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15 *Class Counsel and Proposed Counsel for the Settlement Class*

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

Aberin et al. v. American Honda Motor Co., Inc.

Case No. 4:16-cv-04384-JST

**DECLARATION OF CHRISTOPHER A.
SEEGER IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

I, Christopher A. Seeger, hereby declare under penalty of perjury under the laws of the United States as follows:

1. I am a founding partner of Seeger Weiss LLP (“Seeger Weiss” or, with Carella, Byrne, Cecchi, Brody & Angello, P.C. “Class Counsel”). I am admitted *pro hac vice* in the above captioned action (“Action”), I am one of the attorneys who has worked on the Action and am currently appointed to serve as Class Counsel for the litigation classes certified by the Court in this Action. I have personal knowledge of the facts set forth herein. Capitalized terms contained in

1 this Declaration have the same meaning as set forth in the parties' Settlement Agreement, unless
2 otherwise noted herein.

3 2. Attached as **Exhibit "1"** is a true and correct copy of the Class Action Settlement
4 Agreement entered into by the parties to this action, including all exhibits to the Settlement
5 Agreement:

6 **Exhibit A** – [Proposed] Notice;
7 **Exhibit B** – [Proposed] Preliminary Approval Order; and
8 **Exhibit C** – [Proposed] Final Approval Order.

9 3. Plaintiffs in this Action allege that Defendant American Honda Motor Co.
10 ("Defendant" or "Honda") marketed and sold certain Acura vehicles with a HandsFreeLink
11 ("HFL") Bluetooth interface which was defective, and would fail to properly shut down after the
12 vehicles were shut off, causing an excessive electric parasitic drain on the vehicle's battery and
13 wider electrical system, leading to premature battery and alternator failure, and posing a safety
14 hazard to owners.

15 4. The Settlement reached represents the culmination of years of zealous
16 representation and advocacy by Class Counsel and other firms on behalf of Plaintiffs, the Class
17 Members, and the proposed Settlement Class Members. Milestones of Class Counsel's work and
18 successes include, among others, defeating a motion to transfer, defeating in substantial measure
19 several motions to dismiss, briefing several discovery disputes. taking and defending the
20 depositions of over 13 fact witnesses, including those of Plaintiffs (some of whom appeared more
21 than once), taking and defending the depositions of nine (9) experts, obtaining certification of four
22 litigation classes, opposing Honda's efforts to appeal and otherwise decertify the certified classes,
23 and opposing a motion for summary judgment (and related motions to strike expert testimony). A
24 complete recitation of the work undertaken in this Action will be presented with Class Counsel's
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1 petition for an award of attorneys' fees, expenses, and costs which will be filed with Plaintiffs'
2 motion for final approval.

3 5. The Parties initially undertook to mediate the claims of the putative classes in this
4 Action before Ellen Reisman of Reisman Karron Greene LLP on February 11, 2020, and before
5 class-related expert discovery. These efforts were unsuccessful.

6 6. After Plaintiff obtained certification of classes of purchasers from four states on
7 March 23, 2021 (ECF No. 291), and after further discovery and extensive motion practice, the
8 Parties undertook once again to resolve the claims of the certified classes. Under the auspices of
9 the Honorable Daniel J. Buckley (Ret.) of Signature Resolution, who is the former Presiding Judge
10 of the Superior Court of California, Los Angeles County, the Parties reached the terms of the
11 benefits to be provided to the Settlement Class Members. In advance of the first mediation session
12 on September 22, 2022, the Parties submitted their mediation statements. Between that first session
13 and the next session on October 12, 2022, the Parties continued to discuss the issues and disputes
14 in the Action with the assistance of Judge Buckley, and reached an understanding of and agreement
15 on the basic Settlement benefits. At this second session, the Parties also began to discuss
16 reasonable attorneys' fees, expenses and costs, and a reasonable Service Award for the Plaintiffs
17 and Class Representatives, but were unable to agree on either. Thereafter, the Parties turned to
18 negotiating the full terms of the Settlement Agreement, which was finalized and entered into on
19 February 28, 2023. At all times, the Parties engaged in vigorous, arm's-length discussions. The
20 Declaration of the Honorable Danial Buckley (Ret.) discussing his role in and view of the
21 mediation is attached here as **Exhibit "2"**.
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25 7. Based on the extensive knowledge of the record in this Action and bringing decades
26 of experience litigating actions such as this, Class Counsel have examined the benefits to be
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1 obtained under the terms of this Settlement Agreement, have considered the risks associated with
2 the continued prosecution of the Action and the likelihood of success on the merits of the Litigation
3 and believe that, after considering all of the facts and circumstances, the proposed settlement set
4 forth in this Settlement Agreement offers significant benefits to Settlement Class Members and is
5 fair, reasonable, adequate, and in the best interests of the Settlement Class Members.

6 8. Under the Settlement, Settlement Class Members are offered two categories of
7 benefits which address the impact the HFL defect had on the Settlement Class Members ownership
8 of their Settlement Class Vehicles, with each offering cash payments. (1) Settlement Class
9 Members who paid out of pocket for parts or labor for an HFL Replacement associated with
10 excessive parasitic drain prior to the Settlement Class Vehicle reaching 10 years or 120,000 miles
11 from original purchase are eligible for HFL Replacement Reimbursements of up to \$500 for each
12 replacement of an HFL Unit after indication of excessive parasitic drain; and (2) Settlement Class
13 Members may be eligible for a \$350 payment if the HFL Unit was disconnected from the HFL
14 System *or* there was simply indication that the HFL Unit suffered from excessive parasitic drain
15 prior to the vehicle reaching 10 years or 120,000 miles from original purchase. Settlement Class
16 Members may be eligible for more than one benefit or payment under the Settlement.

17 9. The model of damages that Plaintiffs had developed for trial focused on
18 “overpayment” for the Class Vehicles, where the overpayment premium of \$2,100.70 for each
19 vehicle was depreciated over a 12-year term and allocated between initial and subsequent
20 purchasers. Using Plaintiff Kelly as an example, he was the third purchaser of his vehicle. The
21 initial purchaser (who owned the vehicle for just under three years) overpaid \$792.66 for the
22 vehicle, the second owner (who owned the vehicle for over eight years) overpaid \$1,084.20 for the
23 vehicle, and Mr. Kelly (who owned for the remaining term), overpaid \$224.84. *See* Expert Report
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1 of D.C. Sharp, Ph.D. (ECF No. 249-48 at p. 14). While we do not know yet if the first two owners
2 will be submitting claims (which claims may be based solely on proof of “indication that the
3 vehicle suffered from excessive parasitic drain from the HFL Unit”), a Settlement Class Member
4 like Mr. Kelly, who had a diagnosed HFL drain and disconnected the unit, will be eligible for
5 \$350. Thus, the Settlement benefits represent a substantial portion of any award Class Members
6 may have received from trial and may exceed such an award in many instances.

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8 10. Class Counsel estimates that over 550,000 Settlement Class Members (based on
9 registration data) have purchased approximately 171,000 Settlement Class Vehicles¹ (either new
10 or used) in the four certified states. While a more detailed analysis of the total value of the benefits
11 offered by Settlement will be submitted in support of Final Approval and Class Counsels’ Fee
12 Petition, Class Counsel very conservatively estimates that the value of benefits available to
13 Settlement Class Members is well in excess of \$23 million. This estimation is based on Class
14 Counsel’s consultation with an expert, and after preliminary analysis of the Settlement benefits
15 against the factual record reflecting the “CRAZY” demand for replacement HFL Units (as Honda’s
16 2013 investigation described it) (*See* ECF No. 259 at 10-12, Exhibit “X”) and total replacement
17 part sales data. Needless to say, in the years since Honda made its 2013 calculation, the
18 replacements have only continued to increase. While there is no direct data about the frequency
19 and number of disconnections of HFL Units (which practice was less expensive than replacement),
20 an estimate can be conservatively made based on the historic trends of the replacement part
21 demand, and are included in Class Counsel’s \$23 million estimate. However, this estimate does
22 not consider that the Settlement provides an HFL Disconnection Payment of \$350 simply with
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26 ¹ The maximum value of the “overpayment” model Plaintiffs would have presented at trial,
27 assuming the jury found Honda liable and did not discount the base “overpayment” per vehicle
due any number of factors, was \$360,786,822.

1 proof of an “indication that the vehicle suffered from excessive parasitic drain from the HFL Unit
2 that was not replaced” whether or not it was actually disconnected. Settlement Agreement § 2.30.
3 Given the frequently intermittent nature of the HLF defect, Class Counsel believes that a
4 substantial number of Settlement Class Members would fall into that benefit category and would
5 be eligible for a \$350 Settlement payment whether or not they took any other action. However,
6 Class Counsel currently lacks data relating to the frequency or number of such incidents. However,
7 Honda agrees as part of the Settlement that each Settlement Class Member is eligible for a
8 Settlement benefit “subject to the qualifications including time and mileage restrictions.”
9 Settlement Agreement § 3.1.
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11 11. Although the Parties were able to agree on the benefits for the Settlement Class
12 Members, they were unable to agree on reasonable amounts for Service Awards as part of the
13 Settlement, but are continuing negotiations. With their papers seeking Final Approval of the
14 Settlement, Plaintiffs will separately ask the Court to approve Service Awards for the named
15 Plaintiffs, which are to be paid out separate from the Settlement Class benefits. Plaintiffs have
16 actively participated in the litigation and assisted Class Counsel in drafting the respective
17 complaints and other documents, consulted with Class Counsel as needed, answered discovery-
18 related requests for information, sat for hours of depositions each (with some having to sit for a
19 second deposition), made their vehicles available for day-long inspections by Honda and its
20 expert, and participated in settlement and strategy discussions. Consistent with awards regularly
21 granted under similar circumstances, Plaintiffs believe that they should be compensated for their
22 work done in support of the litigation and for assisting Class Counsel in achieving a strong
23 settlement on behalf of the Class, as well as the reputational and other risks they undertook in
24 bringing this Action.
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1 12. Similarly, the Parties were unable to agree on a reasonable amount for an award of
2 attorneys' fees, expenses and costs, but are continuing negotiations. With their papers seeking
3 Final Approval of the Settlement, Class Counsel will separately ask the Court to approve such an
4 award, which is to be paid out separate from the Settlement Class benefits. In prosecution of the
5 claims of Plaintiffs and the Settlement Class, to Class Counsel and the other firms that worked
6 with Class Counsel throughout the litigation committed over 12,000 hours for a lodestar value of
7 over \$9 million, with costs and expenses of over \$1,180,000 to date. Given the successes in this
8 litigation, and depending on the outcome of the Parties' continuing negotiations, Class Counsel
9 undertook this litigation and representation of Plaintiffs, the Class Members and the proposed
10 Settlement Class Members on a full contingent basis, and may seek a multiplier based on their
11 successes.
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13 13. Class Counsel was impressed by the work by JND Legal Administration ("JND")
14 LLC as the Court-appointed Notice Administrator (ECF No. 326) in providing notice of the
15 Court's order granting class certification, and believes that their appointment as Settlement Notice
16 Administrator would effectively and efficiently build on their work and successes in that Notice
17 Plan. The Declaration of Gina Interpido Bowden of JND sets forth the qualification of JND and
18 the Notice Plan for the Settlement, and is attached hereto as **Exhibit "3"**. In conversation with
19 JND and Class Counsel's experience, it is Class Counsel's opinion that, particularly given the
20 robust Notice Plan agreed to by the Parties as part of the Settlement, a claims rate of 10-15% can
21 reasonably be expected.
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23 14. The Parties agreed that Honda will serve as the Settlement Administrator.
24 Settlement Agreement, ¶¶ 2.39, 4.9. As set forth in the Declaration of Rachel A. Straus in Support
25 of Plaintiffs' Unopposed Motion Preliminarily Approving Settlement and Certifying Settlement
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1 Class, And Approving Notice to the Class and Scheduling Final Approval Hearing which is
2 attached hereto as **Exhibit “4”**, Honda has substantial experience with the responsibilities as
3 Settlement Administrator.

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5 I declare under penalty of perjury that the foregoing is true and correct. Executed this
6 27th day of April, 2023, at Ridgefield Park, New Jersey.

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8 /s/ Christopher A. Seeger
9 Christopher A. Seeger