

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: American Honda Motor Co., Inc.,
CR-V Vibration Marketing and Sales
Practices Litigation

Case No. 2:15-md-2661

Judge Michael H. Watson
Chief Magistrate Judge Deavers

This document relates to: ALL CASES

**PLAINTIFFS' UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS SETTLEMENT**

Plaintiffs Michael Stanley, Robert Fennes, Emily Vellano, Julia Hsi, Thomas Prychitko, Robert Nonni, Bakh Inamov, Michelle and Robert Bergendahl, Amy Bertram, and Aleksandr Kogan move for an Order of the Court granting final approval of the proposed class-wide settlement entered into by the parties and preliminarily approved by the Court on May 11, 2018. *See* ECF No. 95. Based upon the record before the Court, the settlement is fair and reasonable for the class members. A Memorandum in Support is below.

Dated: July 10, 2018

Respectfully submitted,

/s/ Eric. H. Gibbs

Eric H. Gibbs (*pro hac vice*)
David Stein (*pro hac vice*)
Amy Zeman (*pro hac vice*)
GIBBS LAW GROUP LLP
505 14th Street, Suite 1110
Oakland, California 94612
Telephone: (510) 350-9700
Facsimile: (510) 350-9701
ehg@classlawgroup.com
ds@classlawgroup.com
amz@classlawgroup.com

Mark H. Troutman (0076390)
Gregory M. Travalio (0000855)
Shawn K. Judge (0069493)

**ISAAC WILES BURKHOLDER &
TEETOR LLC**

Two Miranova Place, Suite 700
Columbus, Ohio 43215

Telephone: (614) 221-2121

Facsimile: (614) 365-9516

mtroutman@isaacwiles.com

gtravalio@isaacwiles.com

sjudge@isaacwiles.com

Class Counsel

MEMORANDUM IN SUPPORT

I. INTRODUCTION

This multidistrict litigation arose from reports by 2015 Honda CR-V owners that they were experiencing unpleasant vibration in their new vehicles. Soon after the litigation began, Honda provided its dealerships with product enhancements to address the vibration in one or more different modes; the procedures reduced the vibration to acceptable levels in the vast majority of instances. Plaintiffs alleged, however, that Honda should have done much more to notify drivers about the repairs' availability because many CR-V owners had already presented their vehicles for repairs and been turned away by dealerships who said no repairs were available. The proposed settlement addresses this allegation by notifying drivers and reminding dealers about the available repairs and making clear that the countermeasures will be provided at no cost under Honda's powertrain or emissions warranty. By resolving the primary remaining concern for class members, the settlement provides an appropriate end to the litigation and is in the best interests of the settlement class.

In April 2018, when Plaintiffs moved for preliminary approval of the proposed class action settlement, they addressed the factors that district courts in the Sixth Circuit typically consider at the final approval stage. (*See* Prelim. Approval Mot. [ECF No. 94] at 11-17.) The Court granted that motion in May. (Ord. Granting Prelim. Approval [ECF No. 95].) Since then, Honda has implemented the customer outreach program required by the settlement. Drivers around the country are thus being notified in a variety of ways:

- Class members who search on popular search engines such as Google, Bing, and Yahoo for information about 2015 CR-V vibration will see — as the top item listed among the

search results — information about the availability of the countermeasures and settlement;

- Class members who visit Honda’s Owner Link website (which is the website owners of Honda vehicles visit to obtain a variety of information about their vehicles and to schedule service appointments) now see a prominently posted link with information about the countermeasures;
- Honda dealers around the country have received the first of a series of messages reminding them of the countermeasures available under warranty so that they can communicate with class members who visit their dealerships; and
- Both Honda and Class Counsel have sent letters to the thousands of class members who complained about the vibration but who may not have yet received any or all of the product enhancements.

In sum, all that is new since the Court granted preliminary approval is that the settlement’s customer outreach program is now underway; otherwise the Court’s settlement-approval analysis remains largely the same. Accordingly, Plaintiffs request that the Court affirm its preliminary findings and grant final approval of the parties’ settlement.

II. BACKGROUND

A. Plaintiffs’ allegations about the 2015 Honda CR-V vibration

Honda introduced the 2015 CR-V in October 2014. (Second Consolidated Amended Complaint [ECF No. 29] (“2AC”), ¶ 42.) Soon thereafter, a substantial number of drivers began complaining about the vibration. (*Id.*, ¶ 40.) Not all 2015 CR-V owners and lessees experienced the issue, and those who did reported differing levels of severity and varying types of vibration: some reported vibrations while idling, others while accelerating, and others while driving at highway speeds. (*Id.*) But while the issue may not have been universal, it was widespread and

vexing for those whose 2015 CR-Vs kept shaking. Hundreds went so far as to lodge formal complaints with the National Highway Traffic Safety Administration (“NHTSA”), with several commenting that the vibrations were so bad they caused nausea, migraines, and back pain. (*Id.*; Gibbs Decl. [ECF No. 94-1], ¶ 18.)

Many consumers noticed the vibrations immediately, often within days of their purchase. (2AC, ¶ 40.) But for over a year after Honda released its 2015 CR-V, no repairs were available that could solve the problem. Some consumers reported that they were told by dealers that the vibrations were normal, that the vehicle just needed to be broken in, and that a fix was neither needed nor available. (*Id.*, ¶¶ 40, 45.) Even after one Plaintiff served Honda with a pre-lawsuit demand letter formally requesting that Honda publicly acknowledge the vibration issue and offer consumers a remedy, Plaintiffs contend Honda declined to take action in response to the letter. (Gibbs Decl., Exs. 2-3 [ECF Nos. 94-3 and 94-4]; JPML Order [ECF No. 1].) Instead, in reaction to the demand letter Honda represented that the dealership inspected the vehicle and found “there was no defect present that could be attributable to the symptoms as described by” the customer, the vibration “was associated with combined powertrain characteristics [and] has no adverse effect on the drivability or safety of the vehicle,” and that therefore “no consideration can be made at this time.” (Gibbs Decl., Ex. 3 [ECF No. 94-4].)¹

¹ Honda also referred the customer to the National Center for Dispute Settlement (“National Center”) if the customer remained dissatisfied. The National Center provides a no-cost way for a dissatisfied customer to address her concerns before an experienced neutral. Although the results are binding on Honda, the customer is not bound by the decision. This information is contained in all warranty booklets that come with the vehicles.

B. Honda's fix for vibration issues

Honda rolled out a Technical Service Bulletin (“TSB”) to dealers for high speed vibration in August 2015, instructing dealerships on what steps to take for vehicles manifesting unpleasant vibrating at high speeds. Then, in November 2015, after Plaintiffs’ lawsuits were centralized before this Court for pre-trial proceedings, Honda released an updated, comprehensive repair bulletin that it had been working on for some time that instructed dealers about all available countermeasures to address unpleasant vibration in different modes, including for those vehicles experiencing vibration at idle. In Technical Service Bulletin 15-046, Honda detailed three sets of countermeasures depending on the engine and vehicle speed at which a particular CR-V was vibrating. (2AC, ¶¶ 48-50.) The bulletin told dealers providing the repairs that Honda’s “normal warranty applies.” (Gibbs Decl. [ECF No. 94-1], ¶ 7.) Honda’s view is that normal warranty in this case would include powertrain and emissions warranties, which made these countermeasures available free-of-charge to consumers for the length of those warranties.

This was a welcome development from Plaintiffs’ perspective, except that Plaintiffs were concerned the problem remained that 2015 CR-V customers, particularly those that visited a dealer before the TSB was issued, might not be aware of the remedies that were developed and available to address the vibration issue. (2AC, ¶¶ 5, 53-55.) Plaintiffs had asked that Honda notify all CR-V owners and lessees of the potential vibration issues and free countermeasures, but Honda believed that because relatively few vehicle owners appeared to be affected, it chose instead to provide the bulletin only to dealers and service technicians. (*Id.*, ¶¶ 48, 54.) Apart from several YouTube videos, Honda made no apparent effort to notify all drivers in one fell swoop about the availability of the countermeasures pursuant to warranty. (*Id.*, ¶¶ 45-46.) Accordingly, Plaintiffs believe it likely that many drivers — including those who were previously told by Honda dealers that nothing would be done about their vibrations — continued to needlessly drive

around in vibrating vehicles. (*Id.*, ¶¶ 54-55.) Plaintiffs also contend that drivers continued to lodge complaints with the NHTSA and contact Plaintiffs' counsel about the vibration — unaware that a free fix was available. (Gibbs Decl. [ECF No. 94-1], ¶¶ 8, 18.)

C. Litigation and settlement

Plaintiffs' Second Consolidated Amended Complaint alleges that by failing to adequately inform consumers that the 2015 CR-V is prone to excessive vibration, or that its warranty policy provides free repairs, Honda violated the Magnuson-Moss Warranty Act, fourteen states' consumer protection laws, and California's secret warranty law. (2AC, ¶¶ 142-320.) In particular, Plaintiffs acknowledged that Honda had recently begun offering free repairs but alleged "Honda has not publicized the availability of these repairs" and "the many drivers who were previously turned down by dealerships for warranty coverage [were] not told to now return for warranty-covered repairs." (*Id.*, ¶ 5.) Plaintiffs sought "to enjoin Honda from continuing to conceal the problem and the availability of repairs from consumers, and to obtain damages, restitution, and all other available relief." (*Id.*, ¶ 6.)

Before filing their Second Consolidated Amended Complaint on March 3, 2016, Plaintiffs sent Honda a pre-amendment letter formally requesting that Honda notify all Honda CR-V owners that repairs had become available to remedy the vibration, and that the repairs would be provided at no charge under warranty. (Gibbs Decl., Ex. 4 [ECF No. 94-5].) In Honda's view, such notice would have been costly and unnecessary because the countermeasures had been released. Honda declined and moved to dismiss Plaintiffs' complaint on several grounds. (Mot. to Dismiss [ECF No. 35].) Among other things, it argued that disclosing the existence of free repairs on YouTube was sufficient and that its recent alert to dealers that they could provide free repairs did not constitute a secret warranty requiring notice. (*Id.* at 3-5, 20.) Honda also moved to compel several Plaintiffs to arbitrate their claims on an individual basis (as

Honda argued their vehicle purchase contracts required) rather than pursue judicial relief on a class-wide basis. (Mot. to Compel [ECF No. 50].)

The parties explored the possibility of settlement while Honda's motions remained pending. After several months of discovery and preliminary settlement talks, the parties participated in two days of formal mediation with Frank A. Ray on March 7 and March 8, 2017. (Gibbs Decl. [ECF No. 94-1], ¶ 12.) With Mr. Ray's assistance, the parties reached an agreement in principle, which they memorialized in the Settlement Agreement now before the Court.

III. OVERVIEW OF THE SETTLEMENT

A. The settlement class

The proposed settlement would provide injunctive relief to the following Settlement Class, which the parties propose be certified pursuant to Fed. R. Civ. P. 23(b)(2):

All persons or entities who own or lease any Settlement Class Vehicle in the United States, including its territories and Puerto Rico.

Excluded from the Settlement Class are Honda, any entity that is a subsidiary of or is controlled by Honda anyone employed by Class Counsel; any judge to whom this case is assigned, his or her spouse, and members of the judge's staff; and anyone who purchased a Settlement Class Vehicle for the purpose of resale.

(Gibbs Decl. [ECF No. 94-2], Ex. 1 ("Settlement"), ¶ 3.)

B. Injunctive relief requiring Honda to publicize free repairs

To resolve the pending lawsuit, Honda consented to an injunction requiring it to apprise class members—through a comprehensive Customer Outreach Program—that 2015 CR-Vs may experience vibrations, that countermeasures are available to remedy those vibrations, and that the countermeasures are covered by the either the powertrain or emissions warranty, both of which are longer than the bumper-to-bumper New Vehicle Limited Warranty. (Settlement, ¶¶ 4.1-4.2, Ex. 1-D (Injunctive Relief Order).) This Customer Outreach Program began on June 23, 2018, and includes:

1. A prominent posting on Honda's Owner Link website for one year, (*id.*, ¶ 4.3.1, Ex. 1-G);
2. Web optimizations for one year to ensure that relevant Google searches locate information about the vibration and settlement on the first page of results, (*id.*, ¶ 4.3.2);
3. Quarterly messages to Honda dealers, for one year, reminding them about the TSB and the available repairs and warranty coverage, (*id.*, ¶ 4.3.5, Ex. 1-I);
4. Emails to those who complained to Honda about 2015 CR-V vibration but who have not received all available countermeasures, (*id.*, ¶ 4.3.3, Ex. 1-J); and
5. Emails to all individuals who contacted Class Counsel regarding 2015 CR-V vibration (*id.*, ¶ 4.3.4, Ex. 1-K).

(Shortnacy Decl. [ECF No. 97-1] ¶¶ 3-7; Stein Decl., ¶ 24.)

In each of the above notices, Honda conveyed that: (i) some 2015 CR-V drivers experienced vibration at the engine speeds listed in the Service Bulletin; (ii) countermeasures are available for the vibration; (iii) the countermeasures are being provided free of charge under applicable warranties (along with the length of those warranties); and (iv) Settlement Class Members may take advantage of a streamlined informal dispute resolution process with Honda free of charge per their warranty booklets, if they are among the small percentage of vehicle owners dissatisfied after the repairs. (Settlement, ¶ 4.3.)

C. Limited class-wide release

In exchange for Honda's agreement to engage in the customer outreach program, the Settlement Class will release only their injunctive relief and declaratory relief claims arising from Honda's alleged failure to provide sufficient notice of the existence and availability of the vibration repairs set forth in TSB 15-046. (Settlement, ¶¶ 1.22(4), 2.25, 8.4, 8.6.) Only the individual Plaintiffs will release claims for monetary relief. (*Id.*, ¶¶ 1.22(3), 2.20, 8.3, 8.5.) In exchange for that release, Honda has agreed to provide payments to the individual Plaintiffs in

the amount of \$2,500 each. (*Id.*, ¶ 2.14.) Other than the individual Plaintiffs, any class member who wishes to pursue damages against Honda is not precluded from doing so under the settlement.

D. Notice Program

The parties prepared a long-form notice of the settlement to provide information about the litigation, the settlement, and class members' rights. (Settlement., Ex. 1-H.) Under the settlement, Honda is bearing the full cost of the various notices under the customer outreach program. Honda is also maintaining a dedicated settlement website at www.CRVVibrationSettlement.com, which provides class members with access to the long-form notice, the settlement agreement, and other relevant information and documents. (*Id.*, ¶ 7.2.) Traffic has, and continues to be, driven to the settlement website through the various aspects of the customer outreach program and through Honda's purchase of keyword and phrase sponsorship on Google and other popular search engines so that Class Members who use those search terms will be directed to the website. (*Id.*, ¶ 7.2.1.) Honda will also maintain a toll-free number so that class members can call with questions and receive information in both English and Spanish. (*Id.*, ¶¶ 7.3-7.4.)

Finally, notice of the proposed settlement has also been provided to the U.S. Attorney General and appropriate regulatory officials in all 50 states, as required by the Class Action Fairness Act, 28 U.S.C. § 1715. (Not. of Compliance [ECF No. 96].) Honda has provided these government officials with copies of all required materials so that the states and federal government may make an independent evaluation of the settlement and bring any concerns to the Court's attention. (*Id.*)

E. Attorneys' fees and litigation expenses

After reaching an agreement regarding the scope of class-wide relief and the corresponding release, the parties engaged in negotiations to resolve Plaintiffs' counsel's reimbursement of attorney's fees and litigation expenses. (Gibbs Decl. [ECF No. 94-1], ¶ 20.) The parties have not been able to agree to terms and Class Counsel is filing a fee application contemporaneously with this memorandum, which Honda expects to oppose.

IV. ARGUMENT

A. The settlement class should be certified under Fed. R. Civ. P. 23(b)(2)

In its Preliminary Approval Order, the Court found that the proposed settlement class met the requirements of Rule 23 and preliminarily certified it pursuant to Rule 23(b)(2). (Ord. Granting Prelim. Approval [ECF No. 95] at 3-4.) Plaintiffs now request that the Court affirm its preliminary findings and render a final decision as to the appropriateness of class certification.

When presented with a class settlement prior to a decision on class certification, the Court must ensure that the proposed settlement class satisfies the requirements of Fed. R. Civ. P. 23(a) and one of the subsections of Fed. R. Civ. P. 23(b). *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 625 (6th Cir. 2007). Here, the parties' proposed Settlement Class may properly be certified under Fed. R. Civ. P. 23(a) and 23(b)(2).

1. The settlement class satisfies Fed. R. Civ. P. 23(a)

The prerequisites for class certification under Fed. R. Civ. P. 23(a) are (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation, each of which is satisfied here. Fed. R. Civ. P. 23(a); *In re Whirlpool Corp. Front-Loading Washer Prod. Liab. Litig.*, 722 F.3d 838, 850 (6th Cir. 2013).

a) Numerosity

The Settlement Class encompasses approximately 340,000 vehicles, (Gibbs Decl. [ECF No. 94-1], ¶ 13, Ex. 5 [ECF No. 94-6]), and so it readily satisfies the requirement that “joinder of all members [be] impracticable.” Fed. R. Civ. P. 23(a)(1); *In re Whirlpool Corp.*, 722 F.3d at 852 (“While no strict numerical test exists to define numerosity under Rule 23(a)(1), ‘substantial’ numbers of affected consumers are sufficient to satisfy this requirement.”).

b) Commonality

The Settlement Class also meets the commonality requirement because Settlement Class Members’ legal claims against Honda share questions of law and fact. Fed. R. Civ. P. 23(a)(2). Consumer class actions alleging a widespread defect typically raise common issues, and this case is no exception. *See, e.g., In re Whirlpool Corp.*, 722 F.3d at 853 (common question whether alleged design defect in washing machines caused mildew); *Daffin v. Ford Motor Co.*, 458 F.3d 549, 554 (6th Cir. 2006) (common questions included whether vehicles prone to accelerator sticking were defective and whether written warranties covered the issue). Among the questions Settlement Class Members’ claims have in common are: (i) whether the 2015 CR-V is prone to vibration; (ii) whether Honda knew or should have known about the vibration; (iii) whether the vibration is material, such that Honda has a legal duty to disclose it; and (iv) whether Honda sufficiently notified 2015 CR-V owners about the availability of repairs that would be covered under warranty.

c) Typicality

Typicality requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The typicality requirement is similar to the commonality requirement and is generally met when the named plaintiffs’ and class members’ claims arise from the same course of conduct or are based on the same legal or

remedial theory. *Rikos v. Procter & Gamble Co.*, 799 F.3d 497, 509 (6th Cir. 2015). Here, Plaintiffs and Settlement Class Members each have claims that arise from Honda's sale of 2015 CR-Vs alleged to be prone to vibration and from its failure to disclose that vibration at the time of sale. The fact that the vibration manifests for some CR-V owners but not for others does not affect the typicality analysis. *In re Whirlpool Corp.*, 722 F.3d at 857. Because Plaintiffs are pursuing legal theories and remedies that apply to all owners and lessees of Class Vehicles — who have a right to receive notice of material facts concerning their vehicle — Plaintiffs' claims are sufficiently aligned with those of the class.

d) Adequacy

Class representatives are adequate when it “‘appear[s] that [they] will vigorously prosecute the interests of the class through qualified counsel,’ which usually will be the case if the representatives are ‘part of the class and possess the same interest and suffer the same injury as the class members.’” *UAW*, 497 F.3d at 626 (quoting *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 525 (6th Cir. 1976)). Here, Plaintiffs are members of the proposed Settlement Class, they have the same interests and suffered the same injury as other CR-V owners and lessees, and they have vigorously pursued the class's interests through Court-appointed counsel for over two years. Likewise, they are represented by Court-appointed counsel who vigorously advanced their interests and whom this Court has previously found to be well qualified to represent them in this multidistrict litigation. (CMO No. 2 [ECF No. 15]; Gibbs Decl. [ECF No. 94-1], ¶ 19.)

2. The settlement class satisfies Fed. R. Civ. P. 23(b)(2)

In addition to meeting the requirements of Fed. R. Civ. P. 23(a), Plaintiffs also satisfy Fed. R. Civ. P. 23(b)(2), which authorizes class certification where a defendant “has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” As alleged in the

operative complaint, and detailed above, Honda's alleged failure to adequately inform customers about vibration concerns and available remedies applies generally to the Settlement Class. The injunctive relief contemplated by the settlement directly addresses that omission for the class as a whole, making class certification under Fed. R. Civ. P. 23(b)(2) appropriate.

B. The settlement merits final approval

A proposed class action settlement may be approved if the Court, after allowing absent class members an opportunity to be heard, finds that the settlement is "fair, reasonable and adequate." *See UAW v. Gen. Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007) (quoting Fed. R. Civ. P. 23(e)(1)(C)). When assessing a proposed settlement, a district court's inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiation parties and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned." *Vassalle v. Midland Funding, LLC*, No. 3:11-cv-00096, 2014 WL 5162380, at *7 (N.D. Ohio Oct. 14, 2014); *accord Clark Equip. Co. v. Int'l Union, Allied Indus. Workers*, 803 F.2d 878, 880 (6th Cir. 1986).

In assessing whether a proposed class settlement is fair, adequate, and reasonable, this Court and others have considered the following factors:

1. Plaintiffs' likelihood of ultimate success on the merits balanced against the amount and form of relief offered in settlement;
2. The complexity, expense, and likely duration of the litigation;
3. The stage of the proceedings and the amount of discovery completed;
4. The judgment of experienced trial counsel;
5. The nature of the negotiations;
6. The objections raised by the class members; and
7. The public interest.

In re Broadwing, 252 F.R.D. 369, 372 (S.D. Ohio 2006). The sixth factor (objections by class members) cannot be evaluated until the objection deadline passes, but the remaining factors confirm the settlement as advantageous to the class and worthy of approval.

1. Likelihood of success balanced against the relief offered by the proposed settlement

a) Likelihood of ultimate success on the merits

When the litigation started in 2015, Plaintiffs' claims for injunctive relief were reasonably strong. Plaintiffs sought an order requiring Honda to acknowledge vibration problems in the 2015 Honda CR-V, notify owners of the issue, and provide free repairs under warranty. They had amassed what they considered to be a large number of consumer complaints, suggesting that the vibrations Plaintiffs had experienced were not isolated incidents, but rather the result of a known issue that Honda had failed to disclose. They could make strong arguments that Honda had a legal obligation to disclose that type of material fact under state consumer protection laws. And they could mount a convincing case that Honda was obliged to correct the resulting vibrations free of charge under its written warranties.

After Honda rolled out its TSB and countermeasures, Plaintiffs' case for injunctive relief changed, but Plaintiffs still believe their demands for injunctive relief would be likely to succeed. Plaintiffs believe they can still show that many 2015 CR-V owners and lessees remain unaware that free repairs are available to correct their vibration problems — often because Honda dealerships previously told them that their vibrations were normal or that no solution was available. Plaintiffs believe an order requiring Honda to issue a more extensive disclosure will correct the consequences of its alleged prior violation of state consumer protection and warranty laws. Potential pitfalls exist — including variations in state laws, arbitration provisions in some consumers' sales contracts, and other issues raised in Honda's pending motions. But the main

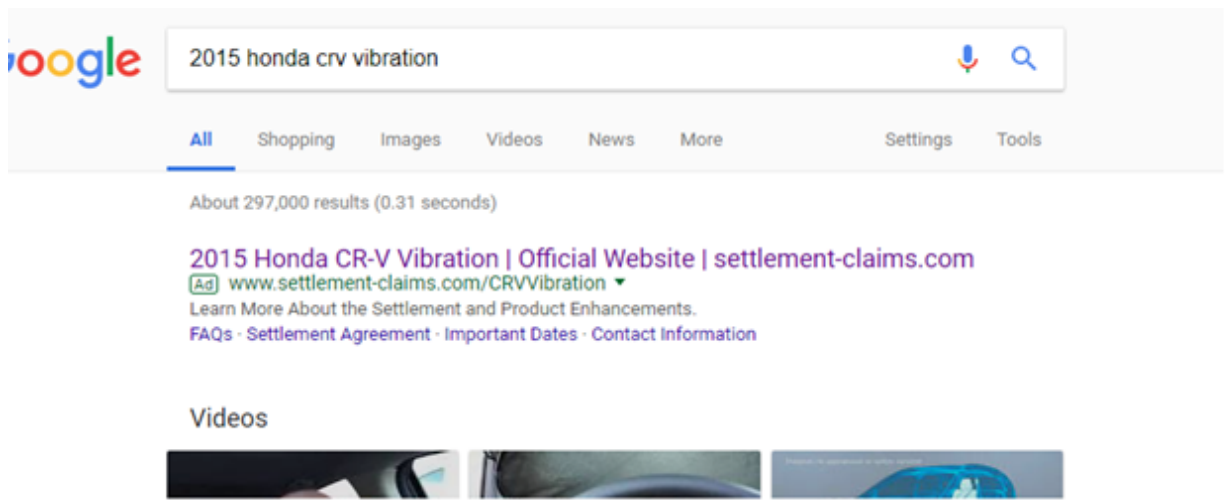
problem, from Plaintiffs' point of view, is that despite the passage of time, many Honda owners are not aware that countermeasures exist to address vibration issues they may be experiencing and that these repairs are covered by warranty. As a result of this litigation, 2015 CR-V owners and lessees are being told *now* about the free countermeasures that are available — not years down the road at the possible conclusion of this litigation.

Plaintiffs' claims for monetary relief, on the other hand, are far less certain. Honda dealers did not charge for vibration repairs in the past and do not do so now. Customers were typically either denied a repair altogether (at the outset of the case) or were provided free repairs under warranty (starting in late 2015). As a result, Settlement Class Members generally do not have out-of-pocket damages that could be recovered at the conclusion of the case. Plaintiffs could attempt to recover damages by arguing that all CR-V owners are entitled to point-of-sale damages — *i.e.*, the difference in market value between the non-defective 2015 CR-Vs they were promised and the 2015 CR-Vs they actually received. Proving point-of-sale damages on a class-wide basis could be challenging here, given that Honda will likely argue that: (i) many 2015 CR-V owners appear not to have experienced any vibration; (ii) this is not a safety defect case, such that the possibility of future manifestation poses lingering concern; (iii) those that did suffer from vibrations reported several different types, which varied in frequency and magnitude; (iv) Honda began offering free repairs early in the vehicles' lifespan; and (v) based upon information exchanged between the parties, those repairs have proven effective in the vast majority of cases. (Gibbs Decl. [ECF No. 94-1], ¶¶ 7, 17.) Under these circumstances, it could be challenging to prove that all Settlement Class Members received vehicles of diminished market value. And it would be challenging to identify and compensate only those 2015 CR-V owners who continue to experience excessive vibration; filtering out those 2015 CR-Vs that may be worth less as a result

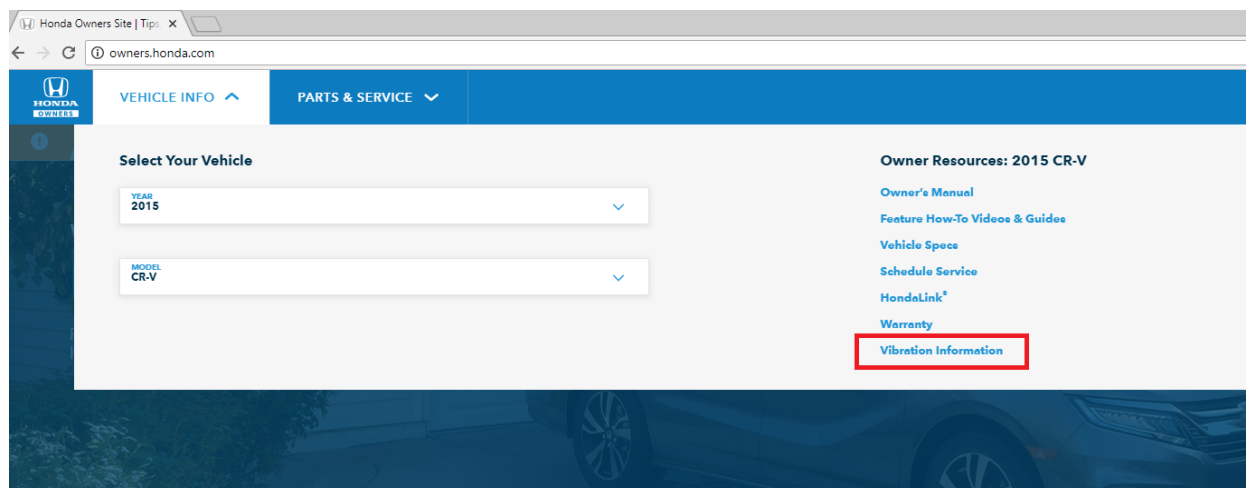
of persistent vibrations from those that are performing as warranted could require individualized proof — undermining the efficiencies that otherwise might be gained from class treatment.

b) The Relief Offered in Settlement

The proposed settlement resolves Plaintiffs’ injunctive relief claims (which Plaintiffs believe are relatively strong for reasons detailed above) and expedites the customer outreach program and its notices to class members. As discussed, Honda is now publicizing the availability of the free vibration repairs in a variety of ways. This includes sponsored advertising that puts notice of the repairs and settlement at the top of Google search results:



(Shortnacy Decl., ¶ 4.) It also includes a highly prominent post on Honda’s Owner Link website, with a link to the vibration information immediately visible once drivers enter their vehicle information:



(*Id.* at ¶ 3.) Those web-based notices are in addition to the quarterly reminders being disseminated to Honda dealers. (Settlement, ¶ 4.3.5; Shortnacy Decl., ¶ 7.) And both Honda and Class Counsel have sent direct communications to class members who had previously contacted them about the vibrations. (Settlement, ¶¶ 4.3.3-4.3.4; Stein Decl., ¶ 24; Shortnacy Decl., ¶¶ 5-6, Ex. 4.) These efforts, in short, are well-calibrated to reach the 2015 CR-V owners who can benefit from information about the repairs and their warranty rights and will give Plaintiffs much — if not all — of the injunctive relief they could have received following trial.

At the same time, the settlement will not compromise individual 2015 CR-V owners' monetary claims. Most class members never experienced a vibration problem, have already received one or more free countermeasures after the litigation commenced, or will receive one or more free countermeasures as a result of the notice plan extant in the proposed settlement. Importantly, those who wish to pursue monetary damages resulting from unique circumstances will remain free to do so. In fact, the settlement will make sure that those 2015 CR-V owners know how they can pursue monetary damages. Honda will be required to remind Settlement Class Members that, to the extent they remain dissatisfied with vibration in their 2015 CR-Vs,

they may take advantage of the free and streamlined dispute resolution process available to them by mediating or arbitrating their individual claims with Honda free of charge. (Settlement, ¶ 4.3.)

2. Complexity, expense, and likely duration of the litigation

Most class actions are inherently complex, and this case is no exception. Plaintiffs' Second Consolidated Amendment Complaint includes twenty-one claims under nine states' laws and involves technical subject matter that would have required extensive expert testimony to resolve. Honda had already raised ripeness, standing, and arbitration issues at the pleading stage and would undoubtedly have raised even more as the litigation progressed to the class certification stage and beyond. At each stage, the class's claims would encounter added risk, the costs of litigation would continue to rise, and more and more time would pass — all while countermeasures to the vibrations exist. By settling now, 2015 CR-V owners affected by the issue but unaware of the existence of the countermeasures will learn of their existence sooner rather than later, and both the risk and cost associated with further litigation can be avoided. *See In re Nationwide Fin. Servs. Litig.*, No. 2:08-CV-00249, 2009 WL 8747486, at *4 (S.D. Ohio Aug. 19, 2009) (“[A]voiding the delay, risks, and costs of continued litigation against a defendant is a valid reason for counsel to recommend and for the court to approve a settlement.”).

3. Stage of proceedings and discovery completed

To ensure that Plaintiffs had sufficient information to evaluate their case and to assess the adequacy of the proposed settlement, courts also consider the stage of the proceedings and the discovery completed. *In re Broadwing*, 252 F.R.D. at 374. Here, the parties engaged in highly focused and critical formal and informal discovery before settling, which included extensive empirical data. Plaintiffs heard from hundreds of class members about their CR-V problems, reviewed Honda's internal data and documents, and consulted with experts and consultants

retained by both sides. (Gibbs Decl. [ECF No. 94-1], ¶¶ 10, 17, 18.) The detail provided in the Second Consolidated Amended Complaint and the extensive briefing on Honda's motions to dismiss and to compel arbitration demonstrate Plaintiffs had a clear view of the strengths and weaknesses of their case and were well positioned to negotiate the settlement before the Court.

4. Judgment of experienced trial counsel

Class Counsel have extensive experience handling consumer class action litigation, as the Court noted in its order appointing them to represent CR-V owners. (CMO No. 2 [ECF No. 15] at 4, 7.) Based on that experience — as well as their knowledge of the strengths and weaknesses of the case, their consultations with experts and class members alike, and their analysis of Honda's internal records — Class Counsel believe the proposed settlement to be in the best interests of the class and urge the Court to approve it.

5. Nature of the negotiations

While courts give significant weight to the recommendation of experienced class counsel, they should also ensure that the recommended settlement is a non-collusive one reached through arm's-length negotiations. *In re Broadwing*, 252 F.R.D. at 375. Here, there should be little doubt that the parties' settlement was reached in good faith. The parties vigorously litigated a motion to dismiss, motion to compel arbitration, and preliminary discovery matters before exploring settlement options at the Court's suggestion. They engaged in substantial formal and informal discovery to aid in those discussions and reached agreement through a multiday, arm's-length

negotiation² presided over by professional mediator Frank A. Ray. (Gibbs Decl. [ECF No. 94-1], ¶¶ 10-12.)

6. Objections Raised by Settlement Class Members

Class members are now being notified of the settlement and have until August 24 to object. (Ord. Granting Prelim. Approval [ECF No. 95] at 6.) Once this deadline has passed, Plaintiffs will provide the Court with a copy of any objections received and a complete assessment of the overall class reaction.

7. Public Interest

“Public policy generally favors settlement of class action lawsuits.” *Stinson v. Delta Mgmt. Assocs.*, 302 F.R.D. 160, 165 (S.D. Ohio 2014). The proposed settlement in this lawsuit would further that general policy of resolving complex litigation and conserving judicial resources. But it also carries a number of other public benefits: it benefits 2015 CR-V owners by providing them with robust information about the availability of free countermeasures sooner rather than later and benefits the public at large by ensuring consumers avail themselves of free remedies available pursuant to warranty.

V. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court enter an order granting final approval of the parties’ settlement.

² In addition, the parties reached agreement on the nature of the relief to be provided to the Settlement Class before any discussion of the question of attorneys’ fees and expense reimbursements. To date, the parties have reached no agreement on fees or costs.

Dated: July 10, 2018

Respectfully submitted,

/s/ Eric. H. Gibbs

Eric H. Gibbs (*pro hac vice*)
David Stein (*pro hac vice*)
Amy Zeman (*pro hac vice*)
GIBBS LAW GROUP LLP
505 14th Street, Suite 1110
Oakland, California 94612
Telephone: (510) 350-9700
Facsimile: (510) 350-9701
ehg@classlawgroup.com
ds@classlawgroup.com
amz@classlawgroup.com

Mark H. Troutman (0076390)
Gregory M. Travaglio (0000855)
Shawn K. Judge (0069493)
**ISAAC WILES BURKHOLDER &
TEETOR LLC**
Two Miranova Place, Suite 700
Columbus, Ohio 43215
Telephone: (614) 221-2121
Facsimile: (614) 365-9516
mtroutman@isaacwiles.com
gtravaglio@isaacwiles.com
sjudge@isaacwiles.com

Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Eric H. Gibbs

Eric H. Gibbs (*pro hac vice*)
Class Counsel

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: American Honda Motor Co., Inc.,
CR-V Vibration Marketing and Sales
Practices Litigation

Case No. 2:15-md-2661

Judge Michael H. Watson
Chief Magistrate Judge Deavers

This document relates to: ALL CASES

[PROPOSED] INJUNCTIVE RELIEF ORDER

The parties to the Litigation have submitted this Injunctive Relief Order providing for the injunctive relief prescribed in the parties' Stipulation of Settlement and Release ("Agreement").

The Court has considered the Agreement and all exhibits thereto and has entered Final Judgment in the Litigation. The Court now adopts the parties' proposed Injunctive Relief Order providing for the Customer Outreach Program detailed below and ENJOINS Defendant American Honda Motor Co., Inc.'s ("AHM") as follows:

A. Terms of Injunction

1. All capitalized terms in this Injunctive Relief Order shall have the meaning ascribed to them in the Agreement unless otherwise stated.

2. The Court enjoins AHM to implement the Customer Outreach Program provided for by Section 4 of the parties' Settlement Agreement until January 1, 2020, and finds that Honda began implementing the Customer Outreach Program by June 25, 2018, pursuant to the Preliminary Approval Order.

3. AHM will continue to engage in the Customer Outreach Program directed to Settlement Class Members and Authorized Honda Dealers to confer benefits to the Settlement

Class as provided for in the Agreement. AHM shall continue to be responsible for all costs associated with Customer Outreach Program unless otherwise expressly provided for by the Agreement.

4. AHM (or, in the instance of item (d) below, Class Counsel) shall take the following steps (to the extent not already completed) with respect to the Customer Outreach Program consistent with the timelines and conditions set forth in the Agreement:

- (a) Prominently post on the Honda Owner Link website a message substantially similar to that attached as Exhibit G to the Agreement.
- (b) Implement a protocol to optimize web searches for terms related to 2015 Honda CR-V unpleasant vibration so the 2015 Honda CR-V Owner Link website will appear on or near the first “page” of Google search results for a period of no less than one (1) year. Under no circumstances shall the protocol be required to remain active more than twelve (12) months after the Effective Date.
- (c) Send by email (if possible), and otherwise by first class mail to last known mailing addresses, letters substantially similar to the one attached as Exhibit H to the Agreement to Settlement Class Members who complained to AHM about unpleasant vibration in Settlement Class Vehicles and who have not had any Product Enhancements performed.
- (d) Disseminate letters substantially similar to that attached as Exhibit I to the Agreement by email to all Settlement Class Members who contacted Class Counsel regarding unpleasant vibration in 2015 Honda CR-Vs and who are not already receiving notice pursuant to paragraph (c) above.

- (e) Send by email (if possible) and otherwise by first class mail to last known mailing addresses, letters substantially similar to the one attached as Exhibit H to the Agreement to Settlement Class Members who complained to AHM about unpleasant vibration in Settlement Class Vehicles after having at least one, but not all applicable Product Enhancements performed.
- (f) Disseminate a message substantially similar to that attached as Exhibit J to the Agreement to Authorized Honda Dealers on a quarterly basis for a one-year period from the date the Settlement Website goes live to remind them about the vibration issues and the Product Enhancements.

5. If AHM is unable to comply with any of the deadlines set forth in the Agreement, AHM will receive a reasonable extension of time sufficient to permit completion of the task upon submission of an application to the Court showing good cause for the extension.

B. Limitations on Injunctive Relief

6. Any actions by AHM determined in good faith to be reasonably necessary to comply with any federal, state, or local law, enactment, regulation, or judicial ruling shall not constitute a breach of the Agreement or this Injunctive Relief Order. In the event that any obligation that AHM has agreed to undertake becomes inconsistent with any future federal, state, or local law, enactment, regulation, or judicial ruling, then AHM shall be released from performing such obligation after notice to the Court and Class Counsel. Any objection to such change in procedure shall be made to the Court by Class Counsel within ten (10) days of such notice (or the next business day if the tenth day falls on a weekend day or Court holiday).

7. The obligations of this Injunctive Relief Order shall expire January 1, 2020.

IT IS SO ORDERED.

DATED: _____

HON. MICHAEL H. WATSON
United States District Court Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: American Honda Motor Co., Inc.,
CR-V Vibration Marketing and Sales
Practices Litigation

Case No. 2:15-md-2661

Judge Michael H. Watson
Chief Magistrate Judge Deavers

This document relates to: ALL CASES

**[PROPOSED] ORDER AND FINAL JUDGMENT GRANTING PLAINTIFFS’
UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT**

Plaintiffs have filed a motion for final approval of the settlement, which Defendant American Honda Motor Co., Inc. (“AHM”) does not oppose. The Court has read and considered all papers filed and proceedings had and otherwise being fully informed in the premises and good cause appearing therefor, finds there is sufficient basis for granting final approval of the settlement.

The Court now **GRANTS** the motion for final approval and makes the following findings and orders:

1. All preliminary findings and conclusions in the Court’s preliminary approval order are hereby made final. In particular, the Court affirms its findings that the following Settlement Class¹ meets the requirements of Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure:

All persons or entities who own or lease any Settlement Class Vehicle in the United States, including its territories and Puerto Rico.

¹ All capitalized terms not otherwise defined in this Order shall take the meaning set forth in the Settlement Agreement.

Excluded from the Settlement Class are AHM, any entity that is a subsidiary of or is controlled by AHM, anyone employed by Class Counsel; any judge to whom this case is assigned, his or her spouse, and members of the judge's staff; and anyone who purchased a Settlement Class Vehicle for the purpose of resale.

"Settlement Class Vehicle" refers to any and all 2015 Honda CR-Vs distributed by American Honda Motor Co., Inc., in the United States, including its territories and Puerto Rico.

2. The Court finds that notice has been disseminated to the Settlement Class in compliance with the Court's Preliminary Approval Order and that notice given was the best notice practicable under the circumstances, fully satisfied due process, and met the requirements of Rule 23 of the Federal Rules of Civil Procedure. The Court further finds that dissemination of notice pursuant to the Class Action Fairness Act ("CAFA") was effected as required under 28 U.S.C. § 1715.

3. The Court finds that the Settlement is fair, reasonable, and adequate; is in the best interest of the Settlement Class; has been entered into in good faith; and should be and hereby is fully and finally approved pursuant to Federal Rule of Civil Procedure 23.

4. The Plaintiffs' releases and Settlement Class Members' releases set forth in the Settlement, in Section 8, are incorporated herein and, as of the Effective Date, are binding and effective on Plaintiffs and all Settlement Class Members, with the Settlement Class and Plaintiffs releasing the Released Parties from the Settled Claims and the Plaintiff Settled Claims as set forth in the Settlement Agreement.

5. There being no just reason for delay, the Court, in the interests of justice, expressly directs the Clerk of the Court to enter this Final Judgment. Upon entry, the Plaintiffs' claims in this Lawsuit shall be dismissed with prejudice, including as to the Plaintiff Settled Claims, and the Settled Claims shall be dismissed in their entirety with prejudice as to the Settlement Class. Without affecting the finality of this Judgment in any way, this Court hereby

retains continuing jurisdiction over (a) implementation of the Settlement; (b) further proceedings, if necessary, on applications for attorney's fees, expenses, and costs in connection with the action and the settlement; and (c) the Parties and the Class Members for the purpose of construing, enforcing, and administering the Settlement Agreement and all orders and judgments entered in connection therewith.

6. The Court will enter the Injunctive Relief Order by separate order and will also resolve Plaintiffs' pending motion for attorney's fees and costs by separate order.

IT IS SO ORDERED.

DATED: _____

HON. MICHAEL H. WATSON
United States District Court Judge