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Plaintiff
13 VINCE EAGEN

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16
17 VINCE EAGEN, on behalf of himself and all
18 others similarly situated,
19 Plaintiff,
20 v.
21 AMERICAN HONDA MOTOR CO., INC.,
22 Defendant.

Case No.: 3:12-cv-01377-SI

Assigned to Hon. Susan Illston
Courtroom: 10

**PLAINTIFF'S UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT & AWARD OF
ATTORNEYS' FEES & EXPENSES**

CLASS ACTION

Complaint Filed: March 19, 2012
Hearing Date: March 21, 2014

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on March 21, 2014, at 9:00 a.m., before the Honorable Susan Illston, in Courtroom 10, on the 19th floor of the United States District Court for the Northern District of California, San Francisco Courthouse, located at 450 Golden Gate Avenue, San Francisco, California, Plaintiff Vince Eagen will, and hereby do, move for entry of a [Proposed] Final Approval Order and Judgment (filed herewith): (i) granting final approval of the proposed settlement, as set forth in the Class Action Settlement and Release (the "Settlement Agreement")¹ (Dkt. 73-1), as fair, reasonable, and adequate pursuant to Fed. R. Civ. P. 23; (ii) finally certifying the Settlement Class for purposes of such settlement; (iii) appointing, for settlement purposes only, Named Plaintiff Vince Eagen and Class Counsel as representative of and attorneys for the Settlement Class; (iv) confirming the ongoing appointing, for settlement purposes only, of American Honda Motor Co., Inc., as Settlement Administrator; (v) finding that the Notice was the best practicable under the circumstances and satisfied all Constitutional and other requirements; (vi) confirming Settlement Class Members who have timely submitted requests for exclusion; (vii) dismissing the action pursuant to the terms and conditions of the Settlement Agreement; (viii) retaining jurisdiction over the enforcement and implementation of the Settlement Agreement and any amendments thereto; (ix) awarding Plaintiff an Incentive Award of \$1,000 to compensate him for his time and effort on behalf of the Settlement Class and (x) awarding Class Counsel a Class Counsel Fees & Expenses Award of \$800,000.00.

This motion is based on this Notice of Motion and Motion; the attached Memorandum of Law; the Declarations of Steven N. Berk of September 13, 2013 (Dkt. 75-1), and January 10, 2014, and accompanying exhibits; the Declarations of Beth E. Terrell of September 12, 2013 (Dkt. 75-2), and January 10, 2014, and accompanying exhibits; the Declaration of Michael F. Ram of September 12, 2013 (Dkt. 75-3), and January 9, 2014, and accompanying exhibits; the Declaration of Lawrence Deutsch of January 9, 2014, and accompanying exhibits; the Declaration of [the]

¹ Capitalized terms not otherwise defined herein shall have the same meanings as ascribed to them in the Settlement Agreement, filed with the Court on September 11, 2013. *See* Settlement Agreement (Dkt. 73-1).

1 Settlement Administrator of January 10, 2014, and accompanying exhibits; the Settlement
2 Agreement (Dkt. 73-1); other papers on file in this action; and such other submissions or
3 arguments that may be filed with the Court or presented before or at the hearing on this motion.

4 As set forth in the attached Memorandum of Law, and as the Court recognized in its order
5 of October 9, 2013 (Dkt. 89) granting preliminary approval, the Settlement Agreement contains all
6 of the material terms of the settlement and other necessary and proper terms pursuant to Rule 23 of
7 the Federal Rules of Civil Procedure (“Rule 23”). The Settlement Administrator has complied,
8 and continues to comply, with the Court’s order and the terms of the Settlement Agreement
9 regarding class notice and claims administration. The settlement meets the criteria for final
10 approval, and is fair, reasonable, and adequate, as further supported by the small number of
11 requests for exclusion and objections submitted by class members. Finally, the requested
12 Incentive Award and Class Counsel Fees & Expenses Award are reasonable and amply supported,
13 particularly in light of Class Counsel’s significantly higher lodestar, and will in no way reduce the
14 benefit to the Settlement Class.

15
16 Dated: January 10, 2014

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12 Attorneys for Individual and
13 Representative Plaintiff VINCE EAGEN

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16
17 VINCE EAGEN, on behalf of himself and all
18 others similarly situated,

19 Plaintiff,

20 v.

21 AMERICAN HONDA MOTOR CO., INC.,

22 Defendant.

Case No.: 3:12-cv-01377-SI

Assigned to Hon. Susan Illston
Courtroom: 10

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT & AWARD OF
ATTORNEYS' FEES & EXPENSES**

CLASS ACTION

Complaint Filed: March 19, 2012
Hearing Date: March 21, 2014

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22	<u>Ellis v. Naval Air Rework Facility</u> ,	
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24	<u>Ellis v. Naval Air Rework Facility</u> , 661 F.2d 939 (9th Cir. 1981).....	7, 10
25	<u>Estrella v. Freedom Fin. Network, LLC</u> ,	
26	No. C 09-03156 SI, 2010 U.S. Dist. LEXIS 61236	
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28	<u>Fisher Bros. v. Cambridge-Lee Indus.</u> ,	
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	<u>Flinn v. FMC Corp.</u> ,	
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9	
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17	
18	
19	
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28	

Fraser v. Asus Computer Int'l,
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Hanlon v. Chrysler Corp.,
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Harris v. Palm Springs Alpine Estates, Inc.,
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Hopson v. Hanesbrands Inc.,
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In re Immune Response Sec. Litig.,
 497 F. Supp. 2d 1166 (S.D. Cal. 2007) 8

Koz v. Kellogg Co.,
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Lamb v. Bitech, Inc.,
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Lerwill v. Inflight Motion Pictures, Inc.,
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Linney v. Cellular Alaska P'ship,
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M. Berenson Co. v. Faneuil Hall Marketplace, Inc.,
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Mandujano v. Basic Vegetable Prod, Inc.,
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Mullane v. Cent. Hanover Bank & Trust Co.,
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Nat'l Rural Telcoms. Coop. v. Directv, Inc.,
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Officers for Justice v. Civil Serv. Com.,
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TABLE OF AUTHORITIES (CONT'D)

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In re Omnivision Techs.,
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Oppenlander v. Standard Oil Co.,
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Paul, Johnson, Alston & Hunt v. Gaulty,
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Principe v. Ukropina (In re Pac. Enters. Sec. Litig.),
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Rodriguez v. Hayes,
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Rodriguez v. W. Publ'g,
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S. F. NAACP v. San Francisco Unified Sch. Dist.,
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Silber v. Mabon,
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Six Mexican Workers v. Ariz. Citrus Growers,
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Thomas v. Baca,
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Vizcaino v. Microsoft Corp.,
290 F.3d 1043 (9th Cir. 2002)..... 23

In re. Wash. Pub. Power Supply Sys. Sec. Litig.,
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Wershba v. Apple Computer,
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Williams v. MGM-Pathe Commc'ns. Co.,
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Yokoyama v. Midland Nat'l Life Ins. Co.,
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TABLE OF AUTHORITIES (CONT'D)

Page(s)

Statutes

Cal. Com. Code § 2313 2

California Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* 2, 3, 14

California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* 2

Class Action Fairness Act, 28 U.S.C. § 1715 20

Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* 2

Other Authorities

Fed. R. Civ. P. 23 1, 18, 20

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Fed. R. Civ. P. 23 (a)(1) 14

Fed. R. Civ. P. 23 (a)(2) 14

Fed. R. Civ. P. 23 (a)(4) 16

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14
15
16
17
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25
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27
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TABLE OF AUTHORITIES (CONT'D)

Page(s)

Brian Walters, “Best Notice Practicable” in the Twenty-First Century,
2003 UCLA J.L. & TECH. 4 (2003)..... 20

W. Rubenstein *et al.*, Newberg on Class Actions, § 11.27
(4th ed. 2012 West) 14

W. Rubenstein *et al.*, Newberg on Class Actions, § 11.41
(4th ed. 2012 West) 6, 7

1 **I. INTRODUCTION**

2 Plaintiff Vince Eagen respectfully submits this memorandum in support of his Motion for
 3 Final Approval of Class Action Settlement & Award of Attorneys' Fees & Expenses. Under the
 4 terms of the Class Action Settlement Agreement and Release ("Settlement Agreement") (Dkt. 73-
 5 1) between Plaintiff and Defendant American Honda Motor Co., Inc. ("AHM"), which the Court
 6 previously preliminarily approved, *see* Order Preliminarily Approving Class Action Settlement
 7 (Oct. 9, 2013) ("Preliminary Approval Order") (Dkt. 89), AHM has agreed to provide valuable
 8 and substantial benefits to the Settlement Class Members to resolve this Litigation.¹

9 The Settlement Agreement contains all of the settlement's material terms and other
 10 necessary terms pursuant to Fed. R. Civ. P. 23. The Settlement Administrator has complied with
 11 the Court's order and the terms of the Settlement Agreement regarding class notice and claims
 12 administration. The settlement meets the criteria for final approval, and is fair, reasonable, and
 13 adequate, as further supported by the fact that only a small number of requests for exclusion and
 14 objections have been submitted by Settlement Class Members. Finally, the requested Incentive
 15 Award and Class Counsel Fees & Expenses Award are reasonable and amply supported by the
 16 relief provided to the Settlement Class, and Class Counsel's significant effort, as reflected its
 17 significantly larger lodestar and will in no way reduce the benefit to the Settlement Class.

18 As such, Plaintiff respectfully moves the Court to enter the [Proposed] Final Approval
 19 Order and Judgment (submitted herewith) (i) granting final approval of the proposed settlement, as
 20 set forth in the Class Action Settlement and Release (the "Settlement Agreement") (Dkt. 73-1), as
 21 fair, reasonable, and adequate pursuant to Fed. R. Civ. P. 23; (ii) finally certifying the Settlement
 22 Class for purposes of such settlement; (iii) appointing, for settlement purposes only, Named
 23 Plaintiff Vince Eagen and Class Counsel as representative of and attorneys for the Settlement
 24 Class; (iv) confirming the ongoing appointing, for settlement purposes only, of American Honda
 25 Motor Co., Inc., as Settlement Administrator; (v) finding that the Notice was the best practicable

26 _____
 27 ¹ Capitalized terms not otherwise defined herein shall have the same meanings as ascribed
 28 to them in the Settlement Agreement, lodged concurrently herewith. *See* Settlement Agreement
 (Exh. 1 to Dkt. 73).

1 under the circumstances and satisfied all Constitutional and other requirements; (vi) confirming
2 Settlement Class Members who have timely submitted requests for exclusion; (vii) dismissing the
3 action pursuant to the terms and conditions of the Settlement Agreement; (viii) retaining
4 jurisdiction over the enforcement and implementation of the Settlement Agreement and any
5 amendments thereto; (ix) awarding Plaintiff an Incentive Award of \$1,000 to compensate him for
6 his time and effort on behalf of the Settlement Class and (x) awarding Class Counsel a Class
7 Counsel Fees & Expenses Award of \$800,000.00.

8 **II. PERTINENT BACKGROUND**

9 **A. Relevant Procedural History**

10 On March 19, 2012, plaintiffs Alex Soto (“Soto”) and Vince Eagen (“Eagen,” together
11 with Soto, “Plaintiffs”), on behalf of a nationwide proposed class, filed a complaint with the Court
12 alleging “a systemic design defect” in 2008, 2009 and 2010 Honda Accord vehicles (the “Subject
13 Vehicles”) that “enables oil to enter into the engine’s combustion chamber.” (*See, e.g.*, Dkt. 1,
14 ¶¶ 1-4, 18-19.) Plaintiffs also alleged that AHM refused to repair the Subject Vehicles under their
15 New Vehicle Limited Warranties and Powertrain Limited Warranties. (*See id.*, ¶¶ 15-17, 23-25.)
16 Plaintiffs alleged causes of action for: (1) violation of California’s Consumers Legal Remedies
17 Act, Cal. Civ. Code § 1750, *et seq.* (the “CLRA”); (2) violation of California’s Unfair
18 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (the “UCL”); (3) breach of written
19 warranty under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* (“Magnuson-Moss”);
20 and (4) breach of express warranty under Cal. Com. Code § 2313. On May 18, 2012, Plaintiffs
21 filed their First Amended Complaint (“FAC”) (Dkt. 11), adding a claim for unjust enrichment.

22 AHM filed an Answer on June 8, 2012 denying Plaintiffs’ allegations and interposing a
23 number of affirmative defenses (Dkt. 15) and filed a Motion To Compel Arbitration as to Plaintiff
24 Eagen (Dkt. 16, 17, 18 and 19). The Court denied AHM’s motion on October 3, 2013 (Dkt. 44)
25 and, thereafter, denied reconsideration (Dkt. 52). AHM appealed the Court’s decision to the Ninth
26 Circuit Court of Appeals (Dkt. 55-56). At the Parties’ request, the Court of Appeals stayed the
27 appeal through March 28, 2014, in anticipation of final approval of this settlement.
28

1 **B. Discovery And Settlement Negotiations**

2 As the result of meaningful and thorough discovery, Plaintiff learned the following:

- 3 • AHM’s software update for 4-cylinder Accords reduces oil consumption and customer
4 return rates to 0.2% of the 4-cylinder fleet. *See* Sept. Berk. Decl. ¶ 12.
- 5 • Certifying a class defined, in part, by “excessive oil consumption” would be
6 problematic because the applicable warranties make no promises regarding oil
7 consumption, and there is no clear industry standard for the same. *Id.* ¶ 8.
- 8 • Even if Plaintiffs could establish a standard rate of oil consumption, hurdles concerning
9 commonality and predominance would be significant because most vehicle owners do
10 not know precisely how much oil their vehicles burn and variations between
11 individuals’ driving styles and other factors, such as climate, also impact the rates at
12 which vehicles burn oil consumption. *Id.* ¶¶ 8-18.

13 However, discovery has demonstrated that there is a significant and rising trend of spark plug
14 fouling and cracking and engine misfires (“Engine Misfire”) in Honda Accords with 6-cylinder
15 engines equipped with VCM-2 (“variable cylinder management”).² Sept. Berk Decl. ¶ 13.

16 In April 2013, while Plaintiffs were preparing for class certification and pressing for
17 discovery on this issue, the Parties’ counsel jointly agreed to an in-person settlement meeting. The
18 Parties thereafter engaged in substantial arm’s length negotiations to reach the settlement presently
19 before the Court. The Parties’ counsel met in person twice over the course of several weeks and
20 also negotiated via telephone numerous times, for several hours. One of the in-person meetings
21 lasted for a full day with a presentation by AHM’s counsel of confidential settlement documents
22 containing data about the efficacy of the repairs on the Class Vehicles.

23 _____

24 ² Plaintiff came to this conclusion as a result of extensive investigation and analysis,
25 including the following: (i) conducting extensive legal research and factual analysis in order to
26 assess the viability of the Plaintiffs’ and class members’ legal claims; (ii) working with
27 automotive experts to identify and confirm the defect; (iii) communicating extensively with
28 members of the Class, including compiling and analyzing data concerning their experiences; (iv)
 analyzing relevant Honda Technical Service Bulletins; (v) drafting notice letters pursuant to the
 California Consumers Legal Remedies Act; (vi) drafting and filing pleadings and other court
 documents; (vii) preparing and propounding formal discovery requests; (viii) researching and
 drafting responses to Honda’s motion to compel arbitrations; (ix) drafting and negotiating
 settlement terms; and (x) drafting mediation briefing. Sept. Berk Decl. ¶ 16.

1 As a result, the Parties agreed to settle the case on a class basis by (1) addressing Engine
2 Misfire in all Honda vehicles with 6-cylinder engines equipped with VCM-2, including various
3 model-year Accords, Odyssey minivans, Pilot SUVs, and Crosstour crossover vehicles – over 1.8
4 million vehicles in total, *see* Decl. of Settlement Administrator of January 10, 2014 (“Admin.
5 Decl.”) ¶ 6 – and (2) eliminating claims concerning oil consumption in Accords with 4-cylinder
6 engines. Sept. Berk Decl. ¶ 13. Once the Parties reached a tentative agreement, it was still
7 necessary to confirm multiple details via numerous conferences, written correspondence, and the
8 exchange of data about which Class Counsel deposed a senior Honda manager. *See, e.g., id.* ¶ 11.

9 **C. Preliminary Approval, Class Notice, and Administration**

10 On September 13, 2013, Plaintiffs Soto and Eagen moved unopposed for preliminary
11 approval (Dkt. 75) of the Parties’ Settlement Agreement (Dkt. 73-1) and AHM stipulated (*see* Dkt.
12 76) to Plaintiffs’ amendment of the FAC, which the Court subsequently ratified (*see* Dkt. 78). On
13 September 27, 2013, the Court conducted an expedited hearing on Plaintiffs’ motion. On
14 September 30, 2013, Plaintiff Eagen filed the Second Amended Complaint (“SAC”) (Dkt. 81) (a)
15 removing Plaintiff Soto and striking his individual allegations, (b) eliminating all allegations and
16 claims concerning oil consumption in 4-cylinder Accords³, and (c) revising and expanding the
17 proposed class definition to include the owners and lessees of all of the Settlement Class Vehicles.
18 (AHM answered the SAC on October 29, 2013. (*See* Dkt. 90.)) After conducting a follow-up
19 conference on October 9, 2013, concerning the Class Notice (*see* Dkt. 88), the Court preliminary
20 approved the settlement and appointed AHM as Settlement Administrator.

21 Pursuant to the Preliminary Approval Order, AHM and its agent, R.L. Polk & Co.,
22 obtained the names and current addresses of the Settlement Class Members and mailed the Court-
23 approved Class Notice and Claim Form (“Notice Packet”) to a total of 1,877,390 Settlement Class
24

25 ³ Although AHM has satisfied Plaintiff and Class Counsel that the software update for 4-
26 cylinder Accords adequately addresses the defect in those vehicles, Class Counsel were concerned
27 that owners and lessees of those vehicles not be prejudiced by the settlement. Although the 4-
28 cylinder update might have arrested excessive oil consumption, it is possible that one or more
vehicles might have experienced physical damage as a result of excessive oil consumption that a
software update cannot reverse. Therefore, Class Counsel negotiated a tolling agreement that
preserves all claims concerning the 4-cylinder Accords. Sept. Berk Decl. ¶ 14.

1 Members. *See* Admin. Decl. ¶¶ 5-7. R.L. Polk completed mailing of the Notice Packets on
 2 December 30, 2013. *Id.* ¶ 8. As of January 8, 2014, R.L. Polk had promptly re-mailed Notice
 3 Packets that were returned by the U.S. Postal Service with forwarding address information to
 4 1,910 Settlement Class Members at updated addresses. *Id.* ¶ 10.

5 Pursuant to the Preliminary Approval Order, AHM has also established and maintains a
 6 website dedicated to the Settlement (enginemisfiresettlement.com) at which Settlement Class
 7 Members may obtain (a) instructions on how to obtain reimbursement of qualifying out-of-pocket
 8 expenses; (b) instructions on how to contact the Settlement Administrator, AHM, and Class
 9 Counsel; (c) copies of the Claim Form, the Class Notice, and other filings and orders; and (d)
 10 answers to frequently asked questions concerning the settlement. *Id.* ¶ 9.

11 Pursuant to the Preliminary Approval Order, AHM has also established and maintains (1) a
 12 Post Office box at which to receive Claim Forms, exclusion requests, objections, and notices of
 13 intention to appear from Settlement Class Members, *id.* ¶ 17, and (b) a toll-free telephone number
 14 for inquiries concerning the settlement, *id.* ¶ 19. As of January 6, 2014, AHM had received 2,465
 15 calls to the toll-free number, *id.*, and 4,385 Claim Forms, *id.* ¶¶ 16, 18.

16 **III. SUMMARY OF THE SETTLEMENT**

17 **A. Settlement Class**

18 The Settlement Agreement (Dkt. 73-1) defines the Settlement Class as:

19 All purchasers and lessees who reside in, and who purchased or leased their
 20 vehicles in the United States (other than for purposes of resale or distribution), of
 21 any: (a) Model-Year 2008, 2009, 2010, 2011, and 2012 Honda Accord vehicles
 22 equipped with a 6-cylinder engine with VCM-2; (b) Model-Year 2008, 2009,
 23 2010, 2011, 2012, and 2013 Honda Odyssey vehicles equipped with a 6-cylinder
 24 engine with VCM-2; (c) Model-Year 2009, 2010, 2011, 2012, and 2013 Honda
 Pilot vehicles equipped with a 6-cylinder engine with VCM-2; (d) Model-Year
 2010, and 2011 Honda Accord Crosstour vehicles equipped with a 6-cylinder
 engine with VCM-2; and (e) Model Year 2012 Crosstour vehicles equipped with a
 6-cylinder engine with VCM-2.⁴

26 ⁴ Excluded from the Settlement Class are (1) [AHM], (2) any affiliate, parent, or subsidiary
 27 of [AHM], (3) any entity in which [AHM] has a controlling interest, (4) any officer, director, or
 28 employee of [AHM], (5) any successor or assign of [AHM], (6) any Judge to whom the Litigation
 is assigned, and (7) any person or entity who purchased a Settlement Class Vehicle for the purpose
 of resale. Settlement Agreement, Section II(1).

1 **B. Benefits to the Settlement Class**

2 First, the settlement provides for full reimbursement through the Claims Period⁵ of out-of-
3 pocket expenses for repairs related to Engine Misfire, *i.e.*,

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

7 Settlement Agreement (Dkt. 73-1) at Section I(I).

8 Second, the settlement provides a three-year extension of the Class Vehicles’ 5-year /
9 60,000 mile Powertrain Warranty as to Engine Misfire through eight (8) years total with no
10 mileage limitation. *Id.* at Section III(A). Moreover, Settlement Class Members do not need to
11 submit a Claim Form to obtain this benefit: if the settlement is approved, the warranty extension
12 will go into effect for all owners and lessees of Settlement Class Vehicles who do not opt-out. *Id.*

13 **C. Class Counsel Fees and Expenses Award and Incentive Award**

14 Class Counsel also moves for an award of attorneys’ fees and expenses, and for an
15 incentive award, to be paid separate and apart from benefits paid to Settlement Class Members.
16 The Parties negotiated Class Counsel’s fees and expenses, and Plaintiff’s incentive award, only
17 after agreeing on all other aspects of the settlement. Sept. Berk Decl. ¶ 19. Class Counsel agreed
18 to seek, and AHM agreed not to contest, an award of attorneys’ fees and expenses of no more than
19 \$800,000 and an incentive award for Plaintiff Eagen of \$1,000. Approval of the settlement is not
20 contingent upon any award. *See* Settlement Agreement §§ I(E), V(C) (Dkt. 73-1).

21 **IV. THE SETTLEMENT WARRANTS FINAL APPROVAL**

22 **A. The Standard for Final Approval**

23 The law favors settlement, particularly in class actions and other complex cases where
24 substantial resources can be conserved by avoiding the time, costs, and rigors of prolonged
25 litigations. *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *ALBA CONTE &*

26 _____
27 ⁵ After the Claims Period, the Extended Warranty will cover these claims and no Out-Of-
28 Pocket Expenses will be incurred by Settlement Class Members because AHM’s dealers or
29 authorized technicians will perform the necessary repairs, free of charge.

1 HERBERT NEWBERG, NEWBERG ON CLASS ACTIONS § 11.41 (4th ed. 2002) (hereinafter
2 “NEWBERG”) (“[B]y their very nature, because of the uncertainties of outcome, difficulties of
3 proof, length of litigation, class action suits lend themselves readily to compromise”). The
4 decision “to approve or reject a settlement is committed to the sound discretion of the trial judge
5 because he is exposed to the litigants, and their strategies, positions, and proof.” In re Mego Fin.
6 Corp. Secs. Litig., 213 F.3d 454, 458 (9th Cir. 2000) (citation omitted).

7 A class action settlement may be approved if the Court, after allowing class members an
8 opportunity to be heard, finds that the settlement is “fair, reasonable, and adequate.” Fed. R. Civ.
9 P. 23(e)(2). When assessing a proposed settlement, “the court’s intrusion upon what is otherwise
10 a private consensual agreement ... must be limited to the extent necessary to reach a reasoned
11 judgment that the agreement is not the product of fraud or overreaching by, or collusion between,
12 the negotiating parties, and the settlement, taken as a whole, is fair, reasonable and adequate to all
13 concerned.” Rodriguez v. West Publ’g Corp., 563 F.3d 948, 965 (9th Cir. 2009) (quoting Hanlon
14 v. Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998)).

15 In assessing fairness, reasonableness, and adequacy, courts weigh many factors, including:

16 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity and likely
17 duration of further litigation; (3) the risk of maintaining class action status
18 throughout the trial; (4) the amount offered in settlement; (5) the extent of
19 discovery completed, and the stage of the proceedings; (6) the experience and
views of counsel; (7) the presence of a government participant; and (8) the reaction
of the class members to the proposed settlement.

20 In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 946 (9th Cir. 2011). A class action
21 settlement is presumed fair where: (1) it was reached through arm’s length negotiations; (2)
22 investigation and discovery were sufficient to allow counsel and the court to act intelligently; and
23 (3) counsel is experienced in similar litigation. Ellis v. Naval Air Rework Facility, 87 F.R.D. 15,
24 18 (N.D. Cal. 1980), aff’d, Ellis v. Naval Air Rework Facility, 661 F.2d 939 (9th Cir. 1981).

25 **B. The Settlement is Presumptively Fair**

26 **1. The Risks Inherent In The Litigation Favor Settlement**

27 The risks associated with maintaining a class action through trial are a relevant criterion in
28 evaluating the reasonableness of a proposed class action settlement. Amchem Prods., Inc. v.

1 Windsor, 521 U.S. 591 (1997). Here, there were a number of obstacles facing Plaintiff if this
 2 action did not settle, and those obstacles remain. Sept. Berk Decl. ¶¶ 8-13. While Class Counsel
 3 are confident in their position, in the absence of a settlement, the risks going forward include:

- 4 • The difficulty of certifying a class defined by “excessive oil consumption”:
- 5 • The uncertainty of the outcome of the appeal of denial of AHM’s motion to compel
 6 arbitration of Plaintiff’s claims;
- 7 • The likelihood that AHM would continue to vigorously oppose both class certification
 8 as well as the merits. Indeed, even if Plaintiff were to obtain preliminary certification,
 9 AHM would likely pursue an interlocutory appeal pursuant to Rule 23(f). The
 10 outcome of such an appeal would, at a minimum, occasion delay and add complexity.

11 In short, while Class Counsel is confident in their ability certify a class and maintain class status
 12 through trial, there are always risks inherent in litigation. In summary, the risks associated with
 13 class certification support final approval of the proposed settlement.

14 **2. Significant Discovery Has Been Conducted**

15 This factor requires the Court to evaluate whether “the parties have sufficient information
 16 to make an informed decision about settlement.” Linney v. Cellular Alaska P’ship, 151 F.3d
 17 1234, 1239 (9th Cir. 1998). As the Ninth Circuit reiterated, “[i]n the context of class action
 18 settlements, ‘formal discovery is not a necessary ticket to the bargaining table’ where the parties
 19 have sufficient information to make an informed decision about settlement.” Dunleavy v. Nadler
 20 (In re Mego Fin. Corp. Sec. Litig.), 213 F.3d 454, 459 (9th Cir. 2000) (quoting Linney v. Cellular
 21 Alaska P’ship, 151 F.3d 1234, 1239 (9th Cir. 1998)). Approval of a class action settlement does
 22 not require that discovery be exhaustive. See, e.g., In re Immune Response Sec. Litig., 497 F.
 23 Supp. 2d 1166, 1174 (S.D. Cal. 2007) (settlement approved where informal discovery gave
 24 parties a clear view of the strengths and weaknesses of their case). Here, discovery was broad,
 25 informed, vigorous, and more than sufficient for Class Counsel to realistically evaluate the
 26 strengths and weaknesses of Plaintiff’s claims:

- 27 • Plaintiff conducted a seven-hour deposition of 30(b)(6) AHM’s designee.
- 28 • Plaintiff propounded three sets of interrogatories to which AHM provided responses.

- 1 • Plaintiff reviewed more than 17,000 pages of documents produced by AHM containing
2 information relating to oil consumption and Engine Misfire.
- 3 • AHM conducted deposed both Plaintiff Soto and Plaintiff Eagen.
- 4 • AHM propounded one set of interrogatories and two sets of requests for production to
5 which Plaintiff Soto and Plaintiff Eagen substantively responded.
- 6 • Plaintiff Soto and Plaintiff Eagen collectively produced over 860 pages of documents.

7 Plaintiff also conducted a detailed and informed investigation and analysis, including extensive
8 legal research and factual analysis in order to assess the viability of the Plaintiffs' and class
9 members' legal claims; consulting with automotive experts to identify and confirm the existence
10 of a potential defect; communicating extensively with members of the proposed class, including
11 compiling and analyzing data concerning their experiences; analyzing relevant Technical Service
12 Bulletins; and significant confirmatory discovery. Sept. Berk. Decl. ¶ 16.

13 Class Counsel understands the strengths and weaknesses of Plaintiff's claims, and further
14 understands why the relief being offered in the settlement precisely addresses the concerns
15 Plaintiff identified as a result of the Litigation. *Id.* ¶ 17-18.

16 **3. The Experience and Views of Class Counsel**

17 The judgment and views of experienced counsel entering into a settlement are "entitled to
18 significant weight." Fisher Bros. v. Cambridge-Lee Indus., 630 F. Supp. 482, 488 (E.D. Pa.
19 1985). Parties represented by competent counsel are better positioned than courts to produce a
20 settlement that fairly reflects each party's expected outcome in litigation. Principe v. Ukropina (In
21 re Pac. Enters. Sec. Litig.), 47 F.3d 373, 378 (9th Cir. 1995). The recommendations of plaintiffs'
22 counsel should be given a presumption of reasonableness. Boyd v. Bechtel Corp., 485 F. Supp.
23 610, 622 (N.D. Cal. 1979). Here, Class Counsel has vigorously prosecuted this case and is
24 willing, able, and prepared to litigate the case through trial and beyond. Class Counsel has
25 considerable experience with complex class actions and consumer class actions in particular.

26 Lead Class Counsel Steven N. Berk has over twenty years of litigation experience
27 spanning the public and private sectors. Sept. Berk Decl. ¶ 20. Mr. Berk served as an Assistant
28 United States Attorney for the District of Columbia and a Trial Attorney in the Office of the

1 General Counsel of the S.E.C., and was thereafter a Partner in the law firm of Jenner & Block
2 where he specialized in complex litigation. *Id.* Mr. Berk has been involved in a number of
3 nationwide class actions and served as class counsel, or in a substantial leadership position, in
4 cases on behalf of consumers against Hewlett-Packard, Dell, Sony, JVC, General Motors, Nissan,
5 American Home Shield, Bank of America, and Mercury Marine, and other corporations. *Id.* He
6 has achieved excellent results for consumers, particularly in product defect litigation.

7 In litigating this case and reaching a resolution, Mr. Berk worked closely with co-counsel
8 Michael F. Ram, Beth E. Terrell, and Lawrence Deutsch.⁶ Mr. Ram, Ms. Terrell, and Mr. Deutsch
9 are leading class action attorneys, with a particular expertise in automotive defect litigation. Sept.
10 Berk Decl. at 18. Every material decision made in this proceeding was the result of informed
11 discussions and thoughtful deliberation. This settlement was the product of consensus among
12 counsel. *Id.* Thus, the experience and views of Class Counsel favor granting final approval. In re
13 Omnivision Techs., 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2007).

14 **4. The Parties Reached Agreement Though Vigorous Arm's Length** 15 **Negotiations**

16 Courts accord "considerable weight" to settlements that are the product of hard-fought
17 negotiations by experienced counsel. Ellis, 87 F.R.D. at 18; M. Berenson Co. v. Faneuil Hall
18 Marketplace, Inc., 671 F. Supp. 819, 822 (D. Mass. 1987). Settlements that follow sufficient
19 discovery and genuine arm's length negotiation are presumed fair. Nat'l Rural Telcoms. Coop. v.
20 Directv, Inc., 2003 U.S. Dist. LEXIS 25375, at *13 (C.D. Cal. Jan. 5, 2003). When a settlement is
21 achieved through arm's length negotiations between experienced counsel, the Court should be
22 hesitant to substitute its own judgment for that of counsel absent a showing of fraud, collusion or
23 other forms of bad faith. Flinn v. FMC Corp., 528 F.2d 1169, 1173 (4th Cir. 1975); Oppenlander
24 v. Standard Oil Co., 64 F.R.D. 597, 624 (D. Colo. 1974).

25 As discussed above, the Parties engaged in protracted settlement negotiations to achieve
26 the proposed settlement. Plaintiff then engaged in additional, confirmatory discovery to verify

27
28 ⁶ See Decl. of Beth E. Terrell of September 12, 2013 ("Sept. Terrell Decl.") and the Decl.
of Michael F. Ram of September 13, 2013 ("Sept. Ram Decl.").

1 that the proposed settlement will meaningfully resolve the issues and concerns identified by
2 Plaintiff in the Litigation. Even though Class Counsel ultimately concluded that the claims
3 concerning excessive oil consumption might not be viable, Class Counsel negotiated a tolling
4 agreement and a voluntary dismissal of those claims to preserve them for individual class
5 members who believe they have suffered harm as a result of Excessive Oil Consumption.⁷ Sept.
6 Berk Decl. ¶ 14. These robust negotiations further favor a finding that the proposed settlement is
7 entitled to a presumption of fairness and meets the standard for final approval.

8 **5. The Reaction of the Class**

9 Although the Settlement Class Members have until February 24, 2014, to opt-out or object,
10 *see* Prelim. Approval Order (Dkt. 89) ¶¶ 12, 17-18, to date, the response has been very positive.
11 As of January 6, 2014, the Settlement Administrator had received 4,385 claims from Settlement
12 Class Members seeking reimbursement of out-of-pocket expenses. Admin. Decl. ¶¶ 16, 18.

13 Although there are over 1.8 million Settlement Class Members, *id.* ¶ 6, the Settlement
14 Administrator has received only 97 requests for exclusion, *id.* ¶ 12. Class Counsel has received
15 another three (3) deficient requests for exclusion. Decl. of Steven N. Berk of January 10, 2014
16 (“Jan. Berk Decl.”) ¶ 9. Together, the individuals who have requested exclusion constitute less
17 than 1/10,000th of a percent of the Settlement Class.

18 Furthermore, from the more than 1.8 million Settlement Class Members, the Settlement
19 Administrator, AHM’s counsel, Class Counsel, and the Court have received a total of just six (6)
20 objection letters. *See* Admin. Decl. ¶ 14; Jan. Berk Decl. ¶ 7; Letter from Christian Stevens of
21 November 25, 2013 (“Stevens Letter”) (Dkt. 92). Of those six, one reflected the Settlement Class
22 Member’s confusion about the proposed relief, *see* Exh. C to Jan. Berk Decl. at 47, and, after
23 consultation with Class Counsel, that Member indicated that he no longer wished to object.

24 Two Settlement Class Members have objected on the basis that they purchased extensions
25 for their Settlement Class Vehicles’ warranties and desire that their Settlement Class Vehicles’
26 Powertrain Warranties are extended by additional years. One such objector purchased a 2-year /

27
28 ⁷ The Parties did not broach the subject of attorneys’ fees or incentive awards until after
the Parties had negotiated the benefits to the Settlement Class. Sept. Berk Decl. ¶ 19.

1 20,000 mile extension through 7 years or 80,000 miles. *See* Exh. C to Jan. Berk Decl. at 8-9. The
2 other such objector purchased a 2-year / 5,000 mile extension through 7 years or 65,000 miles.
3 *See id.* at 48-49. Both objectors argue that the settlement should be modified to provide them with
4 a 3-year extension on top of their already extended Powertrain Warranties, rather than the uniform
5 extension through 8 years / unlimited miles that the Settlement Agreement provides.

6 The proposed warranty extension provides not-insignificant benefit to these particular
7 objectors: an *additional* 1-year extension of their Settlement Class Vehicles' Powertrain
8 Warranties (as they pertain to Engine Misfire), *as well as* the elimination of the mileage cap. As
9 an example, a vehicle driven 12,000 miles per year will accumulate 96,000 miles in 8 years –
10 16,000 and 31,000 miles beyond the mileage limitations by which the objectors' current extended
11 warranties are capped. Simply put, the proposed uniform warranty extension through 8 years /
12 *unlimited miles* provides a significant benefit in terms of duration and mileage, even to those
13 Settlement Class Members who have already purchased extended warranties. More importantly,
14 the proposed extension provides ample time for the defect to manifest *and* for AHM to remedy the
15 condition, free-of-charge, under warranty – a primary goal of the lawsuit.

16 Another Settlement Class Member doubts the validity of Plaintiff's claims and dismisses
17 the existence of Engine Misfire on the basis of his personal experiences with his Settlement Class
18 Vehicles: "I've never had any issues with any of my [Settlement Class Vehicles'] engines
19 I can't imagine any legitimate reason for this lawsuit." *See* Stevens Letter at 1.⁸ AHM and Class
20 Counsel have more thoroughly evaluated the allegations underlying the settlement, and, with the
21 benefit of engineering expertise (in AHM's case), significant discovery, and access to data
22 concerning a far larger set of Settlement Class Vehicles, determined that settlement is justified.

23 Finally a letter received from one couple⁹ indicates their concern about why their late-
24 model 2006 Honda Odyssey is not among the Settlement Class Vehicles. *See* Exh. C to Jan. Berk

25 ⁸ Mr. Steven's objection letter is deficient in several respects, including the omission of his
26 Settlement Class Vehicle(s)' VINs and approximate dates of purchase.

27 ⁹ Because the couple omitted the model year and VIN of any Settlement Class Vehicle they
28 might own, Class Counsel has not yet been able to verify that they are Settlement Class Members.
It is conceivable that they are not Settlement Class Members and only learned of the settlement
through the Settlement Website.

1 Decl. at 33. The couple explained that “[they] owned a 2006 [Honda] Odyssey that ... had a
2 misfire that caused the spark plug to blow from the engine block and burn a hole in the battery ...
3 [and] [they] would like to object on the basis that [the settlement] fail[s] to ... include all model
4 years of the Honda Odyssey that have had a problem with ‘misfire problems [sic].’” They appear
5 to conflate any and all engine misfires – which can result from a wide variety of causes – with the
6 Engine Misfire condition related to the VCM-2 technology at issue in this case, *see* SAC ¶ 2.
7 There is no reason to believe that the misfire event they describe is a related to Engine Misfire,
8 particularly since it is not clear that 2006 Honda Odysseys featured the VCM-2 technology.

9 A court may appropriately infer that that a class action settlement is fair, adequate, and
10 reasonable when few class members object to it. *See, e.g., Wershba v. Apple Computer*, 91 Cal.
11 App .4th at 245 (2001). Indeed a court can approve a class action settlement as fair, adequate, and
12 reasonable even over the objections of a large number of class members. *See Class Plaintiffs*, 955
13 F.2d 1291-96. Plaintiff respects the concerns raised by the five objections received thus far;
14 however none of these concerns seriously challenge the fairness, adequacy, and reasonableness of
15 the settlement. Instead, the small number of the objections strongly suggests that the settlement is
16 satisfactory to a large percentage of the Settlement Class.

17 **V. THE PROPOSED SETTLEMENT CLASS MEETS THE REQUIREMENTS OF** 18 **RULE 23**

19 The Ninth Circuit maintains a “strong judicial policy” favoring settlement of class actions.
20 *Class Plaintiffs*, 955 F.2d at 1276 ; *see also Officers for Justice*, 688 F.2d at 625. The decision to
21 approve a settlement is committed to the sound discretion of the trial court. *Hanlon v. Chrysler*
22 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Settlements that follow sufficient discovery and
23 genuine arms-length negotiation are presumed fair. *Lamb v. Bitech, Inc.*, No. CV-11-05583-EDL,
24 2013 U.S. Dist. LEXIS 109875 (N.D. Cal. Aug. 5, 2013) (citation omitted). Class certification
25 for settlement purposes may be appropriately granted so long as the requirements of 23(a) and
26 23(b)(3) are met: numerosity, commonality, typicality, adequacy, predominance, and superiority.¹⁰

27
28 ¹⁰ Manageability, however, does not have to be satisfied. *See Amchem Prods.*, 521 U.S. at 591.

1 W. Rubenstein *et al.*, NEWBERG, *supra*, § 11.27 (4th ed. 2012 West). In the proposed settlement,
2 each of these criteria is readily met.

3 **A. Numerosity**

4 The numerosity requirement is met where “the class is so numerous that joinder of all
5 members is impracticable.” Fed. R. Civ. P. 23 (a)(1). “Impracticability” is not equated with
6 impossibility; it is only an apparent difficulty or inconvenience from joining all members of the class.
7 Harris v. Palm Springs Alpine Estates, Inc., 329 F.2d 909, 913-14 (9th Cir. 1964). In this case, the
8 proposed Settlement Class includes more than 1.8 million owners and lessees. Admin. Decl. ¶ 6.
9 Thus, numerosity is easily satisfied.

10 **B. Commonality**

11 Commonality is satisfied if “there are questions of law or fact common to the class.” Fed.
12 R. Civ. P. 23 (a)(2). The “commonality requirement has been ‘construed permissively,’ and its
13 requirements deemed ‘minimal.’” Estrella v. Freedom Fin. Network, LLC, No. C 09-03156 SI,
14 2010 U.S. Dist. LEXIS 61236 (N.D. Cal. June 2, 2010) (*quoting Hanlon*, 150 F.3d at 1019-20).
15 Here, several common questions of fact and law exist:

- 16 • Whether the Settlement Class Vehicles have a propensity to have Engine Misfire;
- 17 • Whether Engine Misfire could manifest after the Powertrain Warranty expires;
- 18 • Whether Settlement Class Members have incurred expenses from Engine Misfire;
- 19 • Whether AHM provided Plaintiff and the Settlement Class Members with vehicles
20 inherently defective in their ability to prevent Engine Misfire and its symptoms;
- 21 • Whether the engines’ being subject to premature spark plug fouling and engine
22 misfires would be considered material by a reasonable consumer;
- 23 • Whether AHM has a duty to disclose the defect to Plaintiff and the Class Members;
- 24 • Whether AHM has violated the Consumers Legal Remedies Act ;
- 25 • Whether AHM has engaged in unlawful, unfair, or fraudulent business practices;
- 26 • Whether AHM breached the express warranties with relation to the defect;
- 27 • Whether Plaintiff and the other Class Members are entitled to equitable relief; and
- 28 • Whether Plaintiff and Class Members are entitled to damages and monetary relief.

1 See SAC (Dkt. 76-1) at ¶ 41. The “commonality” requirement is readily satisfied here. See Fraser
 2 v. Asus Computer Int’l, No. C 12-00652 WHA, 2013 U.S. Dist. LEXIS 22338, at *5 (N.D. Cal.
 3 Feb. 19, 2013) (finding commonality satisfied where “the claims of each class member regarding
 4 the ... functionality of the ... product and Asus’ liability therefor” were common to the class).

5 C. Typicality

6 “Like the commonality requirement, the typicality requirement is ‘permissive’ and requires
 7 only that the representative’s claims are ‘reasonably co-extensive with those of absent class
 8 members; they need not be substantially identical.’” Rodriguez v. Hayes, 591 F.3d 1105, 1124
 9 (9th Cir. 2010) (*quoting Hanlon*, 150 F.3d at 1020). To satisfy typicality, Plaintiff must show
 10 that: (1) “other members have the same or similar injury”; (2) “the action is based on conduct
 11 which is not unique to the named plaintiffs”; and (3) “other class members have been injured by
 12 the same course of conduct.” Ellis v. Costco Wholesale Corp., 657 F.3d 970, 984 (9th Cir. 2011);
 13 see also Armstrong v. Davis, 275 F.3d 849, 868 (9th Cir. 2001).

14 Plaintiff’s claims are typical of the claims of the proposed settlement class members,
 15 because, among other things, Plaintiff purchased a Settlement Class Vehicle that contained the
 16 same problem – Engine Misfire – that could potentially manifest in all other Settlement Class
 17 Vehicles. As Plaintiff alleges:

- 18 • Plaintiff purchased his 2008 V6 Honda Accord with VCM-2 in California. (SAC ¶ 30.)
- 19 • Plaintiff’s spark plugs have twice prematurely fouled from Engine Misfire. (SAC ¶ 31.)
- 20 • When Plaintiff’s vehicle had just 30,000 miles on the odometer, the engine began to
 21 misfire. The spark plugs, valve seals, intake valve seals, and gasket head covers were
 22 replaced under warranty. (SAC ¶ 32.)
- 23 • However, when the vehicle’s odometer reached approximately 55,000 miles, Plaintiff’s
 24 vehicle’s engine began misfiring again. He diagnosed the problem by running the
 25 onboard diagnostic codes that the vehicle provides through a database and discovered
 26 that the spark plugs were again fouled and misfiring. (SAC ¶ 33.)
- 27 • After a local mechanic shop replaced one spark plug at a cost of about \$200, Plaintiff
 28 decided to replace the rest himself at a cost of approximately \$90. (SAC ¶ 34.)

- 1 • Notably, the fouled spark plugs were markedly corroded. This was surprising to
- 2 Plaintiff because the plugs had only been installed for about 25,000 miles. (SAC ¶ 35.)
- 3 • The spark plugs corroded rapidly as a result of the defect. (SAC ¶ 36.)

4 Thus, the typicality requirement is readily satisfied.

5 **D. Adequacy of Representation**

6 The Court must also consider whether “the representative parties will fairly and adequately
7 protect the interests of the class.” Fed. R. Civ. P. 23 (a)(4). Representation is adequate where a
8 plaintiff’s counsel is qualified and competent to represent the class, and the class representative
9 does not possess interests that are antagonistic to the remainder of the class. Lerwill v. Inflight
10 Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978); Hanlon, 150 F.3d at 1020 . Thus,
11 determining whether the representative will fairly and adequately protect the interests of the class
12 involves two inquiries: “(1) do the named plaintiff and his counsel have any conflicts of interest
13 with other class members, and (2) will the named plaintiff and his counsel act vigorously on behalf
14 of the class?” Fraser, 2013 U.S. Dist. LEXIS 22338 , at *6 (citing Lerwill, 582 F.2d at 512).

15 Plaintiff and Class Counsel have adequately represented, and will continue to adequately
16 represent, the interests of the Settlement Class Members. Plaintiff owns a Settlement Class
17 Vehicle. *See* SAC ¶ 30. He alleges that his vehicle suffered Engine Misfire. *Id.* ¶¶ 31-36. His
18 interests are not adverse to any other Settlement Class Member, given that all of them have
19 vehicles that are equipped with V-6 engines with VCM-2 subject to Engine Misfire. *Id.*

20 In addition, as set forth in the accompanying declarations of counsel, Class Counsel is well
21 qualified and has investigated and prosecuted this case to effectively advance the interests of class
22 members. Sept. Berk Decl. ¶ 20; *see also* Sept. Terrell Decl.; Sept. Ram Decl.; Decl. of Larry
23 Deutsch of January 9, 2014 (“Deutsch Decl.”). The adequacy of representation requirement is
24 satisfied. Fraser, 2013 U.S. Dist. LEXIS 22338 , at *6-7 (finding that declarations from the
25 plaintiff’s counsel established that he had investigated and prosecuted the case to effectively).

26 **E. Predominance**

27 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class
28 certification must also show that the action is maintainable under Fed. R. Civ. P. 23 (b)(1) (2) or

1 (3).” Hanlon, 150 F.3d at 1022 . Plaintiff is seeking class certification pursuant to Rule 23(b)(3),
 2 which permits class certification upon a showing of predominance and superiority—*i.e.*, that the
 3 questions common to class members’ legal claims predominate over individualized questions, and
 4 that a class proceeding is superior to any alternative methods for resolving the controversy.

5 The predominance requirement “is essentially a heightened commonality inquiry: do the
 6 common legal and factual questions appear more significant than the individualized legal and
 7 factual questions?” Thomas v. Baca, 231 F.R.D. 397, 402 (C.D. Cal. 2005). In the context of a
 8 settlement class, the class members’ claims must be cohesive enough to allow them to be resolved
 9 on a class wide basis. See Amchem Prods., 521 U.S. at 623 . Class certification is not defeated
 10 where the only individual determination necessary is the amount of damages due to each class
 11 member. Yokoyama v. Midland Nat’l Life Ins. Co., 594 F.3d 1087, 1094 (9th Cir. 2010).

12 Here, the common questions of law and fact include those listed above. *See*
 13 “Commonality,” *supra*. The predominance requirement is satisfied. *See Koz*, 2013 U.S. Dist.
 14 LEXIS 64577 , at *10-11 (finding predominance requirement satisfied where the asserted claims
 15 centered on two objectives questions).

16 **F. Superiority**

17 Rule 23(b)(3) also provides a non-exhaustive list of matters pertinent to the Court’s
 18 determination that the class action device is superior to other methods of adjudication:

19 (A) the class members’ interests in individually controlling the prosecution or
 20 defense of separate actions;

21 (B) the extent and nature of any litigation concerning the controversy already
 22 begun by or against class members;

23 (C) the desirability or undesirability of concentrating the litigation of the claims in
 24 the particular forum; and

25 (D) the likely difficulties in managing a class action.

26 Fed. R. Civ. P. 23 (b)(3).

27 In considering a motion to certify a settlement-only class, the third and fourth factors are rendered
 28 moot and are irrelevant because “the proposal is that there be no trial.” *See Amchem Prods.*, 521
 U.S. at 620.

The proposed settlement satisfies the requirements of Rule 23(b)(3)(A) and (B). The

1 Settlement Class Members' interests in individually controlling the prosecution of separate cases
2 is outweighed by the benefits of adjudicating all of their claims in an efficient manner such as
3 through the proposed Settlement Class. Indeed, a class action would be the vastly superior means,
4 and likely the only practical means, of adjudicating the claims of over 1.8 million settlement class
5 members scattered across the country. Given alternative mechanisms available and where, as
6 here, the individual claims are for relatively small amounts of money, the class action mechanism
7 is clearly superior. See Hanlon, 150 F.3d at 1023. Because the class action device provides the
8 superior means to effectively and efficiently resolve this controversy, and because the other
9 requirements of Rule 23 are each satisfied, certification is appropriate.

10 **VI. REQUEST FOR ENTRY OF THE PROPOSED FINAL APPROVAL ORDER AND** 11 **JUDGMENT**

12 The contents of a Rule 23(e) class notice are sufficient if it informs the class members of
13 the nature of the action, the general terms of the settlement, the options available to them (*e.g.*,
14 submitting a claim form, opting out, or objecting), the time and place of the Final Approval
15 Hearing, and ways to obtain more detailed information. MANUAL FOR COMPLEX LITIGATION
16 (FOURTH), § 21.312 (2004). The distribution of class notice is sufficient if it is given in a form
17 and manner that does not systematically leave an identifiable group without notice. S. F. NAACP
18 v. San Francisco Unified Sch. Dist., 59 F. Supp. 2d 1021, 1027-28 (N.D. Cal. 1999), *quoting*
19 *Officers for Justice*, 688 F.2d at 624 (*citing Mandujano v. Basic Vegetable Prod, Inc.*, 541 F.2d
20 832, 835-36 (9th Cir. 1976)). Due process requires only a procedure reasonably calculated to
21 reach class members. Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306 (1950).

22 **A. The Notice Plan Satisfies the Requirements of Rule 23(c)(2)(B)**

23 Federal Rule of Civil Procedure 23(c)(2)(B) requires that members of a class certified
24 under Rule 23(b)(3) be given notice of the suit and its class action status. The class members are
25 entitled to receive "the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23
26 (c)(2)(B). "Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient
27 detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'"
28 Churchill Vill. v. GE, 361 F.3d 566, 575 (9th Cir. 2004); see Silber v. Mabon, 18 F.3d 1449, 1454

1 (9th Cir. 1994) (the notice must be “reasonably calculated, under all the circumstances, to apprise
2 interested parties of the pendency of the action and afford them an opportunity to present their
3 objections.”).

4 Specifically, under Federal Rule of Civil Procedure 23(c)(2)(B), the notice must “clearly
5 and concisely state in plain, easily understood language”:

6 (i) the nature of the action; (ii) the definition of the class certified; (iii) the class
7 claims, issues or defenses; (iv) that a class member may enter an appearance
8 through an attorney if the member so desires; (v) that the court will exclude from
9 the class any member who requests exclusion; (vi) the time and manner for
10 requesting exclusion; and (vii) the binding effect of a class judgment on members
11 under Rule 23(c)(3).

12 Here, the proposed Notice complies with the requirements of Fed. R. Civ. P. 23 (c)(2)(B).

13 The Notice informs Settlement Class Members that a Settlement Class has been
14 conditionally certified and provides a description of the Settlement Class in a manner that allows
15 potential class members to easily determine whether they are a member of the Settlement Class.
16 The notice describes the terms of the proposed settlement, the proposed attorneys’ fees, and the
17 procedure for filing claims, noting that such benefits will be distributed to Settlement Class
18 Members only if the Court approves the settlement after the Final Approval Hearing. The Notice
19 clearly apprises Settlement Class Members of their rights to participate in, object to, or request
20 exclusion from the proposed settlement, and to attend the Final Approval Hearing, providing
21 sufficient descriptions of the process by which to exercise such rights, deadlines associated with
22 exercising such rights, and the time and place of the Final Approval Hearing. The Notice
23 prominently displays the names and addresses of Class Counsel and the procedures for making
24 inquiries through the Administrator or by contacting Class Counsel, and additionally directs the
25 Settlement Class Member to the Engine Misfire Website from which the Settlement Class Member
26 can download a Claim Form. For those Settlement Class Members who do not have access to a
27 computer or to the internet, or for those Settlement Class Members who have additional questions,
28 the Notice also contains all information necessary to contact the Settlement Administrator via a
toll-free telephone number staffed during normal business hours and via U.S. mail. Such notices
that contain a summary of the nature of the pending action, the general terms of the settlement, the

1 options available to class members (*e.g.*, submitting a claim form, opting out, and/or objecting),
 2 the time and place of the Final Approval Hearing, and ways to obtain more detailed information
 3 are consistent with due process and satisfy the requirements of Fed. R. Civ. P. 23 . MANUAL FOR
 4 COMPLEX LITIGATION (FOURTH), § 21.312 (2004).

5 **B. The Manner of Notice Fully Satisfies Due Process**

6 Federal Rule of Civil Procedure 23(e)(1) requires that all class members who would be
 7 bound by the settlement be given “notice in a reasonable manner.” The proposed Notice will
 8 provide Settlement Class members with individual notice by first class mail, thereby satisfying
 9 due process. See Mullane, 339 U.S. at 310 (explaining that notice by first class mail will often be
 10 the “best practicable notice”); Silber, 18 F.3d at 1453-54 (holding notice by direct mail and
 11 publication to be “best notice practicable”).

12 The Parties believe that nearly all (if not all) members of the Settlement Class have
 13 received the direct mail notice, because AHM acquired Settlement Class Members’ addresses
 14 through R.L. Polk & Co., which specializes in obtaining contact information from State
 15 Departments of Motor Vehicles and the National Change of Address database. AHM also posted
 16 the Class Notice on a dedicated website – a useful supplement to individual direct notice.
 17 MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.311 (2004); *see also* Brian Walters, “Best
 18 Notice Practicable” in the Twenty-First Century, 2003 UCLA J.L. & TECH. 4 (2003). In
 19 summary, the notice meets the standards of Rule 23(c)(2)(B) and (e) and satisfies due process.¹¹

20 **VII. REQUEST FOR AWARD OF INCENTIVE FEE AND ATTORNEYS’ FEES &
 21 EXPENSES**

22 As a result of this lawsuit and Class Counsel’s and Plaintiff Eagen’s efforts over the past
 23 two and a half years, AHM has agreed to a settlement that will: (1) extend the Powertrain
 24 Warranties for all 1.8 million Settlement Class Vehicles through eight years *with no mileage limit*
 25 as they pertain to Engine Misfire; and (2) provide *full reimbursement* for past repairs necessitated

26
 27 ¹¹ In accordance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, AHM
 28 provided notice of the proposed settlement to the Attorney General of the United States and
 appropriate state officials of each state within 10 days of filing the Settlement Agreement with the
 Court. *See* Decl. of Michael B. Shortnacy of October 2, 2013 ¶¶ 3-5.

1 by the defect. The settlement is the product of Class Counsel's hard work, skill, creativity and
2 persistence. The requested fees – \$800,000 – is but a fraction (46%) of Class Counsel's lodestar
3 and expenses represent barely two percent (2%) of the potential value of the relief obtained for the
4 Settlement Class. Class Counsel are entitled to reasonable fees and expenses based on the risks
5 they have taken and the strong results they have achieved. Plaintiff is also entitled to a modest
6 incentive award in recognition of the effort he donated in the Class' interest.

7 **A. Class Counsel's Efforts and Results**

8 This settlement is the result of lawyers from four firms working conscientiously in the
9 interests of the Class. Class Counsel spent significant time and money on this matter, up front and
10 to the exclusion of other matters. (Class co-Counsel Berk Law PLLC, which has the most
11 significant investment of hours, has only two (2) attorneys). The case was risky and complex, yet
12 each firm undertook it on a purely contingent basis.

13 The specific tasks that allowed Plaintiffs to reach this position include:

- 14 • conducting extensive legal research and factual analysis to assess the viability of the
15 Plaintiffs' and class members' legal claims;
- 16 • collaborating with automotive experts to identify and confirm the defect;
- 17 • communicating extensively with members of the Class, including compiling and
18 analyzing data concerning their experiences;
- 19 • reviewing and analyzing thousands of pages of discovery material;
- 20 • drafting and filing pleadings and supporting documents;
- 21 • preparing formal discovery requests;
- 22 • defending the depositions of Named Plaintiffs Alex Soto and Vince Eagen;
- 23 • researching and drafting responses to AHM's motion to compel arbitration;
- 24 • negotiating and drafting settlement terms;
- 25 • drafting mediation briefing and participating in a day-long mediation;
- 26 • twice deposing AHM's Fed. R. Civ. P. 30(b)(6) representative;
- 27 • drafting and revising the Class Notice;
- 28

- 1 • filing the preliminary approval brief and supporting documentation;
- 2 • conferring with, *and continuing to confer with* on a daily basis, numerous Settlement
- 3 Class Members by telephone and e-mail about the proposed settlement throughout the
- 4 notice period; and
- 5 • drafting and filing the final approval brief and supporting documents.

6 In the event that the Court grants final approval, Class Counsel might still:

- 7 • brief and argue any appeals that might be taken;
- 8 • communicate with Settlement Class Members regarding the proposed settlement
- 9 throughout the term of the settlement period;
- 10 • assist class members with the settlement claims;
- 11 • participate in the claims appeals process; and
- 12 • monitor the claims process and enforcing the settlement throughout its duration.

13 At this stage in the Claims Period, it is not possible to quantify the total value of

14 reimbursements for out-of-pocket expenses claimed by Settlement Class Members. As of January

15 6, 2014, the Settlement Administrator had received 4,385 claims reimbursement. However, the

16 Settlement Administrator has not finished evaluating and tabulating the claims, *see* Admin. Decl. ¶

17 18; and Settlement Class Members have through April 10, 2014, to submit claims, *see* Exh. A

18 (“Notice Packet”) to Admin. Decl. at 5.

19 The potential value the of warranty extension provision of the settlement, however, was

20 estimated by AHM during the course of confirmatory discovery. At that time, AHM projected the

21 maximum increased costs for eligible future Engine Misfire extended warranty claims to be \$39.9

22 million. *See* Exh. D (Excerpt of Tr. of AHM’s 30(b)(6) designee (July 16, 2013)) to Jan. Berk

23 Decl. at 2. This represents the potential future value of repairs related to Engine Misfire under the

24 proposed extended warranty that would not have been covered by the Settlement Class Vehicles’

25 original 5-year / 60,000 mile Powertrain warranties. Without the settlement and the proposed

26 warranty extension, the Settlement Class Members will bear their own costs of repair if the defect

27 manifests in their vehicles outside the existing Powertrain Warranty; or they will suffer the

28 ongoing symptoms if they forgo repairs in order to avoid the out-of-pocket expenses.

B. Percentage of the Fund Analysis

Under longstanding Ninth Circuit law, reasonable attorneys' fees may be based on a percentage of the common fund (or other monetizable benefit) recovered for the class. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (citing *In re. Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 (9th Cir. 1994) and *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989)). The Ninth Circuit has established twenty-five percent (25%) of the common fund as a "benchmark" for attorneys' fees in common fund cases, with most fees falling somewhere between twenty and thirty percent (20-30%). *See Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Paul, Johnson*, 886 F.2d at 272. Here Class Counsel requests (and AHM has agreed to pay) fees and expenses of approximately two percent (2%).

In determining whether to use the twenty-five percent benchmark or to award fees at the higher or lower end of the usual range, courts in the Ninth Circuit consider several factors, including (1) the results achieved, (2) the risks of litigation, (3) the skill and quality of counsel's work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; (5) whether there were benefits to the class beyond the immediate generation of a cash fund; and (6) the range of awards from comparable common funds. *See Vizcaino*, 290 F.3d at 1048-50. Each of the factors more than supports an award for Class Counsel equal to 2%. First, the proposed settlement confers valuable benefits on the Settlement Class, including extension of the Powertrain Warranty as to Engine Misfire for a total of eight years and with no mileage limitation. As described above, the monetary value of the extended warranty provision of the class settlement alone is substantial: potentially as high as \$39.9 million, *see* Exh. D to Jan. Berk Decl. at 2. In addition, class members will receive full reimbursement of their expenses for all past repairs occasioned by Engine Misfire. Well over 4,000 claims for reimbursement have already been received and it is likely thousands more will be received before the deadline. These claims range from as little as \$200 to more than \$4,000.

Class Counsel have pursued this litigation and invested their time and money despite significant risks, including the complex engineering issues at play, the uncertainty of well-defined,

1 comprehensive industry standards, the age of many of the vehicles, and the potentially crushing
2 resources of a multinational corporate defendant. As a result of the skill and quality of counsel's
3 early and aggressive work, Plaintiffs expeditiously achieved a valuable settlement that will deliver
4 prompt relief.

5 While an objector might argue that not every class member will receive the relief the
6 settlement provides, a percentage fee is properly calculated based on the entire benefit made
7 available to the class members. *See Williams v. MGM-Pathe Commc 'ns. Co.*, 129 F.3d 1026,
8 1027 (9th Cir. 1997) ("the district court abused its discretion by basing the fee on the class
9 members' claims against the fund rather than on a percentage of the entire fund or on the
10 lodestar"); *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133 at *11 (N.D.
11 Cal. Apr. 3, 2009) ("The appropriate measure of the fee amount is against the potential amount
12 available to the class, not a lesser amount reflecting the amount actually claimed by the
13 members.").

14 C. Lodestar Cross-Check

15 The Ninth Circuit also recognizes the lodestar method for calculating attorneys' fees.
16 *Wash. Pub. Power*, 19 F.3d at 1295-96. Calculating counsel's lodestar begins by multiplying the
17 number of hours expended by a reasonable hourly rate. *Blum v. Stenson*, 465 U.S. 886, 897
18 (1984). "The resulting figure may be adjusted upward or downward to account for several factors
19 including the quality of the representation, the benefit obtained for the class, the complexity and
20 novelty of the issues presented, and the risk of nonpayment." *Hanlon*, 150 F.3d at 1029.

21 As of January 6, 2014, Class Counsel has invested **\$1,667,693.36** in attorneys' fees and
22 expenses of **\$48,098.15**. It should be recognized that this fee request necessarily reflects the fees
23 associated with future services that Class Counsel must provide to carry out the settlement,
24 including preparation for and attendance at the Final Approval Hearing and ongoing and frequent
25 conferral with and counseling of Settlement Class Members during the notice and claims periods.
26 Future work might also include enforcement of the settlement and aid to class members who
27 encounter difficulties. *See Hanlon v. Chrysler*, 150 F.3d 1011, 1029 (9th Cir. 1998).

28

1 **VIII. CONCLUSION**

2 For the reasons stated herein, Plaintiff respectfully requests that the Court enter the
3 [Proposed] Final Approval Order and Judgment (submitted herewith) (i) granting final approval of
4 the proposed settlement, as set forth in the Settlement Agreement, as fair, reasonable, and adequate
5 pursuant to Fed. R. Civ. P. 23; (ii) finally certifying the Settlement Class; (iii) appointing, for
6 settlement purposes only, Named Plaintiff Vince Eagen and Class Counsel as representative of
7 and attorneys for the Settlement Class; (iv) confirming the ongoing appointing, for settlement
8 purposes only, of American Honda Motor Co., Inc., as Settlement Administrator; (v) finding that
9 the Notice was the best practicable under the circumstances and satisfied all Constitutional and
10 other requirements; (vi) confirming Settlement Class Members who have timely submitted
11 requests for exclusion; (vii) dismissing the action pursuant to the terms and conditions of the
12 Settlement Agreement; (viii) retaining jurisdiction over the enforcement and implementation of
13 the Settlement Agreement and any amendments thereto; (ix) awarding Plaintiff an Incentive
14 Award of \$1,000 to compensate him for his time and effort on behalf of the Settlement Class and
15 (x) awarding Class Counsel a Class Counsel Fees & Expenses Award of \$800,000.

16 Dated: January 10, 2014

BERK LAW PLLC
Attorneys for Individual and Representative Plaintiff
VINCE EAGEN

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CERTIFICATE OF SERVICE

I, Matthew J. Bonness, hereby certify that on January 14, 2014, I electronically filed the foregoing [**CORRECTED**] **PLAINTIFF’S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT & AWARD OF ATTORNEYS’ FEES & EXPENSES, MEMORANDUM OF LAW IN SUPPORT** thereof, and accompanying [**PROPOSED**] **ORDER** granting the same 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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