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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

**NOTICE OF AND UNOPPOSED
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND FOR
MODIFICATION OF CLASS
DEFINITION; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Hearing Date: August 15, 2024
Time: 2:00 p.m. (Pacific)
Hon. Jon S. Tigar

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2
3 **PLEASE TAKE NOTICE** that Plaintiffs Lindsay and Jeff Aberin, John Kelly, Don
4 Awtrey, Joy Matza, and Charles Burgess (collectively, “Plaintiffs”), on behalf of the proposed
5 Settlement Class, hereby move the Court to GRANT Plaintiffs’ Motion for Final Approval of
6 Class Action and Modification of Class Definition (the “Motion”) pursuant to the Court’s Order
7 Preliminarily Approving Settlement, Certifying Class, Approving Notice to the Class, and
8 Scheduling Final Approval Hearing (ECF No. 436). Defendant, American Honda Motor Co.
9 (“Honda” or “Defendant” or “AHM”) does not object to this Motion.
10

11 The Parties¹ worked cooperatively to effectuate the Notice Plan and Plaintiffs now move
12 the Court to enter an order granting Final Approval of the proposed Settlement as fair, reasonable,
13 adequate, and in the best interests of the Settlement Class, and granting the related applications.
14 Plaintiffs bring this Motion pursuant to Federal Rule of Civil Procedure 23(e), and it is supported
15 by the below Memorandum of Points and Authorities; the Declaration of Christopher A. Seeger in
16 Support of Final Approval of Class Settlement (“Seeger Decl.”); the Declaration of Gina Intrepido
17 Bowden (“Bowden Decl.”) concerning Notice Plan implementation; and the Declaration of Steve
18 Felix on behalf of the Settlement Administrator; the pleadings, records, and papers on file in this
19 action; and all other matters properly before this Court.
20

21 Plaintiffs stand ready to provide any additional information or materials that the Court may
22 require in connection with consideration of the Motion.
23
24

25 ¹ Terms not defined herein shall have the same meaning as in the Settlement Agreement. The
26 Settlement Agreement was submitted as Exhibit 1 to the earlier Declaration of Christopher A.
27 Seeger in Support of Motion for Preliminary Approval of Class Settlement (ECF No. 429-2) and
shall be cited to throughout as “Settlement Agreement.” Plaintiffs otherwise incorporate by
reference the exhibits to and statements made in that declaration.

1 Dated: April 4, 2024

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This unopposed motion seeks final approval of the proposed Settlement in this action and modification of the earlier certified litigation class.² As the Court is aware from the many preceding briefs in this litigation, Plaintiffs seek relief for purchasers of certain Acura vehicles which were equipped with HandsFreeLink (“HFL”), the Bluetooth system in these vehicles, which suffered from a defect where the HFL units would not properly shut down, creating an excessive electric drain. The Settlement provides for reimbursement for out-of-pocket expenses of up to \$500 incurred by any Settlement Class Members who replaced their HFL units where excessive parasitic drain was indicated and \$350 payment to Settlement Class Members who had their HFL unit disconnected or where excessive parasitic drain was indicated. Depending on their experience of the HFL defect, a Settlement Class Member may be eligible for more than one cash payment.

On February 1, 2024, the Court entered the Preliminary Approval Order, which preliminarily approved the Settlement Agreement (ECF No. 436) and conditionally certified the Settlement Class:

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

² Plaintiffs will be filing a separate Motion for Award of Attorneys’ Fees and Costs and for Incentive Awards.

³ Excluded from the Settlement Class are Defendant and its parents, subsidiaries, and affiliates; all persons who properly elect to be excluded from the Settlement Class; governmental entities; and the Judge to whom this case is assigned and his/her immediate family.

1 In addition to conditionally certifying the Settlement Class, the Court determined that the
2 Settlement Agreement – a hard-fought compromise resulting from adversarial, arm’s length
3 negotiations overseen by a seasoned neutral mediator – was sufficiently fair, reasonable, and
4 adequate for provisional approval. Finally, the Court approved the notice program, which included
5 direct notice to each registered owner of a Class Vehicle, as well as a state-of-the-art social media
6 component.

7
8 Given the substantial value of the benefits available to the Settlement Class Members
9 through the Settlement, and in order to avoid the burden, expense, and uncertainty of trial,
10 Plaintiffs respectfully request that the Court grant final approval of the Settlement.

11 II. FACTUAL BACKGROUND

12 The basic facts and procedural history of this action are well-known to the Court and set
13 forth in greater detail in the Plaintiffs’ earlier Motion for Preliminary Approval, and also addressed
14 in the Motion for Attorneys’ Fee and Costs, and Incentive Awards filed along with this instant
15 Motion. *See* ECF No. 429 at 13-16. The Settlement Agreement was reached after exhaustive
16 litigation up to and through contested class certification and associated *Daubert* motions, and then
17 to the brink of trial, including a fresh round of *Daubert* motions along with several dispositive
18 motions filed by Defendant. *See* Declaration of Christopher A. Seeger in Support of Final
19 Approval of Class Settlement (“Seeger Decl.”) ¶ 8. Under the auspices of Hon. Daniel J. Buckley
20 (ret.), the former, Presiding Judge of the Superior Court of California, County of Los Angeles, and
21 a well-respected, neutral mediator with Signature Resolution, the Parties agreed to the core terms
22 of the Settlement (most importantly the cash benefits available to the Settlement Class), followed
23 by several months of further negotiations regarding the Settlement, including, among other
24 matters, the scope and content of notice, forms of orders granting approval of the Settlement, and
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27

1 the claim form and the *quanta* of proof required to support a claim. *See id.* As a result of their
2 extensive engagement with this litigation, Plaintiffs and Class Counsel renew their assertion that
3 the Settlement is fair, reasonable, and adequate and submit that it is in the best interest of the Class
4 and request that the Court give final approval to the Settlement.

5 **A. The Settlement**

6 1. The Settlement Class

7 All persons who purchased the following Acura vehicles: 2004-2008 TL, 2005-2008
8 MDX, or 2007-2009 RDX, in the States of California, Kansas, New York, and Washington,
9 before the vehicles reached 10 years or 120,000 miles, whichever occurred first, are eligible to
10 submit a claim for cash benefits under the Settlement.

11 2. The Settlement Benefits

12 Defendant has agreed to reimburse eligible Settlement Class Members who qualify for an
13 HFL Replacement Reimbursement of up to \$500 for out of pocket for parts or labor for each HFL
14 Replacement an HFL Disconnection Payment in the amount of \$350, and the ability of each
15 Settlement Class Member to submit claims for more than one benefit to resolve Plaintiffs' claims.
16 Settlement Agreement ¶¶ 3.1-3.7. Defendant also is responsible for the costs of notice and
17 administration of the Settlement. *Id.* ¶ 4.2. These Settlement benefits for Settlement Class
18 Members are the source for any award of Class Counsel Fees and Expenses and/or Representative
19 Service Awards, which fees, costs, and awards shall be paid separate and apart from any such
20 benefits. *Id.* ¶ 5.5.

21 3. The Release

22 If the Court grants Final Approval of the Agreement, the Settlement Class will be deemed
23 to have released Defendants from all claims as described in Section 2.35 of the Agreement, which
24

1 is incorporated herein by reference. These claims include the claims in the operative Fourth
 2 Amended Complaint (“FAC”) and potential claims arising out of or relating to the same conduct
 3 as the claims pled in the FAC.⁴

4 4. The Claims Process

5 The Claims Period effectively launched on February 15, 2024, when the Settlement
 6 Website went live and the claim form was available and will run through and including May 30,
 7 2024. Declaration of Steve Felix (“Felix Decl.” – Exhibit 2 to Seeger Decl.) ¶¶ 3, 5, 7. Honda
 8 serves as the Settlement Administrator. ECF No. 436 at 5(F)(i); Settlement Agreement
 9 Settlement Agreement ¶¶ 3.9, 4.1. The Settlement Administrator launched the Settlement Website
 10 (where the FAQs, important dates, claim form and other information is available), ran the call
 11 center and received and has been processing the claims, including any Notices of Insufficiency to
 12 allow Settlement Class members to perfect their claims. *See* Felix Decl. ¶¶ 3-10. The Settlement
 13 Administrator has implemented the claims process and continues to administer the processing of
 14 submitted claims, including providing Settlement Class Members a chance to cure any
 15 deficiencies in their claims. Felix Decl. ¶¶ 7-10

18 5. Attorneys’ Fees and Costs, and Incentive Awards

19 The Parties were unable to agree on reasonable amounts for attorneys’ fees, costs and
 20 expenses, and for Incentive Award for the Class Representatives Settlement Agreement ¶ 5.3.
 21 While they are continuing to discuss these matters, as agreed to by the Parties and directed by the
 22 Court, Plaintiffs have filed alongside this instant Motion their Motion for Attorneys’ Fees, Costs
 23

24
 25 ⁴ The claims released as part of the Settlement as set forth in Section 2.35 of the Agreement are,
 26 in essence, any actual or potential claims that were or could have been asserted in the Actions
 27 related to or arising out of the conduct alleged in the FAC (the conduct being the alleged
 excessive parasitic drain caused by the HFL System).

1 and Incentive Awards. *Id.* ¶¶ 5.4, 5.5; ECF No. 436 at 5(iv). The Parties will be submitting a
2 proposed briefing schedule related to Attorneys' fees and costs, and Incentive Awards. ECF No.
3 436 at 5(v).

4 **B. Class Notice**

5 As set forth in the Settlement Agreement, and in greater detail in the Declaration of Gina
6 Interpido Bowden for the Notice Administrator and Steve Felix for the Settlement Administrator,
7 notice launched shortly after the Court granted preliminary approval and included several
8 components to maximize outreach to the Settlement Class Members. By February 15, 2024, the
9 Settlement website, a toll-free number and direct mailing of the entire Long Form Notice by mail
10 and email to Settlement Class Members was completed. Bowden Decl. ¶¶ 13-17; Felix Decl. ¶¶
11 3-6. The Notice Administrator used several tools to ensure that both the physical mail and
12 electronic mail reached the Settlement Class members, and ultimately delivered one million Long
13 Form Notices directly to Settlement Class Members. Bowden Decl. ¶¶ 7-17. Supplementing the
14 direct notice, a six week "social media" campaign (referred to as "Supplemental Digital Notice"
15 by the Notice Administrator, and delivering over 2 million impressions) was completed and email
16 reminders will still be sent to Settlement Class Members in advance of the deadline for the
17 submission of claims. *See* Settlement Agreement ¶¶ 2.24, 4.3-4.8; Bowden Decl. ¶¶ 18-24.

20 Given that the address information for the direct notice comes from the departments of
21 motor vehicles of the four states that were originally covered by the certified classes and the
22 Settlement Class, Class Counsel believes that the vast majority of Settlement Class Members will
23 receive Settlement Notice directly by mail. With the additional aspects of the Notice Plan, the
24 proposed Notice Administrator anticipated that the expected reach of the Notice Plan is between
25 70%-95%, a "high percentage" reach under the Federal Judicial Center's *Judges' Class Action*
26

1 *Notice and Claims Process Checklist and Plain Language Guide. See Bowden Decl. at ¶ 5 (Seeger*
 2 *Dec., Exhibit 3). In addition, the Settlement call center has responded to 140 calls from Settlement*
 3 *Class Members as of April 3, 2024. Felix Decl. ¶ 6. As implemented, the Notice Administrator*
 4 *concludes that the Settlement Notice Plan reached more than 95% of Settlement Class Members*
 5 *and provided the best notice practicable in the circumstances. Bowden Decl. ¶¶ 30.*

6
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 8 **III. THE COURT SHOULD MAINTAIN CERTIFICATION OF THE**
 9 **SETTLEMENT CLASS AND GRANT FINAL APPROVAL OF THE**
 10 **SETTLEMENT**

11 **A. The Court Has Already Provisionally Certified the Settlement Class and**
 12 **Appointed Plaintiffs' Counsel as Class Counsel**

13 In its February 1, 2024 Preliminary Approval Order, the Court provisionally certified the
 14 Settlement Class upon findings that each of the requirements of Rule 23(a) and 23(b)(1) are met,
 15 and appointed Plaintiffs as Class Representatives and Seeger Weiss LLP and Carella, Byrne, Cecchi,
 16 Brody & Agnello, P.C. as Class Counsel pursuant to FRCP 23(g). *See* ECF No. 436, at 3.⁵ For the
 17 reasons identified in the Court's Preliminary Approval Order and in Plaintiffs' Unopposed Motion
 18 for Preliminary Approval (ECF No. 429), the above-defined Settlement Class meets the
 19 requirements of Federal Rules of Civil Procedure 23(a) and (b)(1). None of the circumstances that
 20 warranted provisional certification have changed. Thus, the Settlement Class should be
 21 maintained through entry of a final judgment.
 22

23
 24 ⁵ In its earlier Order Granting Motion for Class Certification; Denying Motions to Strike Expert
 25 Testimony, the Court had found that Plaintiffs claims were amenable to proof on a class-wide
 26 basis and Plaintiffs were adequate Class Representatives, and appointed Seeger Weiss and
 27 Carella Byrne to serve as Class Counsel. ECF No. 291. As discussed below (Section C),
 Plaintiffs are seeking modification of the Class certified in that Order.

B. The Settlement is Fair, Reasonable, and Adequate

1
2 “The standard for reviewing class action settlements at the final approval stage is well-
3 settled. Rules 23(e)(2) states that the district court may only approve the settlement if ‘it is fair,
4 reasonable, and adequate.’” *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1035 (N.D. Cal. 2016)
5 (citing Fed. R. Civ. P. 23). In determining whether a settlement meets these requirements, courts
6 look to factors including the following:

- 7
- 8 (1) the strength of plaintiffs’ case;
- 9 (2) the risk, expense, complexity, and likely duration of further litigation;
- 10 (3) the risk of maintaining class action status throughout the trial;
- 11 (4) the amount offered in settlement;
- 12 (5) the extent of discovery completed, and the stage of the proceedings;
- (6) the experience and views of counsel;
- (7) the presence of a governmental participant; and
- (8) the reaction of the class members to the proposed settlement.

13 *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (citation and internal quotation marks
14 omitted). The relative importance of these factors depends upon the unique facts and
15 circumstances of a given case, and “[i]t is the settlement taken as a whole, rather than the individual
16 component parts, that must be examined for overall fairness” *Cotter*, 193 F. Supp. 3d at 1035
17 (citations and alterations omitted). “[T]here is a strong judicial policy that favors settlements,
18 particularly where complex class action litigation is concerned.” *In re Syncor ERISA Litig.*, 516
19 F.3d 1095, 1101 (9th Cir. 2008); *see also Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1121 (9th
20 Cir. 2020) (same).

21 Just as the Court has already provisionally certified the Settlement Class, it has also
22 preliminarily found that the Agreement is “fair, reasonable, and adequate.” ECF No. 436, at 4.
23 Indeed, the factors considered at final approval mirror those contemplated at preliminary
24 approval. Having already preliminarily approved the fairness of the settlement, and because
25 there have been no intervening circumstances that would alter that conclusion, the Court should
26 find the same here as Notice has been completed in accordance with the Court’s Preliminary
27

1 Approval Order and all of the relevant factors support final approval of the Settlement. *See*
 2 *Cotter*, 193 F. Supp. 3d at 1036–37 (recognizing that a court’s inquiry at final approval is equally
 3 careful as preliminary approval analysis).⁶

4 (1) Strength of Plaintiffs’ Case; Risk, Expense, Complexity, and Likely Duration
 5 of Further Litigation; Risk of Maintaining Class Action Status Throughout
 6 the Trial

7 In determining whether the settlement is fair, reasonable, and adequate, the Court must
 8 balance the risks of continued litigation, including the strengths and weaknesses of Plaintiffs’
 9 case, against the benefits afforded to class members, including the immediacy and certainty of
 10 recovery. *See Larsen v. Trader Joe’s Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531, at *4 (N.D.
 11 Cal. July 11, 2014); *LaGarde v. Support.com, Inc.*, No. 12-cv-00609-JSC, 2013 WL 1283325, at
 12 *4 (N.D. Cal. Mar. 26, 2013). “In most situations, unless the settlement is clearly inadequate, its
 13 acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.”
 14 *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004)
 15 (internal quotation marks omitted). Difficulties and risks in litigation weigh in favor of approving
 16 a class settlement. *See Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009). Honda
 17 has raised various factual and legal defenses that could prevent recovery at trial.

18 Plaintiffs’ claims involve alleged breaches of various consumer protection statutes, and
 19 claims of fraudulent concealment and breach of implied warranty of merchantability. If forced
 20
 21

22
 23 ⁶ Notably, because this Settlement arises after the Court granted class certification, it is not subject
 24 to the higher level of scrutiny accorded pre-certification settlements. *See Gagnier v. Siteone*
 25 *Landscape Supply LLC*, No. SACV2101834CJCFMX, 2023 WL 8116831, at *7 (C.D. Cal. June
 26 6, 2023) (“When, ‘as here, a settlement agreement is negotiated *prior* to formal class certification,’
 27 the settlement ‘must withstand an even higher level of scrutiny for evidence of collusion or other
 conflicts of interest than is ordinarily required under Rule 23(e) before securing the court’s
 approval as fair.’”) (emphasis in original) (citation omitted).

1 to proceed further on these claims, however, Plaintiffs faced significant risks. For example, for
2 their consumer protection claims, the Plaintiffs are required to establish: (i) that a
3 misrepresentation or omission occurred regarding the alleged defect in the HFL system; (ii) that
4 consumers relied upon the representations or omissions by Honda regarding the alleged defect,
5 and (iii) that Plaintiffs suffered an injury as a result of overpaying for Class Vehicles that
6 contained the alleged defect. In this case, Plaintiffs faced significant legal arguments from Honda
7 that challenged their claims under these statutes, including that Plaintiffs are not entitled to
8 restitution under the CLRA and UCL because they failed to plead that their legal remedies are
9 inadequate. ECF No. 423, at 6-9. In *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir.
10 2020), the Ninth Circuit held that “the traditional principles governing equitable remedies in
11 federal courts, including the requisite inadequacy of legal remedies, apply when a party requests
12 restitution under the UCL and CLRA in a diversity action.” *Id.* at 844. Thus, in the event the
13 Court were to hold that Plaintiffs failed to plead that they lacked an adequate legal remedy,
14 Plaintiffs would face the possibility of not being able to obtain restitution damages for their UCL
15 and CLRA claims. Another argument pressed by Honda was that the Plaintiffs’ claims under the
16 CLRA lack merit because the Plaintiffs fail to allege a direct transaction between Honda and the
17 California Plaintiff. ECF No. 423, at 10-12. The same holds true for Plaintiffs’ fraudulent
18 concealment claims. *See Negrete v. Allianz Life Ins. Co. of N. Am.*, No. CV-05-6838-
19 CAS(MANX), 2015 WL 12592726, at *10 (C.D. Cal. Mar. 17, 2015) (“Class Counsel spent
20 thousands of hours and millions of dollars over the past nine years, while shouldering a substantial
21 risk of non-recovery, to achieve the Settlement. The risks of non-recovery in this matter are real
22 and include, among others: . . . the inherent proof difficulties in any fraud-based claim . . .”). As
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1 rather than the individual component parts, that must be examined for overall fairness.”
2 *DIRECTV*, 221 F.R.D. at 527 (quoting another source). “[I]t is well-settled law that a proposed
3 settlement may be acceptable even though it amounts to only a fraction of the potential recovery
4 that might be available to the class members at trial.” *Id.*

5 “[C]ourts primarily consider plaintiffs’ expected recovery balanced against the value of
6 the settlement offer.” *In re Tableware*, 484 F. Supp. 2d at 1080. “It is well-settled law that a cash
7 settlement amounting to only a fraction of the potential recovery does not per se render the
8 settlement inadequate or unfair.” *In re Mego*, 213 F.3d 454, 459 (9th Cir. 2000) (quoting *Officers*
9 *for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982)). Plaintiffs have provided
10 adequate “information about the maximum amount that the putative class members could have
11 recovered if they ultimately prevailed on the merits of their claims.” *Haralson v. U.S. Aviation*
12 *Servs. Corp.*, 383 F. Supp. 3d 959, 969 (N.D. Cal. 2019) (quoting *K.H. v. Sec’y of Dep’t of*
13 *Homeland Sec.*, No. 15-CV-02740-JST, 2018 WL 3585142, at *5 (N.D. Cal. July 26, 2018)).

14
15
16 Under the class damages model Plaintiffs intended to offer at trial, the “overpayment” for
17 each Class Vehicle was \$2100,70, which was to be depreciated over a 12-year period and
18 allocated between each purchaser of that vehicle. But such an award required that Plaintiffs
19 prevail at trial and could further be discounted or reduced by a jury if Honda were found liable.
20 The Settlement Class benefits offer Settlement Class Members reimbursements of up to \$500 for
21 each replacement of an HFL Unit (after indication of an excessive parasitic drain) and \$350 if the
22 HFL Unit was disconnected *or* excessive parasitic drain was indicated, and Settlement Class
23 Members may be eligible for more than one payment. *See* Seeger Decl. ¶ 4. As a result, the Court
24 can assess whether this estimate has a basis in fact. Plaintiffs have thus “show[n] their work by
25 explaining the relative value of their claims in significant detail.” *Haralson*, 383 F. Supp. 3d at
26
27

1 970 (internal citation omitted) (quoting *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal.
2 2016)); *Eddings v. DS Servs. of Am., Inc.*, No. 15-CV-02576-VC, 2016 WL 3390477, at *1 (N.D.
3 Cal. May 20, 2016).

4 Plaintiffs represent that the monetary component of the Settlement represents a significant
5 portion of a potential award individual Settlement Class Members might have received through
6 trial, if they were ultimately awarded anything. See Seeger Decl. ¶ 10, 11. Indeed, Plaintiffs’
7 class damages model was a primary target in Honda’s pretrial motions and would likely have
8 remained the focus of sustained challenge at any trial. See ECF No. 360.

9
10 Based on the information above, the Court should find that the Settlement provides an
11 adequate recovery to the class. See *Williamson v. McAfee, Inc.*, Nos. 5:14-CV-00158-EJD, 5: 14-
12 cv-02475-EJD, 2016 WL 4524307, at *7 (N.D. Cal. Aug. 30, 2016) (“[A] class settlement does
13 not need to contain the best possible terms. At [the preliminary approval] stage, the court need
14 only determine whether the settlement terms fall within a reasonable range of possible
15 settlements.”).

16
17 (3) Extent of Discovery Completed, and the Stage of the Proceedings

18 This factor evaluates whether “the parties have sufficient information to make an
19 informed decision about settlement.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th
20 Cir. 1998). The extent of discovery completed and stage of proceedings support approval of a
21 proposed settlement, especially when litigation has “proceeded to a point at which both plaintiffs
22 and defendants ha[ve] a clear view of the strengths and weaknesses of their cases.” *Chun-Hoon v.*
23 *McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (internal quotation marks and
24 citation omitted). Here, this litigation was hard-fought and the parties have conducted sufficient
25 discovery to make an informed decision about settlement. Prior to Settlement, the case was set for
26

1 trial. Significant investigation and discovery took place, and the Parties' engaged in substantial
2 motion practice (a motion to transfer, motions to dismiss, discovery motions, motion for class
3 certification, motion for summary judgment, and motions to exclude expert witness opinions). The
4 Parties also exchanged eight expert reports (excluding supplemental reports) to support their
5 respective positions. The filing of the Parties' various motions and the numerously litigated issues
6 suggests that they "had a clear view of the strengths and weaknesses of their cases." *Young v. Polo*
7 *Retail, LLC*, No. C 02 4546 VRW, 2007 WL 951821, at *4 (N.D. Cal. Mar. 28, 2007). At the time
8 of settlement, the Parties have been litigating for over seven years during which time the partes
9 acquired enough information to make an informed decision. This factor weighs in favor of
10 approval. *See Terry v. Hoovestol, Inc.*, No. 16-cv-05183-JST, 2018 WL 4283420, at *4 (N.D. Cal.
11 Sept. 7, 2018) (parties were adequately informed about case prior to settling where plaintiff had
12 served written discovery, reviewed hundreds of pages of documents, interviewed class members,
13 and conducted one deposition); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, No.
14 SACV151614JLSJCG, 2018 WL 3000490, at *5 (C.D. Cal. Feb. 6, 2018).

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16
17 (4) Experience and Views of Counsel

18 The Ninth Circuit recognizes that "parties represented by competent counsel are better
19 positioned than courts to produce a settlement that fairly reflects each party's expected outcome
20 in litigation." *Rodriguez*, 563 F.3d at 967 (internal modifications omitted). Indeed, "[a]n initial
21 presumption of fairness is usually involved if the settlement is recommended by class counsel
22 after arm's-length bargaining." *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198, 2016 WL
23 5907869, at *8 (N.D. Cal. Oct. 11, 2016); *see also Slezak v. City of Palo Alto*, No. 16-CV-03224-
24 LHK, 2017 WL 2688224, at *5 (N.D. Cal. June 22, 2017) (finding the "likelihood of fraud or
25 collusion [wa]s low . . . because the Settlement was reached through arm's-length negotiations,
26
27

1 facilitated by an impartial mediator.”). Further, Class Counsel and Defendants’ counsel are
 2 experienced in class action litigation, and each possess a thorough understanding of the factual
 3 and legal issues involved in the Action. *See Tadepalli v. Uber Techs., Inc.*, No. 15-CV-04348-
 4 MEJ, 2015 WL 9196054, at *9 (N.D. Cal. Dec. 17, 2015) (“Settlements are entitled to ‘an initial
 5 presumption of fairness’ because they are the result of arm’s-length negotiations among
 6 experienced counsel.”). “A district court is entitled to give consideration to the opinion of
 7 competent counsel that the settlement is fair, reasonable, and adequate.” *Ching v. Siemens Indus.,*
 8 *Inc.*, No. 11-cv-04838-MEJ, 2014 WL 2926210, at *5 (N.D. Cal. June 27, 2014) (internal
 9 quotation marks and modifications omitted). Class counsel endorsed the Settlement as fair,
 10 adequate, and reasonable, *See Seeger Decl.* ¶ 16, and there is no reason to question that
 11 representation.
 12

13 (5) Presence of a Governmental Participant

14 There is no governmental participant here. Pursuant to the Settlement Agreement,
 15 Defendant notified the attorneys general of the United States and the several states. ECF
 16 No. 443.
 17

18 (6) Reaction of the Class Members to the Proposed Settlement

19 Although Settlement Class Members have until April 18, 2024, to request their exclusion
 20 from or object to the Settlement, the reaction of the Settlement Class to the Settlement to date
 21 strongly supports final approval of the Settlement.⁷ Indeed, “[a] small number of objections at
 22

23
 24 ⁷ The deadline for Settlement Class Members to opt-out from or object to the Settlement is
 25 April 18, 2024. Rather than address the responses to the Settlement piecemeal, Plaintiffs will
 26 address the final number and substance of such requests and objections after that deadline has
 27 passed and before the Final Approval Hearing. Indeed, apparently recognizing the timing of this
 briefing and the deadline for requests for exclusion and objections, the Court merely provided in

1 the time of the fairness hearing may raise a presumption that the settlement is favorable to the
2 class.” *Omnivision*, 559 F. Supp. 2d at 1043 (approving settlement where three of over 57,000
3 potential class members objected); *see also Churchill Village LLC v. Gen. Elec.*, 361 F.3d 566,
4 577 (9th Cir. 2004) (affirming settlement with 45 objections out of 90,000 notices sent). Notice
5 of the Settlement with specific information about its material terms, as well as each of the
6 associated applications, has been directly mailed to over one million mail and email addresses
7 of Settlement Class Members and only five objections have been filed to date. *See Seeger Decl.*
8 ¶ 14. Moreover, Class Counsel has fielded numerous calls and emails from members of the
9 Settlement Class inquiring about the litigation, Settlement, and claims process, and has received
10 positive feedback from Settlement Class Members. *See id.* As to the handful of objections
11 received to date, some appeared to be confused about their ability to submit a claim, and Class
12 Counsel has been in communication with them to ensure that they are able to fully avail
13 themselves of the Settlement benefits. *See Seeger Decl.* ¶ 15.
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26 the Preliminary Approval Order provided that “[t]he Parties *may* also respond to any comments
27 or objections to the Settlement by April 4, 2018.” ECF No. 436 at 5(vii) (emphasis added).

C. The Court Should Modify the Earlier Certified Class Definition

1
2 Initial Class certified by the Court on March 23, 2021 was “All persons who purchased the
3 following Acura vehicles: 2004-2008 TL, 2005-2008 MDX, or 2007-2009 RDX in [California,
4 Kansas, New York, and Washington]. ECF No 291 at 3, 29. The Settlement Class is nearly
5 identical, but due to the time and mileage limitations of the Settlement Class Benefits, the 10 year
6 or 120,000 miles limitation, the Settlement Class incorporates these limitations to ensure that only
7 persons who are eligible for benefits under the Settlement will release their claims. That is, all
8 persons who purchased their Class Vehicle *after* the relevant limitations on benefits, and who are
9 ineligible for benefits, are not included in the Settlement Class and provide no release of any claims
10 they may have against Honda related to the HFL.
11

12 An order that grants or denies class certification may be altered or amended before final
13 judgment.” Fed.R.Civ.P. 23(c)(1)(C); *see also Armstrong v. Davis*, 275 F.3d 849, 871 n.28 (9th
14 Cir. 2001)(“[w]here appropriate, the district court may redefine the class”). Modifying the class
15 definition is particularly appropriate where the motion is unopposed. *In re Northrop Grumman*
16 *Corp. Erisa Litig.*, No. 06-CV-6213 AB (JCX), 2017 WL 11685252 (C.D. Cal. June 23, 2017).
17 “The standard is the same” for modifying a class as it is certifying a class: “a district court must
18 be satisfied that the requirements of Rules 23(a) and (b) are met to allow plaintiffs to maintain
19 the action on a representative basis.” *Id.*
20

21 Accordingly, Class Counsel requests that the Order granting Class Certification be
22 modified to conform with the Settlement Class Definition, which, as demonstrated in support of
23 the Motion for Preliminary Approval and again in support of this Motion, comports with Rule 23
24 so that the litigation can be terminated once final judgment is entered. *See, e.g., id.*; *see also D.T.*
25 *by and through K.T. v. NECA/IDEW Family Med. Care Plan*, NO. 2:17-cv-00004-RAJ, 2021 WL
26
27

1 8200248 (W.D.Wa. Feb. 2, 2021) (modifying litigation class to conform to proposed settlement
2 class which meets requirements of Rule 23).

3 **IV. CONCLUSION**

4 For the foregoing reasons, those already identified in Plaintiffs' Unopposed Motion for
5 Preliminary Approval and the Court's Preliminary Approval Order, all of the forgoing facts set
6 forth in support of this Motion for Final Approval of Class Action and Modification of Class
7 Definition, and all others appearing on the record, Plaintiffs respectfully request that the Court
8 grant Plaintiffs' Unopposed Motion.
9

10
11 Dated: April 4, 2024

Respectfully submitted,

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*Class Counsel and Proposed Counsel for the
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Motion for Miscellaneous Relief

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California Northern District

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

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

Filer: Jeff Aberin
Lindsey Aberin
Don Awtrey
Charles Burgess
John Kelly
Joy Matza

Document Number: [446](#)

Docket Text:

MOTION NOTICE OF AND UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION AND FOR MODIFICATION OF CLASS DEFINITION filed by Jeff Aberin, Lindsey Aberin, Don Awtrey, Charles Burgess, John Kelly, Joy Matza. Responses due by 4/18/2024. Replies due by 4/25/2024. (Attachments: # (1) Declaration of Christopher A. Seeger, # (2) Exhibit 1, # (3) Exhibit 2, # (4) Proposed Order)(Seeger, Christopher) (Filed on 4/4/2024)

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

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