

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

1                   **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**  
2           This Class Action Settlement Agreement and Release (“Settlement Agreement”) is  
3 entered into between and among: (1) Alex Soto and Vince Eagen (collectively, “Named  
4 Plaintiffs”), on behalf of themselves and as representatives of the Settlement Class defined  
5 herein (the Named Plaintiffs and members of the Settlement Class collectively referred to  
6 as “Settlement Class Members”) on the one hand, and (2) Defendant American Honda  
7 Motor Co., Inc. (“Honda”), on the other hand, (collectively with Settlement Class  
8 Members, the “Parties”) by and through their undersigned counsel, in order to fully and  
9 finally settle and resolve the litigation and to effect dismissal with prejudice of all of the  
10 Released Claims (defined herein) asserted against Honda in the action captioned: *Alex*  
11 *Soto and Vince Eagen v. American Honda Motor Co., Inc.*, Case No. 3:12-cv-1377-SI  
12 (N.D. Cal.) (the “Litigation”) on the terms set forth herein, subject to the final approval of  
13 the Court.

14           WHEREAS, Named Plaintiffs Alex Soto and Vincent Eagen filed their putative  
15 class action complaint on March 19, 2012 (the “Complaint”), and amended their complaint  
16 on May 18, 2012 (the “Amended Complaint”);

17           WHEREAS, the Parties have conducted a thorough examination and investigation  
18 of the facts and law relating to the matters set forth in the Litigation, which included,  
19 among other things: (1) review and analysis by Class Counsel, as defined herein, of  
20 documents and native data produced by Honda; (2) review and analysis by Honda of  
21 documents and information produced by the Named Plaintiffs; (3) Honda’s physical  
22 inspection and examination of Plaintiff Vince Eagen’s vehicle; (4) the depositions of each  
23 of the Named Plaintiffs; (5) the depositions of Honda witnesses pursuant to FED. R. CIV. P.  
24 30(b)(6); (6) each party propounding and responding to written requests for the production  
25 of documents; (7) each party propounding and responding to written interrogatories;

26           WHEREAS, Honda denies all of the allegations in the Litigation, denies that it has  
27 engaged in any wrongdoing, denies Named Plaintiffs’ claims are meritorious and has  
28 denied and continues to deny that it is legally responsible or liable to Named Plaintiffs or

1 any Settlement Class Member, as defined herein, for any of the matters asserted in this  
2 Litigation;

3 WHEREAS, the Parties agree that neither this Settlement Agreement nor the  
4 settlement it represents shall be construed as an admission by Honda of any wrongdoing  
5 whatsoever including an admission of a violation of any statute or law, or of liability on  
6 the claims or allegations in the Litigation;

7 WHEREAS, the Parties agree and understand that neither this Settlement  
8 Agreement nor the settlement it represents shall be construed or admissible as an  
9 admission by Honda in the Litigation or any other proceedings that the Named Plaintiffs'  
10 claims or similar claims are or would be suitable for class treatment if the Litigation  
11 proceeded through both litigation and trial;

12 WHEREAS, the Parties seek to compromise and resolve, finally and completely, all  
13 pending and potential claims of the Settlement Class Members relating to claims which  
14 were or could have been asserted in this Litigation by Named Plaintiffs and/or the  
15 Settlement Class arising from or relating to the alleged Excessive Oil Consumption and  
16 Engine Misfire issues;

17 WHEREAS, Class Counsel are experienced in this type of class litigation, and  
18 therefore recognize the costs and risks of prosecution of this Litigation and believe that it  
19 is in the Named Plaintiffs' interest, and the interest of all Settlement Class Members, to  
20 resolve this Litigation, and any and all claims against Honda arising from the conduct  
21 alleged in the Litigation as set forth in this Settlement Agreement;

22 WHEREAS, the Named Plaintiffs and Class Counsel have examined the benefits to  
23 be obtained under the terms of this Settlement Agreement, have considered the risks  
24 associated with the continued prosecution of the Litigation and the likelihood of success on  
25 the merits of the Litigation and believe that, after considering all of the facts and  
26 circumstances, the proposed settlement set forth in this Settlement Agreement offers  
27 significant benefits to Settlement Class Members and is fair, reasonable, adequate and in  
28 the best interests of the Settlement Class Members;

1 WHEREAS, this Settlement Agreement is the result of significant arm's-length  
2 settlement negotiations that have taken place between the Parties;

3 WHEREAS, the Parties agree that this Settlement Agreement supersedes any and  
4 all agreements previously entered into by the Parties with respect to claims asserted in the  
5 Litigation;

6 NOW, THEREFORE, it is hereby stipulated and agreed, by and between the Parties  
7 and their counsel, as follows:

8 **I. DEFINITIONS**

9 **A. "Claim"**

10 A "Claim" is a request for reimbursement under this Settlement Agreement.

11 **B. "Claim Form"**

12 "Claim Form" refers to a form to be completed by a Settlement Class Member to  
13 request reimbursement under this Settlement Agreement, which shall be without material  
14 alteration from Exhibit A attached hereto.

15 **C. "Claims Period"**

16 "Claims Period" means the time period during which a Settlement Class Member  
17 may submit a Claim Form, which period shall be ninety (90) days, beginning as of the  
18 Notice Date.

19 **D. "Class Counsel"**

20 "Class Counsel" means: (1) Berk Law PLLC; (2) Terrell Marshall Daudt & Willie  
21 PLLC; (3) Ram, Olson, Cereghino & Kopczynski; and (4) Berger & Montague, P.C., all of  
22 which appear on the signature page of this Settlement Agreement.

23 **E. "Class Counsel Fees and Expenses Award"**

24 "Class Counsel Fees and Expenses Award" means the total amount of reasonable  
25 attorneys' fees and expenses sought by and apportioned between Class Counsel, subject to  
26 the approval of the Court, in an amount not to exceed eight hundred thousand dollars and  
27 no cents (\$800,000.00) which is the maximum amount that Class Counsel agrees to request  
28 the Court approve, and the maximum amount that Honda agrees it will not contest. The

1 Class Counsel Fees and Expenses Award will be paid separate and apart from any relief  
2 provided to the Settlement Class pursuant to this Settlement Agreement, and shall be paid  
3 by Honda no later than thirty (30) days after the Effective Date provided that Class  
4 Counsel provide Honda with completed W-9 forms and completed wire transfer forms.

5 **F. “Class List”**

6 “Class List” shall mean the complete listing of the names and addresses obtained by  
7 Honda of all persons Honda determines, after a good faith search, are Settlement Class  
8 Members and thereby eligible to receive the Notice. Honda shall obtain from R.L. Polk &  
9 Co., or a similar entity, the most current available names and addresses of all current and  
10 former owners and lessees of Settlement Class Vehicles in order to develop the Class List.  
11 The Class List shall be run through the National Change of Address database for the  
12 purpose of updating addresses before the Notice is mailed.

13 **G. “Court”**

14 “Court” shall mean the United States District Court for the Northern District of  
15 California, the Honorable Susan Illston presiding, or her duly appointed successor.

16 **H. “Effective Date”**

17 The “Effective Date” of this Settlement Agreement means the date when each and  
18 all of the following conditions have occurred: (1) this Settlement Agreement has been  
19 fully executed by the Parties and their counsel; (2) orders have been entered by the Court  
20 certifying a Settlement Class, granting preliminary approval of this Settlement Agreement  
21 and approving the form of Notice, CAFA Notice and Claim Form, all as provided herein;  
22 (3) the Court-approved Notice and Settlement Website (as defined in Section IV,  
23 Paragraphs 2 and 3 below) have been duly created and/or disseminated as ordered by the  
24 Court; (4) the Court has entered a Final Approval Order and Judgment (as defined in  
25 Section I, Paragraph M below) finally approving this Settlement Agreement as provided  
26 below; and (5) the Final Order and Judgment has become Final as defined in Section I,  
27 Paragraph K, below, and no longer subject to any review or appeal.

1           **I.       “Engine Misfire”**

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

7           **J.       “Excessive Oil Consumption”**

8           “Excessive Oil Consumption” shall mean the alleged condition in Model Year  
9 2008, 2009, and 2010 Honda Accord vehicles that may permit oil to enter into those  
10 vehicles’ engines’ combustion chambers, except to the extent that the alleged Excessive  
11 Oil Consumption is a cause and/or symptom of Engine Misfire.

12           **K.       “Final”**

13           “Final” when referring to a judgment or order means that: (1) the judgment is a  
14 final, appealable judgment; and (2) either (a) no appeal has been taken from the judgment  
15 relating to the merits of the settlement (as opposed to any appeals relating solely to the  
16 Class Counsel Fees and Expenses Award, which will not affect finality as defined herein)  
17 as of the date on which all times to appeal therefrom have expired, or (b) an appeal or  
18 other review proceeding of the judgment relating to the merits of the settlement having  
19 been commenced, such appeal or other review is finally concluded and no longer is subject  
20 to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions  
21 for rehearing *en banc*, petitions for writ of *certiorari*, or otherwise, and such appeal or  
22 other review has been finally resolved in a manner that affirms the Final Order and  
23 Judgment in all material respects.

24           **L.       “Final Approval Hearing”**

25           “Final Approval Hearing” shall mean the fairness hearing at which the Court  
26 considers the fairness, reasonableness and adequacy of the proposed settlement and  
27 whether the settlement should be finally approved by the Court, such Final Approval  
28

1 Hearing to be no earlier than ninety (90) days after the Notice Date, subject to the approval  
2 of the Court.

3 **M. “Final Approval Order and Judgment”**

4 “Final Approval Order and Judgment” shall mean the Court order that approves this  
5 Settlement Agreement, which shall be without material alteration from Exhibit B attached  
6 hereto.

7 **N. “Honda”**

8 “Honda” shall mean American Honda Motor Co., Inc., and its predecessors,  
9 successors, assigns, directors, officers, agents, attorneys, representatives and employees.

10 **O. “Honda’s Counsel”**

11 “Honda’s Counsel” shall mean Loeb & Loeb LLP.

12 **P. “Incentive Award”**

13 “Incentive Award” shall mean the payment not to exceed one thousand dollars and  
14 no cents (\$1,000.00) that Honda has agreed to pay to Named Plaintiff Vince Eagen to  
15 compensate him for his time and effort on behalf of the Settlement Class, subject to  
16 approval of the Court, to be paid no later than thirty (30) days after the Effective Date,  
17 provided that Named Plaintiff Eagen provides to Honda a completed W-9 form. No  
18 Named Plaintiff shall be eligible for an Incentive Award if he elects to exclude himself  
19 (*i.e.*, becomes an “Opt-Out”) from this settlement.:-

20 **Q. “Named Plaintiffs”**

21 “Named Plaintiffs” shall mean Plaintiff Alex Soto and Plaintiff Vince Eagen.

22 **R. “Notice”**

23 “Notice” shall mean the Court-approved form of notice of the settlement provided  
24 to the Settlement Class, by first class mail, postage prepaid, which shall be without  
25 material alteration from Exhibit C attached hereto.

26 **S. “Notice Date”**

27 “Notice Date” means the date by which the Settlement Administrator completes the  
28 mailing of a copy of the Notice by first class mail, postage prepaid, to each person on the

1 Class List. The Notice Date shall be no later than ninety (90) days after the Court enters  
2 the Preliminary Approval Order, defined herein, or such earlier practicable date.

3 **T. “Out-of-Pocket Expense”**

4 “Out-of-Pocket Expense” shall mean a Settlement Class Member’s direct outlay of  
5 funds to pay for Engine Misfire repairs prior to the end of the Claims Period. Out-of-  
6 Pocket Expense does not include any amounts previously reimbursed by any party,  
7 including pursuant to other litigation, warranty or customer goodwill, or any amounts  
8 previously reimbursed by any third party through insurance, vehicle service contracts, or  
9 otherwise. In no event shall monetary compensation be issued to Settlement Class  
10 Members by Honda prior to the Effective Date.

11 **U. “Preliminary Approval Order”**

12 “Preliminary Approval Order” means the order to be entered by the Court  
13 preliminarily approving the settlement and (among other things) directing that Notice be  
14 given to the Settlement Class, which Preliminary Approval Order shall be without material  
15 alteration from Exhibit D attached hereto.

16 **V. “Proof of Repair Expense”**

17 “Proof of Repair Expense” shall mean an original invoice, legible photocopy  
18 thereof, or other record, or some combination thereof, identifying the Out-of-Pocket  
19 Expense paid by the Settlement Class Member for a repair related to Engine Misfire.  
20 Sufficient proof shall consist of one or more contemporaneous writings, including but not  
21 limited to original third-party receipts, invoices, and repair orders or bills, which, either  
22 singly or collectively, prove the existence of an Engine Misfire issue and repair made prior  
23 to the end of the Claims Period, and the amount of the Out-of-Pocket Expense. In no event  
24 shall monetary compensation be issued to Settlement Class Members by Honda prior to the  
25 Effective Date.

26 **W. “Released Claims”**

27 “Released Claims” means any and all claims, actions, causes of action, rights,  
28 demands, suits, debts, liens, contracts, agreements, offsets or liabilities, including but not

1 limited to tort claims, claims for breach of contract, breach of the duty of good faith and  
2 fair dealing, breach of statutory duties, actual or constructive fraud, misrepresentations,  
3 fraudulent inducement, statutory and consumer fraud, breach of fiduciary duty, unfair  
4 business or trade practices, restitution, rescission, compensatory and punitive damages,  
5 injunctive or declaratory relief, attorneys' fees, interests, costs, penalties and any other  
6 claims, whether known or unknown, alleged or not alleged in the Litigation, suspected or  
7 unsuspected, contingent or matured, under federal, state or local law, which the Named  
8 Plaintiffs and/or any Settlement Class Member had, have or may in the future have with  
9 respect to any conduct, act, omissions, facts, matters, transactions or oral or written  
10 statements or occurrences prior to the Effective Date of this Settlement Agreement relating  
11 to or arising out of Engine Misfire, including causes or symptoms thereof, as asserted in  
12 the Litigation by the Named Plaintiffs and/or Settlement Class Members including, without  
13 limitation, causes of action for violations of Cal. Bus. & Prof. Code § 17200, *et seq.*,  
14 Cal. Civ. Code § 1750, *et seq.* and similar claims under the statutes and common law of  
15 other states as well as claims for unjust enrichment and breach of warranty, subject to the  
16 exclusions in Section V, Paragraph D.

17 **X. "Releasees"**

18 "Releasees" shall mean Honda and its authorized dealers, subsidiaries, affiliates,  
19 and suppliers.

20 **Y. "Settlement Class Member"**

21 "Settlement Class Member" means a person who falls within the definition of the  
22 Settlement Class and who does not validly opt out of the Settlement Class pursuant to the  
23 procedure set forth in the Court's Preliminary Approval Order.

24 **Z. "Settlement Class Vehicle"**

25 "Settlement Class Vehicle" means any and all: (1) Model-Year 2008, 2009, 2010,  
26 2011, and 2012 Honda Accord vehicles equipped with a 6-cylinder engine with VCM-2,  
27 (2) Model-Year 2008, 2009, 2010, 2011, 2012, and 2013 Honda Odyssey vehicles  
28 equipped with a 6-cylinder engine with VCM-2, (3) Model-Year 2009, 2010, 2011, 2012,

1 and 2013 Honda Pilot vehicles equipped with a 6-cylinder engine with VCM-2, (4) Model-  
2 Year 2010 and 2011 Honda Accord Crosstour vehicles equipped with a 6-cylinder engine  
3 with VCM-2; and (5) Model Year 2012 Crosstour vehicles equipped with a 6-cylinder  
4 engine with VCM-2, distributed for sale or lease in the United States.

5 **AA. "VIN"**

6 "VIN" shall mean the vehicle identification number of a Settlement Class Vehicle.

7 **II. SETTLEMENT CLASS**

8 1. The Parties stipulate to certification, for settlement purposes only, of a  
9 Settlement Class defined as follows:

10 All purchasers and lessees who reside in, and who purchased or leased their  
11 vehicles in the United States (other than for purposes of resale or  
12 distribution), of any: (a) Model-Year 2008, 2009, 2010, 2011, and 2012  
13 Honda Accord vehicles equipped with a 6-cylinder engine with VCM-2; (b)  
14 Model-Year 2008, 2009, 2010, 2011, 2012, and 2013 Honda Odyssey  
15 vehicles equipped with a 6-cylinder engine with VCM-2; (c) Model-Year  
16 2009, 2010, 2011, 2012, and 2013 Honda Pilot vehicles equipped with a 6-  
17 cylinder engine with VCM-2; (d) Model-Year 2010 and 2011 Honda  
18 Accord Crosstour vehicles equipped with a 6-cylinder engine with VCM-2;  
19 and (e) Model Year 2012 Crosstour vehicles equipped with a 6-cylinder  
20 engine with VCM-2.

21 Excluded from the stipulated Settlement Class are: (1) Honda; (2) any affiliate,  
22 parent, or subsidiary of Honda; (3) any entity in which Honda has a controlling  
23 interest; (4) any officer, director, or employee of Honda; (5) any successor or  
24 assign of Honda; (6) any Judge to whom the Litigation is assigned; (7) anyone  
25 who purchased a Settlement Class Vehicle for the purpose of resale; and (8) any  
26 owners or lessees of Settlement Class Vehicles that were not distributed for sale or  
27 lease in the United States.

1           2.       Solely for purposes of implementing this Settlement Agreement and  
2 effectuating the settlement, Honda stipulates to the Court entering an order preliminarily  
3 certifying the Settlement Class, appointing Named Plaintiff Vince Eagan as representative  
4 of the Settlement Class, and appointing Class Counsel to serve as class counsel for the  
5 Settlement Class.

6           3.       Solely for the purpose of implementing this Settlement Agreement and  
7 effectuating the settlement, the Parties stipulate that Honda will be appointed as Settlement  
8 Administrator, subject to the approval of the Court.

9           4.       Solely for the purpose of implementing this Settlement Agreement and  
10 effectuating the settlement, Honda stipulates that Named Plaintiff Vince Eagan and Class  
11 Counsel are adequate representatives of the Settlement Class.

12 **III. SETTLEMENT CONSIDERATION**

13           In exchange for the dismissal of the Litigation, with prejudice, of the Released  
14 Claims as provided herein, Honda agrees to provide the following consideration to the  
15 Settlement Class:

16           **A. Extension of Powertrain Warranty For Engine Misfire-Related Repairs**

17           Effective as of the Notice Date, Honda will extend the Powertrain Limited  
18 Warranty of each Settlement Class Vehicle to cover Engine Misfire until eight (8) years  
19 after the original sale or lease of each Settlement Class Vehicle with no mileage limitation  
20 (the “Warranty Extension”). Settlement Class Members who obtain repairs performed  
21 pursuant to this section after the Notice Date and prior to the Effective Date are precluded  
22 from opting out of the Settlement Class.

23           The Warranty Extension is subject to the same terms and conditions as the original,  
24 written Powertrain Limited Warranty issued at the original point of sale or lease of each  
25 Settlement Class Vehicle as it relates to Engine Misfire, except as specifically modified  
26 herein. Nothing in this Settlement Agreement will be construed as adding to, diminishing  
27 or otherwise affecting any express or implied warranty, duty or contractual obligation of  
28

1 Honda in connection with the Settlement Class Vehicles, except as it relates to Engine  
2 Misfire as set forth herein.

3 Honda may continue to implement any customer satisfaction or goodwill policy,  
4 program or procedure at its discretion, and may extend goodwill consideration to  
5 individual Settlement Class Members on a case-by-case basis, without regard to their  
6 entitlement to relief under the Settlement Agreement, except that in no case shall a  
7 Settlement Class Member obtain more than one recovery (*e.g.*, any good will or other  
8 payment will reduce or eliminate the right to recover for the same benefit previously  
9 provided) for any incident of Engine Misfire during the Warranty Extension for any  
10 Settlement Class Vehicle.

11 **B. Reimbursements for Engine Misfire Repairs Occurring Before the**  
12 **Notice Date**

13 Settlement Class Members who paid for repairs as a result of Engine Misfire may  
14 submit a claim for reimbursement of Out-of-Pocket Expense. To be eligible for  
15 reimbursement, Settlement Class Members must provide Honda with Proof of Repair  
16 Expense and submit a valid Claim Form within the Claims Period. In no event shall  
17 monetary compensation be issued to Settlement Class Members by Honda prior to the  
18 Effective Date.

19 **C. Dismissal of Oil Consumption Claims**

20 Upon the execution of the Settlement Agreement, Plaintiffs will seek leave of Court  
21 to file a Second Amended Complaint, to which Honda will consent, and, upon obtaining  
22 leave, will thereafter file a Second Amended Complaint removing: (1) all substantive  
23 claims and allegations concerning vehicles equipped with a 4-cylinder engine; (2) all  
24 substantive claims and allegations concerning Excessive Oil Consumption; and (3)  
25 Plaintiff Alex Soto as a Named Plaintiff. The Second Amended Complaint will contain  
26 allegations relating solely to Engine Misfire in Settlement Class Vehicles.

27 The Parties deem that the statute(s) of limitations applicable to claims advanced by  
28 any members of the proposed class, as defined in the Complaint and Amended Complaint,

1 concerning Excessive Oil Consumption, as alleged in the Complaint and Amended  
2 Complaint, in Model Year 2008, 2009, or 2010 Honda Accord vehicles equipped with 4-  
3 cylinder engines, is tolled during the period beginning with the date of the filing of the  
4 Complaint and ending on the Notice Date.

5 **D. Costs of Administration and Notice**

6 The Parties agree that Honda shall serve as Settlement Administrator, subject to the  
7 approval of the Court, to administer specific components of the settlement, including  
8 providing Notice, processing Claim Forms, and maintaining the Website, as defined  
9 below. Honda shall be responsible for all costs of class notice and settlement  
10 administration. In no event shall Class Counsel be responsible for any costs associated  
11 with class notice or settlement administration.

12 **IV. SETTLEMENT ADMINISTRATION**

13 **A. Notice Plan and Settlement Website; CAFA Notice**

14 1. The Settlement Administrator will be responsible for implementing the  
15 Notice Plan, maintaining the Website and providing the CAFA Notice.

16 2. The Settlement Administrator shall be responsible for providing notice to the  
17 Settlement Class and shall undertake various administrative tasks, including without  
18 limitation: (1) mailing or arranging for the mailing by first-class mail, postage prepaid of  
19 the Notice and Claim Form from the information compiled from the Class List to each  
20 Settlement Class Member on the Class List; (2) the creation and maintenance of the  
21 Website; (3) developing processes and procedures for handling returned mail and deficient  
22 Claim Forms; (4) providing to Class Counsel and Honda Counsel within ten (10) business  
23 days of receipt copies of notices of intention to appear at the Final Approval Hearing and  
24 requests for exclusion from the Settlement Class; (5) preparing an Opt-Out list of the  
25 Settlement Class Members requesting exclusion and submitting an affidavit to the Court  
26 before the Final Approval Hearing attesting to the accuracy of that list; (6) preparing a list  
27 of all persons who submitted objections to the settlement and submitting an affidavit to the  
28 Court attesting to the accuracy of that list; (7) maintaining a P.O. Box to which Settlement

1 Class Members can send requests for exclusion, objections, Claim Forms and other  
2 correspondence; and, (8) processing Claim Forms submitted.

3         3.         The Settlement Administrator will establish and maintain a Website which  
4 will make available documents relating to the settlement (including the Notice and Claim  
5 Form) available for download. Within fourteen (14) days of the entry of the Preliminary  
6 Approval Order, the Settlement Administrator will post the Settlement Agreement, the  
7 Notice and Claim Form on the settlement website.

8         4.         During the Claims Period, the Settlement Administrator will post on the  
9 Website a toll-free telephone number that will be staffed during normal business hours  
10 with operators who can answer questions about and provide information to Settlement  
11 Class Members about the settlement and provide the Notice and Claim Form to any  
12 Settlement Class Member upon request.

13         5.         The Settlement Administrator, upon request, will provide available  
14 information to Class Counsel on a monthly basis as to the number of Claims submitted, the  
15 amount of each Claim, and (after the Effective Date) Claims decisions so that Class  
16 Counsel may monitor the claims process.

17         6.         In compliance with the attorney general notification provision of the Class  
18 Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, Honda shall cause notice of this  
19 proposed Settlement to be sent to the Attorney General of the United States, and the  
20 attorneys general of each state in which a Settlement Class Member resides (“CAFA  
21 Notice”), which shall be without material alteration from Exhibit E attached hereto.

22         **B.         Claim Evaluation Procedure**

23         1.         Settlement Class Members who believe they are eligible for  
24 reimbursement of Out-of-Pocket Expense under the Settlement Agreement must send the  
25 Settlement Administrator a completed copy of the Claim Form and Proof of Repair  
26 Expense postmarked during the Claims Period. Upon receiving a Claim Form and  
27 accompanying Proof of Repair Expense, the Settlement Administrator will review the  
28

1 documentation and either confirm or deny the Settlement Class Member's eligibility for  
2 reimbursement within the timeframes set forth in the Settlement Agreement.

3           2.       All Claim Forms submitted to the Settlement Administrator must be  
4 postmarked within the Claims Period. Any Settlement Class Member who fails to submit  
5 a Claim Form postmarked during the Claims Period shall not be entitled to receive any  
6 payment pursuant to the Settlement Agreement, but shall in all respects be bound by the  
7 terms of the Settlement Agreement.

8           3.       Promptly after the Effective Date, the Settlement Administrator will  
9 send reimbursement payments pursuant to this paragraph directly to eligible Settlement  
10 Class Members who submitted a valid and timely Claim Form. To be eligible for  
11 payment, a Settlement Class Member cannot have been previously reimbursed for his or  
12 her Out-of-Pocket Expense and any reimbursement made under the Settlement Agreement  
13 will exclude any prior good-will reimbursement paid by Honda, and/or any monies paid by  
14 any insurer or anyone else, to the Settlement Class Member. The Settlement Class  
15 Member must provide the following information, as indicated on the Claim Form:

- 16           (a)     Name and mailing address of the Settlement Class Member;
- 17           (b)     Identification of the Settlement Class Vehicle for which a claim is  
18                   being made, including the VIN and dates of ownership;
- 19           (c)     Proof of Payment for Out-of-Pocket Expense; and
- 20           (d)     The following attestation: "I declare under penalty of perjury that the  
21                   foregoing is true and correct. Executed on (date)."

22           4.       Claims that do not meet the requirements set forth in the Settlement  
23 Agreement shall be denied. Grounds for rejection include, but are not limited to, failure to  
24 provide Proof of Repair Expense or any other required information, untimely submission  
25 of the Claim Form, or submission of ineligible repair expenses. Within sixty (60) days  
26 after expiration of the Claims Period, the Settlement Administrator shall notify in writing  
27 any claimant whose Claim has been denied, in whole or in part, setting forth the reason(s)  
28 for the denial, as well as providing notice of the claimant's right to contest the denial and

1 request reconsideration and/or to attempt to cure any defect within thirty (30) days. Class  
2 Counsel will be provided with a list of all Claims that have been denied.

3         5.         A Settlement Class Member whose Claim has been denied, may contest that  
4 decision by mailing the Settlement Administrator at the P.O. Box for the administration of  
5 this Settlement, written notice containing a statement of reasons the Settlement Class  
6 Member contests the denial, along with any additional supporting documentation (the  
7 “Contest Notice”). Any Contest Notice must be postmarked within forty-five (45) days  
8 after the date of mailing by the Settlement Administrator of the notice of the denial of the  
9 Claim. The Contest Notice procedures shall be posted on the Settlement Website and shall  
10 also be provided in writing to any Settlement Class Member whose Claim is denied.

11         6.         Within sixty (60) days after the Settlement Class Member mails the Contest  
12 Notice, the Settlement Administrator shall consider the claimant’s request for  
13 reconsideration and any materials submitted by the Settlement Class Member in support  
14 thereof, and mail to the Settlement Class Member a final determination of the Claim. The  
15 decision of the Settlement Administrator shall be final unless the Settlement Class Member  
16 submits the denied Claim to the Better Business Bureau for resolution as described in  
17 paragraph 7 below.

18         7.         If the Settlement Administrator finally denies a Claim, the Settlement Class  
19 Member may appeal the denial to the Better Business Bureau for binding resolution in  
20 accordance with the terms and conditions of the new vehicle limited warranty that  
21 accompanied the Settlement Class Vehicle at the original point of sale or lease, except that  
22 any such appeal must be filed within ninety (90) days of final denial by the Settlement  
23 Administrator and any decision by the Better Business Bureau will be final and binding  
24 upon all parties. Honda will pay any cost charged by the Better Business Bureau for  
25 resolving the dispute. Each party shall be responsible for paying his, her or its own  
26 attorneys’ fees and other expenses if he, she, or it decide to retain counsel.

27         8.         No cash payment shall be paid to any Settlement Class Member until after  
28 the Effective Date.

1           9.       If this settlement never becomes final for any reason, no reimbursement of  
2 any kind shall be made pursuant to the Settlement Agreement.

3           **C.       Objections and Requests for Exclusion**

4           1.       The Parties agree to ask the Court to require any Settlement Class Member  
5 who intends to object to the fairness, reasonableness or adequacy of the settlement to file  
6 any objection via the Court's electronic filing system (if represented by counsel) or to send  
7 the objection to the Settlement Administrator and mail a copy to Honda' Counsel and  
8 Class Counsel via first-class postage prepaid mail. Objections must be filed electronically  
9 or postmarked not later than a date to be set by the Court, which date the Parties shall ask  
10 the Court to set forty-five (45) days after the Notice Date. Any objecting Settlement Class  
11 Member must:

- 12                   (a)     set forth his, her or its full name, current address and telephone  
13                             number;
- 14                   (b)     identify the date of acquisition and Vehicle Identification Number for  
15                             his, her or its Settlement Class Vehicle;
- 16                   (c)     state that the objector has reviewed the Settlement Class definition  
17                             and understands that he, she or it is a Settlement Class Member;
- 18                   (d)     explain the bases for any objection; and
- 19                   (e)     provide copies of any documents the objector wants the Court to  
20                             consider.

21           2.       In addition, any Settlement Class Member objecting to the settlement shall  
22 provide a list of all other objections submitted by the objector, or the objector's counsel, to  
23 any class action settlements submitted in any court in the United States in the previous five  
24 years. If the Settlement Class Member or his, her or its counsel has not objected to any  
25 other class action settlement in the United States in the previous five years, he, she or it  
26 shall affirmatively so state in the objection.

27           3.       An objection must be filed with the Court if the objector is represented by  
28 counsel, or if not represented by counsel, must be sent to the Settlement Administrator via

1 first-class mail, postage prepaid, and must also be served by first-class mail, postage  
2 prepaid, upon both of the following:

3 Honda's Counsel at:

4 Michael L. Mallow  
5 Loeb & Loeb LLP  
6 10100 Santa Monica Boulevard, Suite 2200  
7 Los Angeles, CA 90067-4120

8 Class Counsel at:

9 Steven N. Berk  
10 Berk Law PLLC  
11 2002 Massachusetts Avenue, NW, Suite 100  
12 Washington, DC 20036

13 4. Subject to approval of the Court, any objecting Settlement Class Member  
14 may appear, in person or by counsel, at the Final Approval Hearing to explain why the  
15 proposed settlement should not be approved as fair, reasonable, and adequate, or to object  
16 to any petitions for Class Counsel Fees and Expenses Award or Incentive Awards. Any  
17 such objecting Settlement Class Member must file with the Clerk of the Court and serve  
18 upon all counsel designated in the Notice a notice of intention to appear at the Final  
19 Approval Hearing by the objection deadline. The notice of intention to appear must  
20 include copies of any papers, exhibits, or other evidence that the objecting Settlement  
21 Class Member (or the objecting Settlement Class Member's counsel) will present to the  
22 Court in connection with the Final Approval Hearing. Any Settlement Class Member who  
23 does not provide a notice of intention to appear in accordance with the deadlines and other  
24 specifications set forth in the Notice, or who has not filed an objection in accordance with  
25 the deadlines and other specifications set forth in the Settlement Agreement and the  
26 Notice, will be deemed to have waived any objections to the settlement, subject to the  
27 discretion of the Court.

28 5. The submission of an objection allows Class Counsel or Honda's Counsel to  
take the deposition of the objecting Settlement Class Member pursuant to the Federal

1 Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence  
2 relevant to the objection. Failure by an objector to make himself or herself available for a  
3 deposition or comply with expedited discovery requests may result in the Court striking  
4 the objection. The Court may tax the costs of any such discovery to the objector or the  
5 objector's counsel if the Court determines that the objection is frivolous or is made for an  
6 improper purpose.

7         6. Settlement Class Members may exclude themselves from the settlement (*i.e.*,  
8 “Opt-Out”), relinquishing their rights to any benefits under the Settlement Agreement. A  
9 Settlement Class Member wishing to exclude himself, herself or itself must send the  
10 Settlement Administrator a letter postmarked by a date to be set by the Court, which date  
11 the Parties shall request the Court set forty-five (45) days after the Notice Date, containing:  
12 (1) the Settlement Class Member's name, current address, and telephone number; (2) the  
13 approximate date of acquisition and VIN for his, her or its Settlement Class Vehicle; and  
14 (3) a clear statement communicating that he, she or it elects to be excluded from the  
15 Settlement Class, does not wish to be a Settlement Class Member and elects to be excluded  
16 from any judgment entered pursuant to the settlement. Any request for exclusion must be  
17 postmarked on or before the deadline provided in the Notice. Settlement Class Members  
18 who fail to submit a valid and timely request for exclusion shall be bound by the  
19 Settlement Agreement.

20         7. Any Settlement Class Member who submits a request for exclusion with a  
21 timely postmark has no standing to object to the settlement and shall be deemed to have  
22 waived any rights or benefits under the Settlement Agreement. If a Settlement Class  
23 Member files a Claim Form, or receives repairs for Engine Misfire under the Warranty  
24 Extension, and also requests exclusion from the settlement, then the Settlement Class  
25 Member will remain in the Settlement Class and the request for exclusion will be deemed  
26 void. If a Settlement Class Member opts out and files a separate action based on the same  
27 or similar facts, in any tribunal, and also submits a Claim Form, the Settlement Class  
28

1 Member shall be deemed to be a member of the Settlement Class and his or her claims  
2 shall be deemed Released Claims.

3 8. Not later than fourteen (14) days after the deadline for submission of  
4 requests for exclusion, the Settlement Administrator shall provide the Court, Class Counsel  
5 and Honda's Counsel with a list identifying each Settlement Class Member who submitted  
6 an exclusion request together with copies of the exclusion requests, together with a  
7 declaration attesting to the completeness and accuracy thereof.

8 **V. SETTLEMENT APPROVAL PROCESS**

9 **A. Preliminary Approval of Settlement**

10 Promptly after the execution of this Settlement Agreement, Plaintiff shall present  
11 this Settlement Agreement to the Court, along with a motion requesting that the Court  
12 issue a Preliminary Approval Order, which shall be without material alteration from  
13 Exhibit D attached hereto.

14 **B. Final Order and Judgment**

15 If this Settlement Agreement is preliminarily approved by the Court, Plaintiff shall  
16 present a motion requesting that the Court issue a Final Order and Judgment directing the  
17 entry of judgment pursuant to FED. R. CIV. P. 54(b) which shall be without material  
18 alteration from Exhibit B attached hereto.

19 **C. Class Counsel's Application for Class Counsel Fees and Expenses**

20 **Award and Named Plaintiff Incentive Award**

21 1. Class Counsel will apply to the Court for a Class Counsel Fees and Expenses  
22 Award concurrently with the submission of their motion in support of the Final Order and  
23 Judgment. Honda agrees that it will not oppose an application to the Court for a Class  
24 Counsel Fees and Expenses Award that does not exceed eight hundred thousand dollars  
25 and no cents (\$800,000.00) and Plaintiffs and Class Counsel agree that they will not apply  
26 to the Court for a Class Counsel Fees and Expenses Award in an amount exceeding eight  
27 hundred thousand dollars and no cents (\$800,000.00). In no event will the Class Counsel  
28 Fees and Expenses Award be paid by Honda: (a) prior to the Effective Date, or (b) prior to

1 the date that the order awarding the Class Counsel Fees and Expenses Award becomes  
2 Final.

3         2.         Class Counsel will apply to the Court to approve an Incentive Award for  
4 Named Plaintiff Vince Eagen in an amount not to exceed one thousand dollars and no  
5 cents (\$1,000.00), and Honda agrees not to oppose such application, subject to the  
6 approval of the Court. In no event will the Incentive Award be paid by Honda prior to the  
7 Effective Date.

8         3.         The Parties agree that Honda will not in any event or circumstance be  
9 required to pay a Class Counsel Fees and Expenses Award in an amount exceeding eight  
10 hundred thousand dollars and no cents (\$800,000.00) or be required to pay an Incentive  
11 Award greater than one thousand dollars and no cents (\$1,000.00), subject to the approval  
12 of the Court.

13         4.         Any order or proceedings relating to the Application for Class Counsel Fees  
14 and Expenses Award or Incentive Award, or any appeal from any order related thereto or  
15 reversal or modification thereof, will not operate to terminate or cancel this Settlement  
16 Agreement, or effect or delay the Effective Date of this Settlement Agreement as it relates  
17 to benefits conferred to Settlement Class Members, provided that the Settlement  
18 Agreement is otherwise in all respects Final.

19         5.         Class Counsel agree that upon payment by Honda of the Class Counsel Fees  
20 and Expenses Award as specified by the Court, pursuant to wire transfer information  
21 provided by Class Counsel, Honda's obligations to Class Counsel shall be fully satisfied  
22 and discharged.

23         **D.         Release by Plaintiffs and Class Members**

24         1.         Upon the Effective Date, the Plaintiffs and each Settlement Class Member  
25 shall be deemed to have, and by operation of the Final Order and Judgment shall have,  
26 released, waived, and forever discharged the Releasees from all Released Claims.  
27  
28

1           2.       The Plaintiffs and Class Members expressly waive and relinquish, to the  
2 fullest extent permitted by law, the provisions, rights, and benefits of section 1542 of the  
3 California Civil Code, which provides:

4                   A general release does not extend to claims which the creditor  
5 does not know or suspect to exist in his favor at the time of  
6 executing the release, which if known by him must have  
7 materially affected his settlement with the debtor.

8           3.       Notwithstanding the foregoing Release, the following claims are not  
9 released: (a) claims for personal injuries (defined as any identifiable injury to a person's  
10 body according to objective medical criteria as adjudged by a licensed medical healthcare  
11 professional pursuant to an appropriate standard of care), or (b) claims of damage to  
12 property alleged to have been caused by Engine Misfire (except for claims of damage to  
13 any Settlement Class Vehicle itself, including without limitation, claims of diminution in  
14 the Settlement Class Vehicle's value, all and any of which are Released Claims).

## 14 **VI. MISCELLANEOUS PROVISIONS**

### 15 **A. Effect of Exhibits**

16           The exhibits to this Settlement Agreement are an integral part of the settlement and  
17 are expressly incorporated and made a part of this Settlement Agreement.

### 18 **B. No Admission**

19           Neither the fact of, nor any provision contained in this Settlement Agreement, nor  
20 any action taken hereunder, shall constitute, or be construed as, an admission of the  
21 validity of any Claim or any fact alleged in the Litigation or of any wrongdoing, fault,  
22 violation of law, or liability of any kind on the part of Honda or any admissions by Honda  
23 of any Claim or allegation made in any action or proceeding against Honda or any of the  
24 Releasees. This Settlement Agreement shall not be offered or be admissible in evidence  
25 against Honda, the Plaintiffs, or the Settlement Class Members or cited or referred to in  
26 any action or proceeding, except in an action or proceeding brought to enforce its terms or  
27 to enjoin or bar a competing action brought on the same grounds as the claims or cases  
28 dismissed pursuant to this Settlement Agreement.

1           **C.     Entire Agreement**

2           This Agreement represents the entire agreement and understanding among the  
3 Parties and supersedes all prior proposals, negotiations, agreements, and understandings  
4 relating to the subject matter of this Settlement Agreement. The Parties acknowledge,  
5 stipulate, and agree that no covenant, obligation, condition, representation, warranty,  
6 inducement, negotiation, or understanding concerning any part or all of the subject matter  
7 of this Settlement Agreement has been made or relied on except as expressly set forth in  
8 this Settlement Agreement. No modification or waiver of any provisions of this Settlement  
9 Agreement shall in any event be effective unless the same shall be in writing and signed by  
10 the person or party against whom enforcement of the Agreement is sought.

11           **D.     Arm's-Length Negotiations and Good Faith**

12           The Parties have negotiated all of the terms and conditions of this Settlement  
13 Agreement at arm's length. All terms, conditions, and exhibits in their exact form are  
14 material and necessary to this Settlement Agreement and have been relied upon by the  
15 Parties in entering into this Settlement Agreement. The Parties agree to act in good faith  
16 during the settlement administration process.

17           **E.     Continuing Jurisdiction**

18           The Parties agree that the Court may retain continuing and exclusive jurisdiction  
19 over them, including all Settlement Class Members, for the purpose of the administration  
20 and enforcement of this Settlement Agreement.

21           **F.     Binding Effect of Settlement Agreement**

22           This Settlement Agreement shall be binding upon and inure to the benefit of the  
23 Parties and their representatives, heirs, successors, and assigns.

24           **G.     Governing Law**

25           The Settlement Agreement will be construed and enforced in accordance with, and  
26 governed by, the substantive laws of California, without giving effect to that state's  
27 choice-of-law principles. However, the Parties acknowledge that federal law (including  
28 FED. R. CIV. P. 23 and federal case law) applies to consideration and approval of the

1 settlement, certification of the Settlement Class, and all related issues such as any petition  
2 for Class Counsel Fees and Expenses Award.

3 **H. Construction of Settlement Agreement Terms**

4 The determination of the terms of, and the drafting of, this Settlement Agreement  
5 has been by mutual agreement after arm's length negotiation, with consideration by and  
6 participation of all Parties and their counsel. Since this Settlement Agreement was drafted  
7 with the participation of all Parties and their counsel, the presumption that ambiguities  
8 shall be construed against the drafter does not apply. The Parties were represented by  
9 competent and effective counsel throughout the course of settlement negotiations and in  
10 the drafting and execution of this Settlement Agreement, and there was no disparity in  
11 bargaining power among the Parties to this Settlement Agreement. None of the Parties  
12 will be deemed the drafter of the Settlement Agreement for purposes of construing its  
13 provisions. The language in all parts of the Settlement Agreement will be interpreted  
14 according to its fair meaning, and will not be interpreted for or against any of the Parties as  
15 the drafter.

16 **I. Confidentiality Agreements**

17 All agreements made and orders entered during the Litigation relating to the  
18 confidentiality of information will survive the Settlement Agreement.

19 **J. Extensions of Time**

20 The Parties may agree upon a reasonable extension of time for deadlines and dates  
21 reflected in this Settlement Agreement, without further notice (subject to Court approval as  
22 to Court dates).

23 **K. Authority to Execute Settlement Agreement**

24 Each counsel or other person executing this Settlement Agreement or any of its  
25 exhibits on behalf of any Party hereto warrants that such person has the authority to do so.

26 **L. Right to Rescind**

27 If one thousand (1,000) Settlement Class Members properly and timely exercise  
28 their right to opt out of the settlement, Honda shall have the right to terminate this

1 Settlement Agreement without penalty or sanction, without prejudice to its position on the  
2 issue of class certification and the amenability of the claims asserted in the Litigation to  
3 class treatment, and the Parties shall be restored to their litigation position existing  
4 immediately before the execution of this Settlement Agreement.

5 **M. Public Statements**

6 The Parties will not make any public statement about the settlement, including any  
7 representations by their counsel on their websites or otherwise except for noting the  
8 caption of the case, the fact it was filed as a proposed class action and resolved and Class  
9 Counsel appeared as counsel of record for their respective clients. Any other statements,  
10 regardless of format or forum, must be agreed to in writing by the Parties prior to  
11 publication.

12 **N. Full and Final Agreement**

13 The Settlement Agreement constitutes the entire agreement among the Parties, and  
14 no other representations, warranties or inducements have been made to any party  
15 concerning the Settlement Agreement.

16 **O. Counterparts**

17 This Settlement Agreement may be executed in one or more counterparts.

18 IN WITNESS HEREOF, the Parties hereby execute, and cause this Settlement  
19 Agreement to be executed, by their duly authorized attorneys, as of the date(s) indicated on  
20 the lines below.

21  
22 NAMED PLAINTIFFS:

23 Dated: ~~August~~ 9, 2013  
24 *September*

  
\_\_\_\_\_  
ALEX SOTO

25  
26 Dated: August \_\_, 2013

\_\_\_\_\_  
VINCENT BEAGEN

1 Settlement Agreement without penalty or sanction, without prejudice to its position on the  
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20 the lines below.

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22 NAMED PLAINTIFFS:

23 Dated: August \_\_, 2013

\_\_\_\_\_  
ALEX SOTO

24  
25  
26 Dated: August \_\_, 2013

  
\_\_\_\_\_  
VINCENT EAGEN  
Vincent Eagen 

1 ON BEHALF OF NAMED PLAINTIFFS  
2 AND THE SETTLEMENT CLASS:

3 Dated: August 3, 2013



Steven N. Berk, Admitted PHV  
Email: steven@berklawdc.com  
Matthew J. Bonness, CSB #229226  
Email: matt@berklawdc.com  
BERK LAW PLLC  
2002 Massachusetts Ave., NW, Suite 100  
Washington, DC 20036  
Telephone: (202) 232-7550  
Facsimile: (202) 232-7556

4 *SB*  
5 *Sp. Justice*

6  
7  
8  
9 September 6, 2013

10 Dated: ~~August \_\_, 2013~~



Beth E. Terrell, CSB #178181  
Email: bterrell@tmdwlaw.com  
Kimberlee L. Gunning, Admitted PHV  
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936 North 34th Street, Suite 400  
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Telephone: (206) 816-6603  
Facsimile: (206) 350-3528

11  
12  
13  
14  
15 Dated: August \_\_, 2013

16 Michael F. Ram, CSB #104805  
Email: mram@rocklawcal.com  
17 RAM, OLSON, CEREGHINO  
& KOPCZYNSKI  
18 555 Montgomery Street, Suite 820  
San Francisco, California 94111  
19 Telephone: (415) 433-4949  
20 Facsimile: (415) 433-7311

21 Dated: August \_\_, 2013

22 Lawrence Deutsch, Admitted PHV  
Email: ldeutsch@bm.net  
23 Shanon Carson, Admitted PHV  
Email: scarson@bm.net  
24 Eugene Tompkins, Admitted PHV  
Email: gtompkins@bm.net  
25 BERGER & MONTAGUE, P.C.  
1622 Locust Street  
26 Philadelphia, Pennsylvania 19103  
27 Telephone: (215) 875-3062  
28 Facsimile: (215) 875-4604

1 ON BEHALF OF NAMED PLAINTIFFS  
2 AND THE SETTLEMENT CLASS:

3 Dated: August \_\_, 2013

4 \_\_\_\_\_  
Steven N. Berk, Admitted PHV  
Email: steven@berklawdc.com  
Matthew J. Bonness, CSB #229226  
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2002 Massachusetts Ave., NW, Suite 100  
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9 Dated: August \_\_, 2013

10 \_\_\_\_\_  
Beth E. Terrell, CSB #178181  
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Kimberlee L. Gunning, Admitted PHV  
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Facsimile: (206) 350-3528

15 Dated: <sup>Sept.</sup> ~~August~~ 6, 2013

16 \_\_\_\_\_  
*Michael F. Ram* *By Karl Olson*  
Michael F. Ram, CSB #104805  
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& KOPCZYNSKI  
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21 Dated: August \_\_, 2013

22 \_\_\_\_\_  
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Shanon Carson, Admitted PHV  
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Eugene Tompkins, Admitted PHV  
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1 ON BEHALF OF NAMED PLAINTIFFS  
2 AND THE SETTLEMENT CLASS:

3 Dated: August 3, 2013

4 *SB* *Sp. Justice*



Steven N. Berk, Admitted PHV  
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9 Dated: August \_\_, 2013

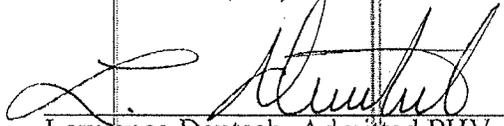
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15 Dated: August \_\_, 2013

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21 Dated: August 8, 2013

*September*



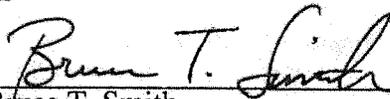
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AMERICAN HONDA MOTOR CO., INC.:

Dated: August 5, 2013

*September*

  
\_\_\_\_\_  
Bruce T. Smith  
Senior Vice President,  
Parts, Service and Technical Division,  
AMERICAN HONDA MOTOR CO., INC.

ON BEHALF OF  
AMERICAN HONDA MOTOR CO., INC.:

Dated: August 5, 2013

*September*

  
\_\_\_\_\_  
Michael L. Mallow  
LOEB & LOEB LLP  
10100 Santa Monica Boulevard, Suite 2200  
Los Angeles, CA 90067-4120