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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

AMERICAN HONDA MOTOR CO.,
INC.,

Defendant.

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

) Assigned to Hon. Susan Illston

) Courtroom: 10

) **ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND APPLICATION
OF ATTORNEYS, COSTS, AND
CLASS REPRESENTATIVE
PAYMENTS, FINAL JUDGMENT
AND ORDER OF DISMISSAL WITH
PREJUDICE**

) CLASS ACTION

) Complaint Filed: March 19, 2012

[PROPOSED] FINAL ORDER AND JUDGMENT

On October 9, 2013, the Court entered a Preliminary Approval Order that preliminarily approved the Settlement Agreement in this Litigation and specified the manner in which the Settlement Administrator, Defendant American Honda Motor Co., Inc. (“AHM”), was to provide notice to the Settlement Class. The Settlement Agreement, which is incorporated herein by reference, sets forth the terms and conditions for a settlement and dismissal with prejudice of the Litigation. Terms and phrases in this Final Order and Judgment, unless otherwise defined herein, shall have the same meaning as ascribed to them in the Settlement Agreement.

After entry of the Preliminary Approval Order directing dissemination of Notice in accordance with the Notice plan set forth in the Settlement Agreement, the Settlement Administrator caused the Notice to be mailed to Settlement Class Members via first class U.S. Mail, postage prepaid. Settlement Class Members’ mailing addresses were obtained via a good faith search of Department of Motor Vehicle registration data for each State and

1 the District of Columbia, and procedures were put into place for updating addresses and
2 the handling of returned mail. In addition, a dedicated settlement website containing the
3 Settlement Agreement, the Notice, the Claim Form, and other relevant settlement and
4 Court documents was created, and a toll-free telephone number staffed with operators
5 during regular business hours was also put into place. Both remain operative.

6 Following the dissemination of the Notice and the posting of the Notice on the
7 settlement website, Settlement Class Members were given an opportunity to: (i) submit
8 timely requests for exclusion from the Settlement Class; or (ii) object to the Settlement
9 Agreement (including the Class Counsel Fees and Expenses Award and Named Plaintiff's
10 Incentive Award).

11 A Final Approval Hearing was held on March 21, 2014 at 9:00 a.m. at which time
12 each person filing timely written objection to the settlement and a notice of his/her intent
13 to appear were given a full opportunity to state any objections to the settlement.

14 NOW THEREFORE, this matter having been brought before the Court on the
15 motion of Named Plaintiff Vince Eagen, through his attorneys, the Court having fully
16 considered the terms of the Settlement Agreement and all submissions made in connection
17 with it, finds that the Settlement Agreement and the settlement should be finally approved
18 as fair, reasonable and adequate and the Litigation dismissed with prejudice as to all
19 Settlement Class Members who have not excluded themselves from the Settlement Class,
20 and without prejudice as to all persons who timely and validly excluded themselves from
21 the Settlement Class as set forth on the list of Opt Outs, and further finds the Released
22 Claims are subject to the Release in accordance with FED. R. CIV. P. 54 and other
23 applicable laws.

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

25 1. The Court finds it has personal jurisdiction over the Named Plaintiff and all
26 members of the Settlement Class and has subject matter jurisdiction to approve the
27 settlement and Settlement Agreement and all Exhibits thereto.

28

1 2. The Court finds this order is being entered more than ninety (90) days after
2 AHM provided notice of the proposed settlement to the Attorney General of the United
3 States and the attorneys general of the States as required by 28 U.S.C. § 1715(b),
4 complying fully with 28 U.S.C. § 1715(d).

5 3. The Court finds that the manner of dissemination and content of the Notice
6 as specified in detail in the Settlement Agreement:

- 7 i. constituted the best notice practicable;
- 8 ii. constituted notice that was reasonably calculated under the circumstances
9 to apprise Settlement Class Members of the pendency of the Litigation, of
10 their right to object to or exclude themselves from the proposed
11 settlement, of their right to appear at the Final Approval Hearing and of
12 their right to seek monetary and other relief;
- 13 iii. constituted reasonable, due, adequate and sufficient notice to all persons
14 entitled to receive notice, and
- 15 iv. met all applicable requirements of Due Process and any other applicable
16 law or requirement. Full and fair opportunity has been afforded to the
17 members of the Settlement Class to be heard at and to participate in the
18 Final Approval Hearing.

19 4. According to its terms, the settlement provides cash reimbursements to
20 Settlement Class Members for eligible Out-of-Pocket expenses relating to previous repairs
21 for Engine Misfire, and provides an extension of the Powertrain Limited Warranty for
22 Engine Misfire for a total period of eight years from date of original purchase or lease
23 without mileage limitation. The Court therefore finds that the settlement set forth in the
24 Settlement Agreement is fair, reasonable and adequate as to each of the Parties and as it
25 applies to the Settlement Class, and in compliance with all requirements of Due Process
26 and applicable law, as to and in the best interests of each of the Parties and members of the
27 Settlement Class, and directs consummation of all of its terms and provisions, and any
28 timely and valid objections thereto are hereby overruled.

1 5. With respect to the Settlement Class, the Court finds and concludes, for
2 settlement purposes only, that: (i) the Settlement Class Members are so numerous as to
3 make joinder impracticable; (ii) there are questions of law and fact common to the
4 Settlement Class, and such questions predominate over any questions affecting only
5 individual Settlement Class Members; (iii) the Named Plaintiff's claims and the defenses
6 thereto are typical of the claims of Settlement Class Members and the defenses thereto; (iv)
7 the Named Plaintiff and his counsel can protect and have fairly and adequately protected
8 the interests of the Settlement Class Members in the Litigation; and (v) a class action is
9 superior to all other available methods for fairly and efficiently resolving the Litigation
10 and provides substantial benefits to the Settlement Class Members and the Court. The
11 Court therefore determines that this action satisfies the prerequisites for class certification
12 for settlement purposes pursuant to FED. R. CIV. P. 23.

13 6. The Court further finds that the Settlement Agreement is supported by the
14 vast majority of the members of the Settlement Class. As of the last date by which
15 requests for exclusion were to be postmarked in accordance with the terms of the
16 Preliminary Approval Order, the Settlement Class Members who have opted out of the
17 Settlement Class and any objections submitted are relatively few when compared to the
18 total number of members of the Settlement Class. The terms of this Final Order and
19 Judgment and the Settlement Agreement do not apply to the Opt-Outs or to any other
20 persons the Parties agree in writing submitted timely and valid requests for exclusion,
21 unless such Opt-Outs or persons elect to claim the benefits set forth in the Settlement
22 Agreement, thereby choosing to rescind their requests for exclusion from the Settlement
23 Class.

24 7. The Court finds that the Settlement Agreement and the settlement provided
25 for therein and any proceeding taken pursuant thereto are not and should not in any event
26 be offered or received as evidence of, a presumption, concession or an admission of
27 liability, a defect, or of any misrepresentation or omission in any statement or written
28 document approved or made by AHM or any Releasee of the suitability of these or similar

1 claims to class treatment in active litigation and trial; provided, however, that reference
2 may be made to the Settlement Agreement and the settlement provided for therein in such
3 proceedings as may be necessary to effectuate the settlement.

4 8. The Court finds that the Parties and the Settlement Administrator have fully
5 complied with their respective obligations as set forth in the Preliminary Approval Order
6 entered by this Court on October 9, 2013.

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

11 IT IS HEREBY ORDERED as follows:

12 9. The preliminary certification of the Settlement Class in the Preliminary
13 Approval Order is hereby confirmed and made final for purposes of the Settlement
14 Agreement as approved by this Final Order and Judgment. Pursuant to FED. R. CIV. P. 23,
15 the Court hereby certifies, for settlement purposes only, a Settlement Class defined as
16 follows:

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

23 10. Specifically excluded from the Settlement Class are the following persons:
24 (a) AHM; (b) any affiliate, parent or subsidiary of AHM; (c) any entity in which AHM has
25 a controlling interest; (d) any officer, director, or employee of AHM; (e) any successor or
26 assign of AHM; (f) any Judge to whom the Litigation is assigned; (g) anyone who
27 purchased a Settlement Class Vehicle for purposes of resale; (h) any owners or lessees of
28 Settlement Class Vehicles that were not distributed for sale or lease in the United States;

1 and (i) all persons who have timely elected to opt out of or exclude themselves from the
2 Settlement Class in accordance with this Court's Orders.

3 11. The Settlement Class shall include all original purchasers and lessees as well
4 as subsequent purchasers and lessees who purchased or leased a Class Vehicle.

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

10 13. For settlement purposes only, the Court confirms its appointment of AHM as
11 Settlement Administrator, and finds the Settlement Administrator has fully discharged its
12 duties as set forth in the Settlement Agreement.

13 14. The Court confirms its appointment of Class Counsel, for settlement
14 purposes only, of: (1) Berk Law PLLC; (2) Terrell Marshall Daudt & Willie PLLC; (3)
15 Ram, Olson, Cereghino & Kopczynski; and (4) Berger & Montague, P.C., and finds Class
16 Counsel adequately represents the Settlement Class for purposes of entering into and
17 implementing the settlement and Settlement Agreement.

18 15. The Court confirms its appointment of Named Plaintiff Vince Eagen, for
19 settlement purposes only, and finds Named Plaintiff adequately represents the Settlement
20 Class for purposes of entering into and implementing the settlement and Settlement
21 Agreement.

22 16. The Court awards a Named Plaintiff's Incentive Award of \$ _____
23 to Named Plaintiff Vince Eagen and a Class Counsel Fees and Expenses Award in the
24 amount of \$ _____ to Class Counsel. These amounts shall be paid and
25 distributed in accordance with the provisions of the Settlement Agreement.

26 17. The motion for final approval of all the terms set forth in the Settlement
27 Agreement is GRANTED, and the Court hereby overrules all objections, as either
28

1 untimely, not in accordance with the Court's previous order or on their merits, and directs
2 consummation of all of its terms and provisions.

3 18. The Court approves the list of Opt-Outs attached hereto as Exhibit __ and
4 determines that Exhibit __ is a complete list of all Settlement Class Members who timely
5 have requested exclusion from the Settlement Class and, accordingly, shall neither share in
6 nor be bound by the Final Order and Judgment, subject to the terms of the Settlement
7 Agreement.

8 19. The Court adjudges that the Named Plaintiff and Settlement Class Members
9 have conclusively compromised, settled, dismissed and released any and all Released
10 Claims against AHM and the Releasees.

11 20. The Court declares that the Settlement Agreement and this Final Order and
12 Judgment to be binding on, and have *res judicata* and preclusive effect in all pending and
13 future lawsuits or other proceedings encompassed by the Release and the Released Claims
14 maintained by or on behalf of the Named Plaintiff and all other Settlement Class Members,
15 as well as their successors, assigns, past, present, and future parents, subsidiaries, joint
16 venturers, partnerships, related companies, affiliates, unincorporated entities, divisions,
17 groups, directors, officers, shareholders, employees, agents, representatives, servants,
18 partners, executors, administrators, assigns, predecessors, successors, descendants,
19 dependents, and heirs.

20 21. By operation of this Final Order and the Judgment entered therewith,
21 effective as of the Effective Date, and in consideration of the Settlement Agreement and
22 the benefits extended to the Settlement Class, the Named Plaintiff, on behalf of himself
23 and the Settlement Class Members, and each Settlement Class Member, on behalf of
24 himself or herself or itself and his or her or its respective successors, assigns, past, present,
25 and future parents, subsidiaries, joint venturers, partnerships, related companies, affiliates,
26 unincorporated entities, divisions, groups, directors, officers, shareholders, employees,
27 agents, representatives, servants, partners, executors, administrators, assigns, predecessors,
28 successors, descendants, dependents, and heirs, do or by operation of this Final Order and

1 Judgment are deemed to have fully released and forever discharged the Releasees from the
2 Released Claims in accordance and consistent with the terms of the Settlement Agreement,
3 but not as to any obligations created or owed to them under the terms of the Settlement
4 Agreement.

5 22. The Court dismisses on the merits and with prejudice the Second Amended
6 Complaint in this Litigation without fees or costs except as provided in the Settlement
7 Agreement. Upon the Effective Date, the Named Plaintiff and all members of the
8 Settlement Class who have not been excluded from the settlement, whether or not they
9 submit a Claim Form within the time and in the manner provided for, shall be barred from
10 asserting any Released Claim against AHM, and any such members of the Settlement
11 Class shall have released any and all Released Claims against the Releasees.

12 23. Effective as of the date of this Order, to the fullest extent permitted by law,
13 the Court orders and enters a permanent injunction barring and enjoining the Settlement
14 Class Members from: (i) filing, commencing, prosecuting, intervening in or participating
15 (as class members or otherwise) in any other lawsuit or administrative, regulatory,
16 arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the
17 claims and causes of action or the facts and circumstances arbitration or other proceeding
18 in any jurisdiction based on, relating to or arising out of the claims and causes of action or
19 the facts and circumstances giving rise to the Litigation or the Released Claims; and (ii)
20 organizing Settlement Class Members who have not been excluded from the class into a
21 separate class for purposes of pursuing as a purported class action any lawsuit or
22 arbitration or other proceeding (including by seeking to amend a pending complaint to
23 include class allegations or seeking class certification in a pending action) based on,
24 relating to or arising out of the claims and causes of action or the facts and circumstances
25 giving rise to the Litigation and/or the Released Claims; the terms of the Release shall not
26 apply to the Opt-Outs listed on Exhibit ___ hereto or to any other persons the Parties agree
27 in writing submitted timely and valid requests for exclusion and should also be listed as
28 Opt-Outs unless such persons elect to claim the benefits set forth in the Settlement

1 Agreement thereby choosing to rescind their requests for exclusion from the Settlement
2 Class.

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

8 25. If (i) the Effective Date does not occur for any reason whatsoever, or (ii) the
9 Settlement Agreement becomes null and void pursuant to the terms of the Settlement
10 Agreement, this Final Order and Judgment shall be deemed vacated and shall have no
11 force or effect whatsoever.

12 26. Without affecting in any way the finality of the judgment entered under this
13 Final Order and Judgment, this Court reserves continuing and exclusive jurisdiction over
14 the Parties, including all Settlement Class Members, and the execution, consummation,
15 administration and enforcement of the terms of the Settlement Agreement.

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

19
20 IT IS SO ORDERED.

21
22 Dated: _____

23 _____
24 SUSAN ILLSTON
25 UNITED STATES DISTRICT JUDGE
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