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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

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

The Parties[1] worked cooperatively to effectuate the Notice Plan and Plaintiffs now move the Court to enter an order granting Final Approval of the proposed Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and granting the related applications. Plaintiffs bring this Motion pursuant to Federal Rule of Civil Procedure 23(e), and it is supported by the below Memorandum of Points and Authorities; the Declaration of Christopher A. Seeger in Support of Final Approval of Class Settlement ("Seeger Decl."); the Declaration of Gina Intrepido Bowden ("Bowden Decl.") concerning Notice Plan implementation; and the Declaration of Steve Felix on behalf of the Settlement Administrator; the pleadings, records, and papers on file in this action; and all other matters properly before this Court.

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

[1] Terms not defined herein shall have the same meaning as in the Settlement Agreement. The Settlement Agreement was submitted as Exhibit 1 to the earlier Declaration of Christopher A. 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.

Dated: April 4, 2024

Respectfully submitted,

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Class Counsel and Proposed Counsel for the Settlement Class

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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.

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

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

II. FACTUAL BACKGROUND

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

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

A. The Settlement

1. 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, are eligible to submit a claim for cash benefits under the Settlement.

2. The Settlement Benefits

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

3. The Release

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

is incorporated herein by reference. These claims include the claims in the operative Fourth Amended Complaint ("FAC") and potential claims arising out of or relating to the same conduct as the claims pled in the FAC.[4]

4. The Claims Process

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

5. Attorneys' Fees and Costs, and Incentive Awards

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

[4] The claims released as part of the Settlement as set forth in Section 2.35 of the Agreement are, in essence, any actual or potential claims that were or could have been asserted in the Actions 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).

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

B. Class Notice

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

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

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

III. THE COURT SHOULD MAINTAIN CERTIFICATION OF THE SETTLEMENT CLASS AND GRANT FINAL APPROVAL OF THE SETTLEMENT

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

In its February 1, 2024 Preliminary Approval Order, the Court provisionally certified the Settlement Class upon findings that each of the requirements of Rule 23(a) and 23(b)(1) are met, and appointed Plaintiffs as Class Representatives and Seeger Weiss LLP and Carella, Byrne, Cecchi, Brody & Agnello, P.C. as Class Counsel pursuant to FRCP 23(g). *See* ECF No. 436, at 3.[5] For the reasons identified in the Court's Preliminary Approval Order and in Plaintiffs' Unopposed Motion for Preliminary Approval (ECF No. 429), the above-defined Settlement Class meets the requirements of Federal Rules of Civil Procedure 23(a) and (b)(1). None of the circumstances that warranted provisional certification have changed. Thus, the Settlement Class should be maintained through entry of a final judgment.

[5] In its earlier Order Granting Motion for Class Certification; Denying Motions to Strike Expert Testimony, the Court had found that Plaintiffs claims were amenable to proof on a class-wide basis and Plaintiffs were adequate Class Representatives, and appointed Seeger Weiss and 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

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

> (1) the strength of plaintiffs' case;
> (2) the risk, expense, complexity, and likely duration of further litigation;
> (3) the risk of maintaining class action status throughout the trial;
> (4) the amount offered in settlement;
> (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.

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

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

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

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

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

Plaintiffs' claims involve alleged breaches of various consumer protection statutes, and claims of fraudulent concealment and breach of implied warranty of merchantability. If forced

[6] Notably, because this Settlement arises after the Court granted class certification, it is not subject to the higher level of scrutiny accorded pre-certification settlements. *See Gagnier v. Siteone Landscape Supply LLC*, No. SACV2101834CJCDFMX, 2023 WL 8116831, at *7 (C.D. Cal. June 6, 2023) ("When, 'as here, a settlement agreement is negotiated *prior* to formal class certification,' 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).

to proceed further on these claims, however, Plaintiffs faced significant risks. For example, for their consumer protection claims, the Plaintiffs are required to establish: (i) that a misrepresentation or omission occurred regarding the alleged defect in the HFL system; (ii) that consumers relied upon the representations or omissions by Honda regarding the alleged defect, and (iii) that Plaintiffs suffered an injury as a result of overpaying for Class Vehicles that contained the alleged defect. In this case, Plaintiffs faced significant legal arguments from Honda that challenged their claims under these statutes, including that Plaintiffs are not entitled to restitution under the CLRA and UCL because they failed to plead that their legal remedies are inadequate. ECF No. 423, at 6-9. In *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020), the Ninth Circuit held that "the traditional principles governing equitable remedies in federal courts, including the requisite inadequacy of legal remedies, apply when a party requests restitution under the UCL and CLRA in a diversity action." *Id.* at 844. Thus, in the event the Court were to hold that Plaintiffs failed to plead that they lacked an adequate legal remedy, Plaintiffs would face the possibility of not being able to obtain restitution damages for their UCL and CLRA claims. Another argument pressed by Honda was that the Plaintiffs' claims under the CLRA lack merit because the Plaintiffs fail to allege a direct transaction between Honda and the California Plaintiff. ECF No. 423, at 10-12. The same holds true for Plaintiffs' fraudulent concealment claims. *See Negrete v. Allianz Life Ins. Co. of N. Am.*, No. CV-05-6838-CAS(MANX), 2015 WL 12592726, at *10 (C.D. Cal. Mar. 17, 2015) ("Class Counsel spent thousands of hours and millions of dollars over the past nine years, while shouldering a substantial risk of non-recovery, to achieve the Settlement. The risks of non-recovery in this matter are real and include, among others: . . . the inherent proof difficulties in any fraud-based claim . . . ."). As

such, absent the Settlement, Plaintiffs faced a possibility of not prevailing on significant parts of their claims.

Regardless of the arguments of the parties regarding the relative strength of their claims and arguments, "[i]t is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced." *In re Heritage Bond Litigation*, No. 02-ML-1475, 2005 WL 1594403, at *6 (C.D. Cal. June 10, 2005) (citation omitted). While Class Counsel are confident in their ability to successfully maintain class action status through trial, there are risks inherent in any litigation, including challenges in proving liability and damages, as well as the possibility that Honda will raise meritorious defenses to the certified claims. This is especially true in class action litigation. *See, e.g.*, *Chas. Pfizer & Co.*, 314 F. Supp. at 743-44. Plaintiffs have supplied "enough information to evaluate the strengths and weaknesses of [their] case." *Haralson*, 383 F. Supp. 3d at 970. Although the Class Members (or some of them) arguably might have received more if they had proceeded to trial and prevailed on the merits of their case, they also faced a risk that the resulting recovery would be smaller than what is currently expected. Further, the benefit of receiving an award in the immediate future has its own value. *Bellinghausen*, 306 F.R.D. at 255. Given the risks of further litigation, the uncertain outcome of the Plaintiffs' case weighs in favor of final approval.

(2) Amount Offered in Settlement

Assessing the fairness, adequacy, and reasonableness of the amount offered in settlement is not a matter of applying a "particular formula." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). "[U]ltimately, [it] is nothing more than an amalgam of delicate balancing, gross approximations, and rough justice." *Id.* And, "it is the complete package taken as a whole,

rather than the individual component parts, that must be examined for overall fairness." *DIRECTV*, 221 F.R.D. at 527 (quoting another source). "[I]t is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the class members at trial." *Id.*

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

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

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

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

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

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

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

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

(4) Experience and Views of Counsel

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

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

(5) Presence of a Governmental Participant

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

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

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

[7] The deadline for Settlement Class Members to opt-out from or object to the Settlement is April 18, 2024. Rather than address the responses to the Settlement piecemeal, Plaintiffs will address the final number and substance of such requests and objections after that deadline has 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

the time of the fairness hearing may raise a presumption that the settlement is favorable to the class." *Omnivision*, 559 F. Supp. 2d at 1043 (approving settlement where three of over 57,000 potential class members objected); *see also Churchill Village LLC v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming settlement with 45 objections out of 90,000 notices sent). Notice of the Settlement with specific information about its material terms, as well as each of the associated applications, has been directly mailed to over one million mail and email addresses of Settlement Class Members and only five objections have been filed to date. *See* Seeger Decl. ¶ 14. Moreover, Class Counsel has fielded numerous calls and emails from members of the Settlement Class inquiring about the litigation, Settlement, and claims process, and has received positive feedback from Settlement Class Members. *See id.* As to the handful of objections received to date, some appeared to be confused about their ability to submit a claim, and Class Counsel has been in communication with them to ensure that they are able to fully avail themselves of the Settlement benefits. Seeger Decl. ¶ 15.

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the Preliminary Approval Order provided that "[t]he Parties ***may*** also respond to any comments 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

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

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

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

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

IV. CONCLUSION

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

Dated: April 4, 2024

Respectfully submitted,

By: */s/ Christopher A. Seeger*

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From: ECF-CAND@cand.uscourts.gov
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Subject: Activity in Case 4:16-cv-04384-JST Aberin et al v. American Honda Motor Company, Inc. Motion for Miscellaneous Relief

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California Northern District

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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)

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