

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION

4 LINDSEY ABERIN, individually and on behalf) Case No. 4:16-cv-04384-JST
5 of all others similarly situated,)
6 Plaintiffs,) **ORDER PRELIMINARILY APPROVING**
7 v.) **SETTLEMENT, CERTIFYING CLASS,**
8 AMERICAN HONDA MOTOR CO., INC.,) **APPROVING NOTICE TO THE CLASS, AND**
9 Defendant.) **SCHEDULING FINAL APPROVAL**
) **HEARING *AS MODIFIED***
)
) Re: ECF No. 429
)
)

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11 In this Action, Plaintiffs seek relief for American Honda Motor Co., Inc.’s alleged
12 violations of the consumer protection, fraudulent concealment, and breach of implied warranty
13 laws of the States of California, Kansas, New York, and Washington, and claims under the
14 Magnuson Moss Warranty Act, 15 U.S.C. § 2301, et seq., as set forth in Plaintiffs’ Fourth
15 Amended Class Action Complaint (“Complaint”) dated September 9, 2022. ECF No. 403.¹

16 Presented to the Court for preliminary approval is a Settlement of the Action. The terms
17 of the Settlement are set forth in the Settlement Agreement executed by counsel on February 28,
18 2023 on behalf of all Plaintiffs and the Defendant (the “Parties”). The Court has considered
19 Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement Agreement (“Preliminary
20 Approval Motion”) and its earlier Order Granting Motion for Class Certification (ECF No, 291),
among other things, to determine whether to approve preliminarily the Settlement, certify

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22 ¹ This Order incorporates by reference the definitions in the Parties’ Class Action Settlement
23 Agreement (“Settlement” or “Settlement Agreement”) attached as Exhibit 1 to Plaintiffs’ Notice
24 of Motion, Unopposed Motion for Approval of Settlement Agreement and Certification of
Settlement Class, and Supporting Memorandum, ECF No. 429-2, and all terms used herein shall
have the same meanings as set forth in the Settlement Agreement unless set forth differently
herein. The terms of the Settlement are fully incorporated in this Order as if set forth fully
herein.

1 preliminarily a Settlement Class, authorize the dissemination of Class Notice to the Settlement
2 Class Members, and set a date and time for the Final Approval Hearing. Upon reviewing the
3 Settlement Agreement, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

4 1. Class Findings. The Court preliminarily finds that the requirements of the Federal
5 Rules of Civil Procedure (“Rules”), the United States Constitution, the Rules of the Court, and
6 any other applicable law have been met as to the “Settlement Class” defined below, in that:

7 A. The Court preliminarily finds that the Settlement Class is
8 ascertainable from objective criteria, and the Settlement Class Members
9 are so numerous that their joinder before the Court would be
10 impracticable. Rule 23(a)(1) is satisfied.

11 B. The Court preliminarily finds and reaffirms its earlier ruling, ECF
12 No. 291, that there are one or more questions of fact and/or law common
13 to the Settlement Class. Rule 23(a)(2) is satisfied.

14 C. The Court preliminarily finds and reaffirms its earlier ruling, ECF
15 No. 291, that the claims of Plaintiffs Lindsay and Jeff Aberin, Don
16 Awtrey, Charles Burgess, John Kelly, and Joy Matza (“Plaintiffs” or
17 “Named Plaintiffs”) are typical of the claims of the Settlement Class.
18 Rule 23(a)(3) is satisfied.

19 D. The Court preliminarily finds and reaffirms its earlier ruling, ECF
20 No. 291, that the Named Plaintiffs will fairly and adequately protect the
21 interests of the Settlement Class in that: (i) the Named Plaintiffs’ interests
22 and the nature of claims alleged are consistent with those of Settlement
23 Class Members; (ii) there appear to be no fundamental conflicts among the
24 Named Plaintiffs or between the Named Plaintiffs and the Settlement
Class; and (iii) the Named Plaintiffs and the Settlement Class Members
are represented by qualified, reputable counsel who are experienced in

1 preparing and prosecuting large, complicated class actions. Rule 23(a)(4)
2 is satisfied.

3 E. The Court preliminarily finds and reaffirms its earlier ruling, ECF
4 No. 291, that the prosecution of separate actions by individual members of
5 the Settlement Class would create a risk of: (i) inconsistent or varying
6 adjudications as to individual Settlement Class Members that would
7 establish incompatible standards of conduct for Defendant; or (ii)
8 adjudications as to individual Settlement Class Members that would, as a
9 practical matter, be dispositive of the interests of the other members not
10 parties to the adjudications, or substantially impair or impede those
11 persons' ability to protect their interests. Rule 23(b)(1) is satisfied.

12 F. The Court preliminarily finds and reaffirms its earlier ruling, ECF
13 No. 291, that Seeger Weiss LLP and Carella, Byrne, Cecchi, Brody &
14 Agnello, P.C. ("Class Counsel") are capable of fairly and adequately
15 representing the interests of the Settlement Class. Class Counsel have
16 done extensive work identifying or investigating potential claims in the
17 Action, litigating the claims in this Court and on appeal, and participating
18 in a months-long mediation and settlement negotiation process. Class
19 Counsel are experienced in handling class actions, other complex
20 litigation, and claims of the type asserted in this Action. Class Counsel
21 are knowledgeable about the applicable law and have committed the
22 necessary resources to represent the Settlement Class. Rule 23(g) is
23 satisfied.

24 2. Class Certification. Based on the findings set forth above, the Court's earlier
Order Granting Class Certification, ECF No. 291, and the submissions related to modification of
that earlier Order, the Court preliminarily certifies the following Settlement Class under Federal
Rules of Civil Procedure 23(b)(1) and 23(e) in this litigation: "all persons who purchased the

1 following Acura vehicles before the vehicles reached 10 years or 120,000 miles, whichever
2 occurred first: 2004-2008 TL, 2005-2008 MDX, or 2007-2009 RDX in the States of California,
3 Kansas, New York and Washington.”

4 The Court preliminarily appoints Plaintiffs Lindsay and Jeff Aberin, Don Awtrey,
5 Charles Burgess, John Kelly, and Joy Matza, the Named Plaintiffs, as the class representatives
6 for the Settlement Class, and Seeger Weiss LLP and Carella, Byrne, Cecchi, Brody & Agnello,
7 P.C. as Class Counsel for the Settlement Class.

8 3. Preliminary Findings Regarding Proposed Settlement. The Court preliminarily
9 finds that:

10 A. The proposed Settlement resulted from (a) informed, extensive
11 arm’s-length negotiations conducted by Class Counsel and Defendant’s
12 counsel that took place over multiple months and were facilitated by a
13 third-party mediator, the Honorable Daniel Buckley (Ret.) of Signature
14 Resolution Group;

15 B. Class Counsel have concluded that the proposed Settlement is fair,
16 reasonable, and adequate; and

17 C. The proposed Settlement is sufficiently fair, reasonable, and
18 adequate to warrant sending notice of the Settlement to the Settlement
19 Class.

20 4. Final Approval Hearing. A hearing is scheduled for August 15, 2024, at 2:00
21 p.m. PDT, before the undersigned via Zoom at the link available at

22 <https://cand.uscourts.gov/judges/tigar-jon-s-jst> to determine, among other things:

23 A. Whether the Settlement should be approved as fair, reasonable, and
24 adequate;

B. Whether the Complaint should be dismissed with prejudice
pursuant to the terms of the Settlement Agreement;

1 C. Whether the notice to the Settlement Class provided for by the
2 Settlement Agreement: (i) constituted the best practicable notice; (ii)
3 constituted notice that was reasonably calculated, under the circumstances,
4 to apprise Settlement Class Members of the pendency of the Action, their
5 right to object to the Settlement, and their right to appear at the Final
6 Approval Hearing; (iii) was reasonable and constituted due, adequate, and
7 sufficient notice to all persons entitled to notice; and (iv) met all
8 applicable requirements of the Federal Rules of Civil Procedure and any
9 other applicable law; and

10 D. Whether Class Counsel adequately represented the Settlement
11 Class for purposes of entering into and implementing the Settlement
12 Agreement.

13 The motion for final approval shall address the final approval guidelines in
14 the Northern District of California’s Procedural Guidance for Class Action
15 Settlements, available at [https://cand.uscourts.gov/forms/procedural-](https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements)
16 [guidance-for-class-action-settlements](https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements), in the order the guidelines are
17 presented on the website. As reflected in the Guidance, the Court will
18 require a post-distribution accounting within 21 days after the distribution
19 of settlement funds. The Court will typically withhold between 10% and
20 25% of the attorney’s fees granted at final approval until after the post-
21 distribution accounting has been filed. The final approval motion should
22 specify what percentage class counsel believes it is appropriate to
23 withhold and why.

24 5. Class Notice Program. The proposed Class Notice Program consists of (a) a
mailed notice (“Class Notice,” attached as Exhibit 1 to Plaintiffs’ Preliminary Approval Motion),
sent to the last known address of Settlement Class Members; (b) email follow-ups to each
Settlement Class Member for whom email addresses are known; (c) a social-media component;

1 (d) targeted notice based on search terms used by persons on Google; and (e) a website
2 publication of the Settlement Agreement and Class Notice and other case-related documents at a
3 public website with a domain name related to the action. With respect to such Class Notice
4 Program, the Court finds that such Class Notice is fair and adequate. The Court further reaffirms
5 its findings in support of the appointment of JND Legal Administration as Notice Administrator,
6 ECF No. 326, and now appoints JND Legal Administration to serve as Settlement Notice
7 Administrator. The Court also directs that the Notice:

- 8 A. Describe the terms and effect of the Settlement Agreement;
- 9 B. Notify the Settlement Class that Class Counsel's attorney's fees
10 and expenses, and any Service Awards to Named Plaintiffs, will be
11 decided by this Court and paid according to Section V.C of the Settlement
12 Agreement;
- 13 C. Give notice to the Settlement Class of the time and place of the
14 Final Approval Hearing;
- 15 D. Advise Settlement Class Members that they have the right to opt
16 out of the Settlement Class;
- 17 E. Advise Settlement Class Members of the binding effect of a
18 judgment on the Settlement Class Members;
- 19 F. Describe how the recipients of the Class Notice may object to any
20 of the relief requested.

21 The Court further directs that:

- 22 i. No later than February 16, 2024, the Class Notice, with such non-
23 substantive modifications thereto as may be agreed upon by the
24 Parties, mailing to each Settlement Class Member who can be
identified pursuant to the terms of the Settlement Agreement shall
commence. No later than February 16, 2024, the Parties shall

1 cause the Settlement Agreement and the Class Notice to be
2 published on the website identified in the Class Notice.

3 ii. No later than March 1, 2024, the “Notice Date” with completion of
4 the direct mailing shall be completed.

5 iii. At or before the Final Approval Hearing, Class Counsel shall file
6 with the Court a proof of timely compliance with the foregoing Class
7 Notice Program mailing and publication requirements and the Settlement
8 Administrator shall file a list of persons who properly and timely
9 requested to be excluded from or opt out of the Settlement.

10 iv. By April 4, 2024, Class Counsel shall file its motion in support of
11 Final Approval of the Settlement, and application for attorney’s fees and
12 expenses, and Service Awards to the Named Plaintiffs.

13 v. To the extent the Parties are not able to reach an agreement as to
14 reasonable attorney’s fees, expenses, and/or contribution awards before
15 Class Counsel files its application for attorney’s fees, expenses, and
16 contribution awards, the Parties shall submit a proposed briefing schedule
17 for the Court for review once Plaintiffs file their application for attorney
18 fees, expenses and contribution awards.

19 vii. The Parties may also respond to any comments or objections to the
20 Settlement by April 4, 2024.

21 6. Requests by Settlement Class Members to be excluded from or to opt out of the
22 Settlement must be submitted by April 18, 2024.

23 7. Objections to Settlement. Any Settlement Class Member who wishes to object to
24 the fairness, reasonableness, or adequacy of the Settlement, including the application for
attorneys’ fees and expenses, and Service Awards, to any term of the Settlement Agreement, to
the application for payment of attorney’s fees and expenses, or to the application for Service
Awards for the Named Plaintiffs, may timely file an objection in writing no later than April 18,

1 2024. All written objections and supporting papers must: (1) clearly identify the case name and
2 number; (2) be submitted to the Court either by mailing the written objection to the Class Action
3 Clerk, United States District Court for the Northern District of California, Suite 400 S, 1301 Clay
4 Street, Oakland, California 94612, or by filing the objection in person at any location of the
5 United States District Court for the Northern District of California; (3) be filed or postmarked on
6 or before April 18, 2024; (4) set forth the objector's full name and current address; (5) state
7 whether the objection applies only to the objector, to a specific subset of the class, or to the entire
8 class; (6) set forth a statement of the position the objector wishes to assert; (7) set forth the
9 names and a summary of testimony of any witnesses that the objector might want to call in
10 connection with the objection; (8) provide the name(s), address(es) and phone number(s) of any
11 attorney(s) representing the objector; (9) state whether the objector and/or his or her counsel
12 intends to appear at the Final Approval Hearing; and (10) include the objector's signature. Any
13 Settlement Class Member or other Person who does not timely file and serve a written objection
14 complying with the terms of this paragraph shall be deemed to have waived, and shall be
15 foreclosed from raising, any objection to the Settlement, and any untimely objection shall be
16 barred.

15 8. Class Notice Expenses. All expenses related to the Class Notice Program shall be
16 paid by Defendant as provided in Section IV.A of the Settlement Agreement.

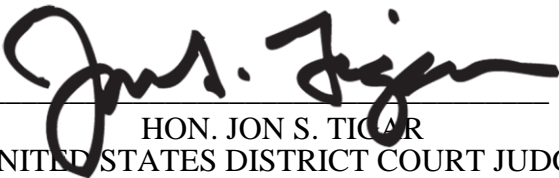
17 9. Service of Papers. Defendant's Representative and Class Counsel shall promptly
18 furnish each other and the Court with copies of any and all objections that come into their
19 possession by any means other than filing with the Court.

20 10. Termination of Settlement. This Order shall become null and void, and shall be
21 without prejudice to the rights of the Parties, all of whom shall be restored to their respective
22 positions existing immediately before this Court entered this Order, if the Settlement is
23 terminated in accordance with the Settlement Agreement. In such event, Section VII.N of the
24 Settlement Agreement shall govern the rights of the Parties.

1 11. Use of Order. In the event this Order becomes of no force or effect, it shall not be
2 construed or used as an admission, concession, or declaration by or against Defendant, Named
3 Plaintiffs, or the Settlement Class.

4 13. Continuance of Hearing. The Final Approval Hearing may be postponed,
5 adjourned, or continued by further order of this Court, without further notice to the parties or the
6 members of the Settlement Class other than entry of an order on the Court's docket.

7 DATED: February 1, 2024


HON. JON S. TICAR
UNITED STATES DISTRICT COURT JUDGE

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Lam, Priscilla S. (SHB)

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Order on Motion for Settlement

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Case Name: Aberin et al v. American Honda Motor Company, Inc.

Case Number: [4:16-cv-04384-JST](#)

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Document Number: [436](#)

Docket Text:

ORDER PRELIMINARILY APPROVING SETTLEMENT, CERTIFYING CLASS, APPROVING NOTICE TO THE CLASS, AND SCHEDULING FINAL APPROVAL HEARING *AS MODIFIED* by Judge Jon S. Tigar granting [429] Motion for Settlement.(mll, COURT STAFF) (Filed on 2/1/2024)

4:16-cv-04384-JST Notice has been electronically mailed to:

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