Rules 3.769 *et seq.*, as applicable, and finally certifies the Settlement Class for settlement purposes.

3. The Court further finds that the Agreement was arrived at after extensive arm's length negotiations conducted in good faith by counsel for all parties in this action in several private mediations among the parties before Hon. Howard B. Wiener (Ret.) and is supported by

[1] Unless otherwise specified, all defined terms in this Final Order and Judgment have the same meaning as the meaning described in the Agreement and/or the Order Granting Motion for Preliminary Approval of Class Action Settlement and Directing Dissemination of Class Notice entered on September 30, 2011 ("Preliminary Approval Order"), and those terms are incorporated here by this reference. To the extent there is any conflict between the definitions of those terms, the definitions in the Agreement will control.

the vast majority of the members of the Settlement Class. As of the last date by which requests for exclusion were to be postmarked in accordance with the terms of the Preliminary Approval Order, the Settlement Class Members who have opted out of the Settlement Class (each an "Opt-Out") and any objections submitted are relatively few when compared to the total number of members of the Settlement Class. The terms of this Final Order and Judgment and the Agreement do not apply to the Opt-Outs or to any other persons the parties agree in writing submitted timely and valid requests for exclusion, unless such Opt-Outs or persons elect to claim the benefits set forth in the Agreement, thereby choosing to rescind their requests for exclusion from the Settlement Class.

4. The settlement set forth in the Agreement is fair, reasonable and adequate in light of the complexity, expense and duration of this litigation, and the risks inherent and involved in establishing liability and damages, and in maintaining the class action through trial and appeal, and any timely and valid objections thereto are hereby overruled. This litigation presents difficult and complex issues as to liability and the relief to be afforded members of the Settlement Class as to which there are substantial grounds for difference of opinion. The settlement is also fair, reasonable and adequate when weighing the benefits afforded to the Settlement Class against the uncertainties and difficulties associated with obtaining class certification for merits purposes, the expense and length of time necessary to prosecute these proceedings through trial, the uncertainties of the outcome of the proceedings, and the fact that resolution of the class claims, whenever and however determined, would likely be submitted for appellate review. In addition, there have been extensive arm's length negotiations between counsel for all parties in these Consolidated Proceeding overseen by Hon. Howard B. Wiener (Ret.), and the exchange of detailed information about the claims alleged in the Lawsuits. The promises and commitments of the parties under the terms of the Agreement, including the injunctive relief provisions contained therein, thus constitute fair value given in exchange for the releases of the Released Claims against the Released Parties in the light of such factors and the information in the parties' possession at the time the settlement was negotiated and agreed to by the parties.

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5. As supported by declarations filed with the Court, the Court finds that the manner of dissemination and content of the Class/Website Notice as specified in detail in the Agreement: (i) constituted the best notice practicable, (ii) constituted notice that was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Lawsuits, of their right to object to or exclude themselves from the proposed settlement, of their right to appear at the Final Approval Hearing and of their right to seek monetary and other relief, (iii) constituted reasonable, due, adequate and sufficient notice to all persons entitled to receive notice, and (iv) met all applicable requirements of Due Process and any other applicable law or requirement. Full and fair opportunity has been afforded to the members of the Settlement Class to be heard and to participate in the Final Approval Hearing.

6. The Court finds that the parties and Rust have complied with their respective obligations as set forth in the Preliminary Approval Order entered by this Court on September 30, 2011.

7. The Court finds the parties and each Settlement Class Member have submitted to the jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of the Agreement, permitting the Court to retain continuing jurisdiction over this action under Cal. Code Civ. Proc. Section 664.6 to ensure the terms of this settlement are fully effectuated. The Court further finds it is in the best interests of the parties and the Settlement Class Members, and consistent with principles of judicial economy, that any dispute between any Settlement Class Member (including any dispute as to whether any person is a Settlement Class Member) and any of the Released Parties that in any way relates to the applicability or scope of the Agreement, including the injunctive relief provisions contained therein, or of this Final Order and Judgment, should be presented exclusively to this Court for resolution by this Court.

Based upon the foregoing findings of fact and conclusions of law, which are based upon and supported by the substantial evidence presented by the parties hereto and members of the Settlement Class, all of which the Court has considered and is in the record before the Court,

IT IS ORDERED as follows:

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1. The motion for final approval of all the terms set forth in the Agreement is GRANTED, and the Court hereby overrules all objections, as either untimely, not in accordance with the Court's previous order or on their merits.

2. Because the Court determines that these Consolidated Proceeding satisfy the prerequisites for class certification for settlement purposes under California Code of Civil Procedure Section 382, California Civil Code Section 1781, and California Rules of Court, Chapter 6, Rules 3.769 *et seq.*, and/or other laws as applicable, the Court reaffirms its ruling in the Preliminary Approval Order as to the propriety of class certification for settlement purposes and finally certifies a Settlement Class and a MY 2006-2008 Subclass as defined in the Preliminary Approval Order and Agreement as:

> All persons in the United States and/or the District of Columbia who purchased or leased other than for purposes of resale or distribution a Honda Civic Hybrid (HCH) model years 2003 through 2009 (MY 2003-2009 Class).
>
> A Subclass defined as all persons in the United States and/or the District of Columbia who purchased or leased other than for purposes of resale or distribution an HCH model year 2006, 2007 or 2008 (MY 2006-2008 Subclass).

The Settlement Class and Subclass shall include all original purchasers and lessees as well as any subsequent purchaser or lessees who purchased or leased a Class Vehicle on or before the Preliminary Approval Date.

Specifically excluded from the Settlement Class are the following persons:

(i) American Honda Motor Co., Inc. ("AHM") and its subsidiaries and affiliates, employees, officers, directors, agents, and representatives and their family members;

(ii) Class Counsel;

(iii) The judges who have presided over the Lawsuits; and

(iv) All persons who have timely elected to opt out of or exclude themselves from the Settlement Class in accordance with this Court's Orders.

3. The Court confirms its appointment as Class Counsel Cuneo, Gilbert & LaDuca, LLP, Chimicles & Tikellis LLP, The Consumer Law Group of California, Doyle Lowther, LLP, and the Law Offices of Michael E. Lindsey and finds Class Counsel and the Named Plaintiffs adequate representatives of the Settlement Class.

4. In light of the factors set forth above and based on the submissions received by the Court in connection with both preliminary and final approval of this settlement, the Court grants final approval to the Agreement and settlement as being fair, reasonable and adequate as to all parties and consistent with and in compliance with all requirements of Due Process and applicable law, as to and in the best interests of all parties and directs the parties and their counsel to implement and consummate this Agreement in accordance with its terms and provisions.

5. The proposed method for providing relief to Settlement Class Members, as set forth in the Agreement, is finally approved as fair, reasonable, adequate, just, and in the best interests of the Settlement Class, and the parties are hereby ordered to provide and comply with the relief described in the Agreement in accordance with its terms.

6. The Court hereby awards an Attorneys' Fee Award to Class Counsel and the Named Plaintiffs' Incentive Awards on the bases and in the amounts as set forth in the fee and expense applications filed with the Court. These amounts shall be paid and distributed in accordance with the provisions of the Agreement.

7. By operation of this Final Order and the Judgment entered therewith, effective as of the Effective Date, and in consideration of the Agreement and the benefits extended to the Settlement Class, the Named Plaintiffs, on behalf of themselves and the Settlement Class Members, and each Settlement Class Member, on behalf of himself or herself or itself and his or her or its respective successors, assigns, past, present, and future parents, subsidiaries, joint venturers, partnerships, related companies, affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees, agents, representatives, servants, partners, executors, administrators, assigns, predecessors, successors, descendants, dependents, and heirs, do or by operation of this Final Order and Judgment are deemed to have fully released and forever discharged the Released Parties from the Released Claims in accordance and consistent with the terms of the Agreement, but not as to any obligations created or owed to them under the terms of the Agreement. "Released Claims" shall mean any and all claims, actions, causes of action, rights, demands, suits, debts, liens, contracts, agreements, offsets or liabilities, including but not limited to tort claims, claims for breach of contract, breach of the duty of good faith and fair

dealing, breach of statutory duties, actual or constructive fraud, misrepresentations, fraudulent inducement, statutory and consumer fraud, breach of fiduciary duty, unfair business or trade practices, restitution, rescission, compensatory and punitive damages, injunctive or declaratory relief, attorneys' fees, interests, costs, penalties and any other claims, whether known or unknown, alleged or not alleged in the Lawsuits, suspected or unsuspected, contingent or matured, under federal, state or local law, which the Named Plaintiffs and/or any Settlement Class Member had, now have or may in the future have with respect to any conduct, act, omissions, facts, matters, transactions or oral or written statements or occurrences prior to the Effective Date of the Agreement relating to or arising out of the advertising of the fuel economy or miles per gallon ("MPG") of MY 2003-2009 HCHs, and additionally as to members of the MY 2006-2008 Subclass, claims relating to or arising out of the Integrated Motor Assist ("IMA") battery system in MY 2006-2008 HCHs, including that it did not perform as expected and/or that the IMA battery system is somehow defective, and AHM's that installation of the PUD adversely affected the performance and fuel efficiency of the MY 2006-2008 HCH, as asserted in the Lawsuits by the Plaintiffs and/or the Settlement Class Members including, without limitation, causes of action for violations of Cal. Bus. & Prof. Code § 17200, *et seq.*, Cal Bus. & Prof. Code § 17500, *et seq.*, Cal. Civ. Code § 1750, *et seq.* and similar claims under the statutes and common law of other states as well as claims for unjust enrichment, but excluding claims for Personal Injury or Bodily Injury.

8. In addition, by operation and entry of this Final Order and Judgment, Named Plaintiffs and each and every Settlement Class Member and Released Party shall be deemed to have, on behalf of their respective successors, assigns, past, present, and future parents, subsidiaries, joint venturers, partnerships, related companies, affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees, agents, representatives, servants, partners, executors, administrators, assigns, predecessors, successors, descendants, dependents, and heirs, covenanted and agreed to forever refrain from instituting, maintaining, or proceeding in any action against the Named Plaintiffs, Class Counsel or the Released Parties, with respect to

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any of the Released Claims as applicable, but not as to any obligations created or owed to any of them under the terms of the Agreement.

9. Effective as of the date of this Order, to the fullest extent permitted by law, the Court orders and enters a permanent injunction barring and enjoining the Settlement Class Members from (i) filing, commencing, prosecuting, intervening in or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to these Lawsuits or the Released Claims, and (ii) organizing Settlement Class Members who have not been excluded from the class into a separate class for purposes of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Lawsuits and/or the Released Claims, except that Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency; the terms of the Release shall not apply to the Opt-Outs listed on Exhibit 1 hereto or to any other persons the parties agree in writing submitted timely and valid requests for exclusion and should also be listed as Opt-Outs unless such persons elect to claim the benefits set forth in the Agreement thereby choosing to rescind their requests for exclusion from the Settlement Class.

10. The Agreement and the Final Order and Judgment is and shall be binding on and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Release maintained by or on behalf of the Named Plaintiffs and all other Settlement Class Members, as well as their successors, assigns, past, present, and future parents, subsidiaries, joint venturers, partnerships, related companies, affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees, agents, representatives, servants,

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partners, executors, administrators, assigns, predecessors, successors, descendants, dependents, and heirs.

11. The Agreement and the settlement provided for herein and any proceedings taken pursuant thereto are not and cannot be offered or received as evidence of, a presumption, concession or an admission of liability or a defect or of any misrepresentation or omission in any statement or written document approved or made by AHM or any Releasee or of the suitability of these or similar claims to class treatment in active litigation and trial.

12. The Court hereby authorizes the parties, without further approval from the Court, to adopt such amendments, modifications and expansions of the Agreement and all Exhibits hereto as (i) shall be consistent in all material respects with this Final Order and Judgment and (ii) do not limit the rights of the parties or Settlement Class Members.

13. The Court hereby approves the script for the HCH Fuel Economy Video and directs AHM to produce and post the video in accordance with the terms set forth in the Agreement.

14. Without affecting the finality of the judgment entered under this Final Order and Judgment, this Court retains continuing jurisdiction over this settlement and this Consolidated Proceeding, including the administration, consummation, and enforcement of the Agreement, the injunctive provisions set forth in the Agreement and the provision of benefits to the Settlement Class members, under California Code of Civil Procedure Section 664.6. Without affecting the finality of the judgment entered under this Final Order and Judgment, this Court also retains jurisdiction over the parties, the Released Parties, and each member of the Settlement Class who are deemed to have submitted to the exclusive jurisdiction of this Court for any suit, action, proceeding or dispute arising out of or relating to this Final Order and Judgment or the enforcement of the terms of the Agreement.

15. The Court hereby orders the Clerk of the Court to enter forthwith a Judgment of Dismissal of the Second Amended Complaint in this Consolidated Proceeding with prejudice and without costs except as provided for under the terms of the Agreement and in this Order.

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16. The Court further orders Class Counsel to dismiss the other Lawsuits (*i.e.*, *True, et al. v. American Honda Motor Co., Inc.*, Case No. 5:07-cv-287-VAP-OP (C.D. Cal.); *Gibble v. American Honda Motor Co., Inc.*, Case No. 2:10-cv-6148-VAP-OP (C.D. Cal.); *Stouch v. American Honda Motor Co., Inc.*, Case No. 2:10-cv-6236-VAP-OP (C.D. Cal.); and *Thieben v. American Honda Motor Co., Inc.*, Case No. BC 441424 (Los Angeles Cty. Sup. Ct.)) by filing stipulations of dismissal within seven (7) days of the Final Order and Judgment becoming Final without fees or costs being awarded to any party except as provided for under the terms of the Agreement.

17. The Court finds that there is no reason for delay and directs the Clerk to enter this Final Order and Judgment in accordance with the terms of this Final Order and Judgment as of the date of this Order.

IT IS SO ORDERED.

DATED: MAR 16 2012, 2012

Timothy B. Taylor

Hon. Timothy B. Taylor
Judge of the Superior Court

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Attorneys for Plaintiffs
[Additional counsel appear on signature page]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

LOGAN and ANITA LOCKABEY, et al., as Individuals and on Behalf of All Others similarly Situated, Plaintiffs, v. AMERICAN HONDA MOTOR CO., INC., et al., Defendants.	**Case No. 37-2010-00087755-CU-BT-CTL** **CLASS ACTION** **PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury that I am employed with The Consumer Law Group, whose address is 9466 Black Mountain Road, Suite 225, San Diego, California 92126. I am over the age of eighteen years and not a party to this action; that I served the below named persons the following documents:

NOTICE OF ENTRY OF ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPLICATION FOR PAYMENT OF ATTORNEYS' FEES, COSTS AND CLASS REPRESENTATIVE PAYMENTS, FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE AND DENYING OBJECTORS' MOTIONS

[ ] By personally delivering copies to the person served at the following address:

SEE ATTACHED SERVICE LIST

[X] By placing a copy of a CD containing a true and correct copy of all of the above documents in a separate sealed envelope, with postage fully prepaid, for each addressee named below and depositing each for collection and mailing pursuant to the ordinary business practice of this office, which mail is deposited with the U.S. Postal Service on the same day at San Diego, California; and

[ ] By Overnight Mail by placing an Overnite Express/Federal Express Envelope addressed to each of the persons on the service list attached hereto and depositing said envelope in the Overnite Express/Federal Express Pickup Boxes located at Activity Road in San Diego, California 92126.

[ ] By Fax Transmission: Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission which I printed out is attached.

[X] By Electronic Service: Based upon agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below [**as noted**].

Executed this 16th day of March, 2012 at San Diego, California.

SALLY CORMIER

SERVICE LIST

LATHAM & WATKINS, LLP Mark S. Mester, Esq. mark.mester@lw.com 233South Wacker Drive, Suite 5800 Chicago, IL 60606 Tel: (312) 876-7700 Fax: (312) 993-9767 (**VIA E-MAIL**) LATHAM & WATKINS, LLP Natalie Prescott natalie.prescott@lw.com 600 West Broadway, Suite 1800 San Diego, CA 92101-3375 Tel: (619) 238-2934 Fax: (619) 696-7419 (**VIA E-MAIL**) Attorneys for Defendant AMERICAN HONDA MOTOR CO., INC.	BARACK FERRAZZANO KIRSCHBAUM & NAGELBERG, LLP Livia M. Kiser, Esq. livia.kiser@bfkn.com 200 West Madison Street, Suite 3900 Chicago, IL 60606 Tel: (312) 984-3100 Fax: (312) 984-3150 (**VIA E-MAIL**) Attorneys for Defendant AMERICAN HONDA MOTOR CO., INC.
Michael E. Lindsey, Esq. mlindsey@nethere.com Attorney at Law 4455 Morena Blvd., Suite 207 San Diego, CA 92117-4325 Tel: (858) 270-7000 (**VIA E-MAIL**) Co-Counsel for Plaintiffs Lockabey and Castrejon	DOYLE LOWTHER, LLP William J. Doyle II, Esq. (SBN 188069) bill@doylelowther.com John A. Lowther, Esq. (SBN 207000) john@doylelowther.com James R. Hail (SBN 202439) jim@doylelowther.com 10200 Willow Creek Rd., Suite 150 San Diego, CA 92131 Tel: (858) 935-9960 Fax: (858) 939-1939 (**VIA E-MAIL**) Co-Counsel for Plaintiffs Lockabey and Castrejon
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SEE ATTACHED LIST OF OBJECTORS	

Honda Civic Hybrid Settlement Objections

	NAME	DATE SENT	REPRESENTATION	CONTACT
1	John H. and Ida A. VanderMolen	Jan. 30, 2012		P.O. Box 911 Winthrop, WA 98862
2	Jeremy Schwartz	Jan. 31, 2012		71 Chestnut Street Willimantic, CT 06226 (860) 450-0435
3	Peter M. Schurke	Feb. 7, 2012		21206 Elberta Road Lynnwood, WA 98036 (425) 670-2475 (206) 227-4029 (cell)
4	D. Jonathan Ramos	Feb. 11, 2012		6731 Barefoot Circle Huntington Beach, CA 92649 (626) 422-1579
5	Paul and Tamara Arlin	Feb. 3. 2012		630 E. Puente Street Covina, CA 91723 (626) 331-2023
6	Amanda Smith	Feb. 9, 2012		1178 Jenkins Hollow Road Mountain City, TN 37683 (423) 727-4779
7	Vicki M. Moll	Feb. 8, 2012		239 Circle Ave. Ridgewood, NJ 07450-5206 (201) 444-2752
8	Michael A. Belshe	Feb. 9, 2012		13855 Saratoga Ave. Saratoga, CA 95070 (408) 718-6885
9	Roy Eugene Richardson	Feb. 11, 2012		1005 Towanda Road Virginia Beach, VA 23464 (757) 424-2344
10	Ronald S. Krol	Feb. 11, 2012		4030 FitzJames Walk Oak Lawn, IL 60453-3306 (708) 424-5729
11	Elizabeth Sutherland	Feb. 10, 2012		5801 Mountain Island Drive Durham, NC 27713
12	Christian Matthews	Feb. 10, 2012		5801 Poinsett Avenue El Cerrito, CA 94530 (510) 237-6355
13	Donald Catanzaro	Feb. 11, 2012		16144 Sigmond Lane Lowell, AR 72745 (479) 751-3616
14	Melinda S. Collins	Feb. 9, 2012		101 Toledo Street Royal Palm Beach, FL 33411 (561) 281-5305
15	Clinton Killian	Feb. 10, 2012		The Law Office of Clinton Killian Leamington Building 1814 Franklin St., Suite 805 Oakland, CA 94612-3527 (510) 625-8823

16	Thomas J. Tomaka	Feb. 11, 2012		1103 Lanier Blvd., NE Atlanta, GA 30306 (770) 315-0675
17	Marjory Trott	Feb. 10, 2012		8 Dukes Road Nantucket, MA 02554 (508) 228-4209
18	Timothy J. Hitz	Feb. 6, 2012		1706 Hercules Drive Colorado Springs, CO 80905-4123 (719) 630-3945
19	David J. Lang	Feb. 7, 2012		3107 W. Tina Lane Flagstaff, AZ 86001 (928) 774-3796
20	Andrew H. Newman and Leslie H. Newman	Feb. 9, 2012		1108 S. Crescent Heights Blvd. Los Angeles, CA 90035 (323) 857-5602
21	Paul A. Seyler	Feb. 9, 2012		5833 Mt. Shadows Blvd. Firestone, CO 80504 (720) 290-1864
22	E. Marie Colo	Feb. 9, 2012		817 Aaron Dr., Apt. 101 Lynden, WA 98264 (360) 318-9325
23	Erin Vitus	Feb. 8, 2012		1982 West Bayshore Rd., Apt. 336 East Palo Alto, CA 94303 (650) 722-1496
24	Kathy Proya	Feb. 6, 2012		71 Egypt Hollow Lane Toronto, OH 43964 (740) 282-6011
25	Gregory B. McClain	Feb. 6, 2012		203 Avenue H Redondo Beach, CA 90277 (310) 540-0680
26	Susan Leibowitz	Feb. 10, 2012		180 Gardner St, Apt. 2-3 Arlington, MA 02474 (781) 648-5226
27	Steven Chung	Feb. 9, 2012		7538 Valmont St. Tujunga, CA 91042 (818) 497-0925
28	Gerald Nicholson and Lisa Nicholson (separate)	Jan. 14, 2012 Jan. 15, 2012		17803 N. 130th Drive Sun City West, AZ 85375
29	Erin L. Wiltowski	Jan. 18, 2012		1505 Hawkeye Ct. Crainville, IL 62918 (618) 521-4532
30	Karsten Adam	Dec. 30, 2011		719 Borello Way Mountain View, CA 94041 (650) 968-2145
31	Rudy Stefenel	Jan. 11, 2012		120 Dixon Landing Rd, #117 Milpitas, CA 95035-2533 (408) 209-6953

32	Keith Richard Cyrnek			6404 W. Port Au Prince Ln. Glendale, AZ 85306-3107
33	Jeffrey L. Anderson	Jan. 25, 2012		11010 Schoolcraft Rd. Burnsville, MN 55337-1125 (952) 895-1652
34	Christopher R. Day	Feb. 7, 2012		1217 N. Quantico Street Arlington, VA 22205 (703) 930-2179
35	Curtis Sahakian	Feb. 9, 2012		4843 Howard Street Skokie, IL 60077 (312) 307-7740
36	Leslie Anne Burnet	Feb. 9, 2012		1308 Calumet Ave. Los Angeles, CA 90026 (213) 580-5678
37	Nancy Brooks Cummings	Feb. 7, 2012		5001 Rembert Drive Raleigh, NC 27612 (919) 781-0275
38	Peter B. Fredman	Feb. 10, 2012		Peter B. Fredman, Esq. 125 University Ave, Suite 102 Berkeley, CA 94710 (510) 868-2626
39	Rob Bleetstein and Diane Kramer	Feb. 10, 2012	Heather Peters	Heather Peters, Esq. 7119 W. Sunset Blvd., #552 Los Angeles, CA 90046 (310) 461-4349
40	Ildiko M. Kovach, PhD	Feb. 7, 2012		10930 Rocky Mount Way Silver Spring, MD 20902 (301) 649-3907
41	Diane and Kenneth Willey	Feb. 7, 2012		1840 Longleaf Rd. Cocoa, FL 32926 (321) 636-6585
42	Arlette M. Johnson	Feb. 11, 2012		144 Ridge Road Stratford, CT 06614 (203) 545-3882
43	John Rego, Ron Biermann, Sr., Caroline Khripin, Milton Pyron, Stephen Pustelnick, Rebecca Schrader, Kim Noack	Feb. 10, 2012	Steve W. Berman	Hagens Berman Sobol Shapiro, LLP 1918 Eighth Ave., Ste. 3300 Seattle, WA 98101 (206) 623-7292
44	Stephen and Richard Vise	Feb. 3, 2012	Marianne P. Borselle	Marianne P. Borselle, Attorney at Law 805 S. Wooster St., #301 Los Angeles,CA 90035-1766 (310) 659-7566