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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 VINCE EAGEN, on behalf of himself and all)
others similarly situated,)
11 Plaintiff,)
12 v.)
13 AMERICAN HONDA MOTOR CO., INC.,)
14 Defendant.)

Case No.: 3:12-cv-01377-SI
Assigned to Hon. Susan Illston

**DEFENDANT AMERICAN HONDA
MOTOR CO., INC.'S SUBMISSION
IN SUPPORT OF FINAL
SETTLEMENT APPROVAL**

15)
16) Complaint Filed: March 19, 2012
Trial Date: None set
17)
18) Hearing Date: March 21, 2014
Time: 9:00 a.m.
Courtroom: 10
19)

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1 Defendant American Honda Motor Co., Inc. (“AHM”) respectfully makes this
 2 submission in support of Plaintiff Vince Eagen’s Unopposed Motion for Final Approval of
 3 Class Action Settlement & Award of Attorneys’ Fees & Expenses (Dkt. 99).¹ As set forth
 4 in Plaintiff’s Motion, and herein, the proposed settlement provides substantial benefits to
 5 Settlement Class Members, and is fair, adequate and reasonable. AHM therefore
 6 respectfully requests that the Court grant final approval to the settlement, and enter the
 7 Final Approval Order as proposed (Dkt. 93-2).

8 I. INTRODUCTION

9 Notwithstanding its strong defenses, AHM agreed to settle Plaintiff’s claims in
 10 order to enhance customer satisfaction in AHM’s vehicles. Indeed, the terms of the
 11 settlement provide meaningful and tangible relief to Settlement Class Members.

12 First, the settlement provides for full cash reimbursement of eligible Out-of-Pocket
 13 Expenses incurred by Settlement Class Members for repairs to their Settlement Class
 14 Vehicles related to Engine Misfire.² To take advantage of this benefit, Settlement Class
 15 Members need only complete and submit a Claim Form by April 10, 2014. Settlement
 16 Class Members whose reimbursement claims are not approved in whole or in part have the
 17 right under the Settlement Agreement to submit additional materials and information and
 18 to have the Claim decision reconsidered. (Settlement Agreement, Section IV(B)(5)).
 19 Settlement Class Members still not satisfied with their reimbursement claim award after
 20 reconsideration can then initiate a binding arbitration administered by the Better Business
 21 Bureau. (Settlement Agreement, Section IV(B)(6)-(7)). The administrative costs charged
 22 by the Better Business Bureau for the appeals, if any, are to be borne by AHM. *Id.*

24 ¹ Capitalized terms not otherwise defined herein shall have the same meanings as
 25 ascribed to them in the Settlement Agreement. (“Settlement Agreement,” Dkt. 73-1).

26 ² As defined in the Settlement Agreement, Engine Misfire is: the alleged condition
 27 in the Settlement Class Vehicles equipped with engines with variable cylinder
 28 management (“VCM-2”) where the cycling of the cylinder under certain drive conditions
 allows for spark plug cooling, which may result in carbon fouling of the spark plugs, and is
 defined by the diagnostic trouble code (“DTC”) numbers P0301, P0302, P0303, or P0304.
 (Settlement Agreement, Section I(I)).

1 Second, the settlement provides a three-year extension of the Settlement Class
 2 Vehicles' original 5-year / 60,000 mile Powertrain Warranty to cover Engine Misfire.
 3 (Settlement Agreement, Section III(A)). Per the terms of the Settlement Agreement, AHM
 4 is extending the Powertrain Warranty so that the warranty period for Engine Misfire totals
 5 eight years from the original sale or lease of the Settlement Class Vehicle, without any
 6 mileage limitation. *Id.* Settlement Class Members do not need to file a Claim Form to
 7 obtain this benefit. They only need to bring their car to an AHM-authorized dealer for
 8 repair. Settlement Class Members will not have to pay any money out-of-pocket for
 9 Engine Misfire repairs covered by the Warranty Extension, as set forth in the Settlement
 10 Agreement.

11 In light of these comprehensive benefits to the Settlement Class Members, AHM
 12 believes that the settlement is fair and reasonable and should be finally approved. The
 13 extremely low number of objectors—just six out of a total of 1.87 million Settlement Class
 14 Notices mailed—is also strong evidence that the Settlement Class Members are satisfied
 15 with the settlement as proposed. AHM responds to the objectors below.³

16 **II. RESPONSE TO OBJECTORS**

17 While Settlement Class Members have until February 24, 2014 to object, to date
 18 only six Settlement Class Members have objected to the settlement out of 1.87 million
 19 Settlement Class Notices mailed.⁴ (Shortnacy Decl., ¶ 5.) In addition, only 161
 20 individuals have excluded themselves from the settlement, and many of these did so
 21 simply because they have suffered no harm or they object to class actions on principle.
 22 Shortnacy Decl., ¶ 4. In any event, these numbers represent a tiny fraction—.0003% and
 23 .009%, respectively—of the total number of Settlement Class Notices mailed, and provide

24 ³ AHM's response to five objectors' claims is set forth in Section II(A)-(C), *infra*.
 25 The sixth objector, Caldwell, raises issues about an "engine misfire" that "caused a spark
 26 plug to blow from the engine block and burn a hole in the battery." (Dkt. 97-5.)
 27 Caldwell's objection should be overruled because it plainly does not relate to Engine
 28 Misfire that is at issue in this case, nor does it relate to any of the Settlement Class
 Vehicles. A seventh Settlement Class Member submitted an objection, but later withdrew
 it. *See* accompanying Declaration of Michael B. Shortnacy, dated February 7, 2014, ¶ 5.

⁴ *See* January 10, 2014, Settlement Administrator Decl., Dkt. 93-1, at ¶ 6.

1 powerful evidence that the proposed settlement has been well-received by the Settlement
2 Class Members and is a fair and reasonable result. *See, e.g., Hartless v. Clorox Co.*, 273
3 F.R.D. 630, 641 (S.D. Cal. 2011) (reaction of class weighed in favor of final approval
4 where only 0.033% objected to the class settlement and only 1.1% of the class opted out);
5 *Pereira v. Ralph's Grocery Co.*, 2010 WL 6510346, *4 (C.D. Cal. July 1, 2010) (finding
6 that the relatively low number of objections indicated a fair an adequate settlement where
7 of the thousands of class members, only 14 filed objections); *In re Omnivision*
8 *Technologies, Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (concluding that the lack
9 of objection from class members favored approval of the settlement where 0.005% of class
10 members submitted objections). Nevertheless, AHM responds below to the central issues
11 raised by the objectors and respectfully urges the Court to grant final approval to the
12 proposed settlement.

13 **A. Objection to Ethanol Fuel Additives**

14 Objector Stevens states that he has owned four different Settlement Class Vehicles.
15 (Dkt. 92.) He also admits that he “never had one issue with [his] VCM-2 engines.” *Id.*
16 Objector Stevens takes no issue with any specific term of the settlement. Nor does he
17 object to the relief provided to Settlement Class Members. Rather, he suggests that the
18 engine misfire issues he has experienced in non-Settlement Class Vehicle engines are
19 attributable to ethanol contained in fuel additives “required” by the government. *Id.*
20 Objector Stevens’ experiences underscore the appropriateness of the relief provided by this
21 settlement: individuals like Objector Stevens, who have never experienced any issues with
22 their VCM-2 engines, will likely never need the benefit of the Warranty Extension; but, for
23 those Settlement Class Members who do experience Engine Misfire covered by the
24 Warranty Extension, the Extension will be there to provide them relief.

25 **B. Objections of Settlement Class Members Who Already Purchased** 26 **Extended Warranties**

27 Objectors Fieldhacker and McClelland both complain that they do not receive the
28 same benefit as other Settlement Class Members because these objectors already

1 purchased extended warranties for their Settlement Class Vehicles. (Shortnacy Decl., ¶¶ 8-
 2 9.) The objectors state that the extended warranties they purchased are seven years in
 3 duration, and therefore the eight-year Warranty Extension for Engine Misfire under the
 4 Settlement Agreement only gives them one extra year of coverage for eligible Engine
 5 Misfire repairs. The objectors argue that the settlement should be modified to provide
 6 them with additional three and five year extensions (respectively) on top of their already
 7 extended Powertrain Warranties.

8 The objectors' proposed "tiered" implementation of the Warranty Extension for
 9 Engine Misfire, however, is unworkable since extended warranties of varying terms and
 10 conditions can be obtained from numerous third-parties. Moreover, it is not accurate (as
 11 the objectors suggest) that the Warranty Extension provides them with fewer benefits than
 12 other Settlement Class Members because the objectors previously purchased some kind of
 13 extended warranty. Under the Settlement Agreement, the Warranty Extension for Engine
 14 Misfire is without a mileage limitation. But, the objectors' purchased extended warranties
 15 do have mileage limitations (of 80,000 and 65,000 miles respectively). Therefore, the
 16 Warranty Extension for Engine Misfire contained in the Settlement Agreement does
 17 provide material benefits to these objectors, and to those Settlement Class Members
 18 similarly situated.

19 **C. Objection that Settlement Class Vehicle Engines Be Replaced in their**
 20 **Entirety**

21 Objector Pendzich admits that "he does not have an engine misfire problem" at this
 22 time, but is concerned that "he may have one in the future." (Shortnacy Decl., ¶ 10.)
 23 Objector Pendzich should rest assured, however, because under the terms of the Settlement
 24 Agreement his Settlement Class Vehicle is covered pursuant to the terms of the Warranty
 25 Extension until January 17, 2018,⁵ without any limitation as to mileage. *Id.* Indeed,
 26 Objector Pendzich personifies the relief provided to Settlement Class Members who may
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28 ⁵ This date is based on the date Mr. Pendzich reports to have purchased his vehicle.

1 have speculative future concerns about their Settlement Class Vehicles: the Warranty
2 Extension will be there for Settlement Class Members who may not need it today, but
3 might need it at a later time.

4 Objector Pendzich also complains that AHM’s “engine replacement criteria” should
5 be changed such that AHM will “replace the engine when the engine oil burn/consumption
6 rate is approximately one quart or more per 2,000 miles of travel.” *Id.* Objector Pendzich,
7 however, gives the Court no indication that he has any expertise regarding automotive
8 repair. His speculation that an appropriate remedy for Engine Misfire is in every case
9 engine “replacement”—rather than the remedies developed by automotive experts and
10 instituted as a result of discovery and settlement negotiation by Class Counsel and AHM—
11 should be of comparatively little value to the Court in evaluating the fairness of the
12 settlement.

13 Objector Alexanian similarly urges that the settlement should require AHM to
14 “replace the engines of all those who complained about the oil consumption in their
15 vehicles.” (Shortnacy Decl., ¶ 11.) He also urges the Court to consider “lost time, money,
16 anguish on individuals.” *Id.* Such harm, however, is speculative and unquantifiable,
17 especially when weighed against what the settlement does provide: reimbursement of
18 Settlement Class Members’ actual eligible Out-of-Pocket Expenses.

19 In addition, replacing entire vehicle engines at the request of Settlement Class
20 Members, as these objectors request, for any issue whether or not properly attributable to
21 Engine Misfire (and even though other, effective repairs have been developed for Engine
22 Misfire itself) would be unnecessary, not to mention prohibitively expensive and
23 unworkable. Moreover, these objectors’ demands for further remedies are based solely on
24 speculation: speculation that they will experience problems at some point in the future that
25 are not related to Engine Misfire, or speculation that none of AHM’s repair protocols for
26 Engine Misfire will work.

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1 For all of the foregoing reasons, AHM respectfully submits that the few objectors
2 who have objected to the settlement should be overruled and the Court should grant final
3 approval of the proposed settlement.

4 **III. CONCLUSION**

5 The proposed settlement is fair, adequate, and reasonable. The extremely low rate
6 of opt-outs and objections strongly supports this conclusion. AHM therefore respectfully
7 requests that the Court grant final approval of the proposed settlement (Dkt. 73-1), enter
8 the Final Approval Order (Dkt. 93-1) as proposed, and conditionally certify the proposed
9 Settlement Class.

10 Dated: February 7, 2014

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13 By: /s/ Michael B. Shortnacy
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CERTIFICATE OF SERVICE

I, Michael B. Shortnacy, hereby certify that on February 7, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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