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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

THERON COOPER and ALICE TRAN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

AMERICAN HONDA MOTOR CO., INC., a California corporation,

Defendant.

NO. BC448670

MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND INCENTIVE PAYMENTS TO NAMED PLAINTIFFS

Complaint Filed: November 1, 2010

CLASS ACTION

Judge: Hon. William F. Highberger

Department: 307
Date: Friday, September 16, 2011
Time: 11:00 a.m.

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I. INTRODUCTION

Plaintiffs seek approval of a payment from Honda for attorneys' fees and expenses of $430,000, which Honda would pay in addition to (and which would in no way reduce) the benefits provided to class members under the settlement in this action. The requested payment would compensate Plaintiffs' counsel for work conducted on behalf of a class of nearly 2.1 million class members that commenced a year ago and will continue for many months. Counsel began the litigation by thoroughly investigating this matter, then drafted a detailed Complaint, obtained documents and testimony related to Plaintiffs' claims and the amount of damages, negotiated a settlement that provided full relief to class members, and assisted class members in understanding the scope of the settlement and obtaining relief. Counsel will continue to assist class members in this manner for the next several months. In total, the three firms representing Plaintiffs have spent 1,153.8 hours to date on the litigation representing a lodestar amount of $493,399 that is substantially less than the $408,293.96 requested fee.

The requested fee is both reasonable and amply supported. The requested amount was thoroughly negotiated by the parties and arrived at *only after* class relief was secured and with the assistance of a JAMS mediator after a day-long mediation session. Moreover, the requested fee is supported by the value counsel created for the class. Honda agreed to provide the relief made available in the settlement only after the filing of this suit. The chronology of events demonstrates that Plaintiffs were the catalyst for a change in policy that will benefit hundreds of thousands of Civic owners. Although the financial benefit to the class has not been completely realized (and will not for years to come because tens of thousands of class members now have extended warranties that will be in effect until 2015 for many class members), the reimbursement claims submitted to date as well as the repairs made pursuant to the extended warranty demonstrate a robust recovery for the class. As of July 30, 2011, Honda had received reimbursement claims for 6,639 unique VINs (representing 7,375 visors and $456,650 in cash payments) and had repaired or replaced 40,917 visors under the extended warranty

(representing a value of $2,782,356). In total, with several months left in the claims period and several years left in the warranty period, Honda already has paid approximately $3,239,006.00 in reimbursements and replacements.

II. RELEVANT FACTS

A. Class Counsel Have Obtained a Valuable Settlement for the Class

The three law firms that represent the class in this case, Berk Law Firm PLLC, Terrell Marshall Daudt & Willie PLLC, and Rukin Hyland Doria & Tindall LLP (collectively "Class Counsel") have achieved outstanding relief for the class, including: (1) financial relief to compensate class members for out-of-pocket costs already incurred in repairing or replacing the defective sun visors; (2) extended warranty protection for the future replacement of defective sun visors at no cost to class members; and (3) injunctive relief to compel Honda to notify all proposed class members about the sun visor defect and their right to have the visor repaired or replaced at no cost during the extended warranty period. Further, Class Counsel have done so quickly and efficiently without exposing class members to the risks of litigation. Each of these benefits is discussed in further detail below.

1. Reimbursement for Out-of-Pocket Expenses

With at least four months remaining in the claims period, Honda already has received claims for reimbursement for 6,639 unique Vehicle Identification Numbers ("VINs"), representing 7,375 sun visor replacements. (*See* Declaration of Roy Brisbois in Support of Honda's Joinder to Plaintiffs' Motion for Final Approval of Class Settlement ("Brisbois Decl.". ¶ 8.) The total value of these claims is $456,650. *Id.* This amount *does not include* the number of class members who have had their visors replaced under the extended warranty provided by the settlement. These preliminary claims indicate that the settlement has directly benefitted

thousands of consumers and already required Honda to pay hundreds of thousands of dollars to the class.[1]

2. Extended Warranty Protection

Before settlement relief was negotiated for the class, if a class member's sun visor failed after three years or 36,000 miles, he or she would need to pay out of pocket to purchase a new visor at a cost of approximately $68. Since the settlement was negotiated, class members also will be able to obtain a free replacement of their failed visors until 100,000 miles or 7 years from purchase. Honda is currently compiling information regarding the number of visors class members already have had replaced under the extended warranty since notice was sent in June and will soon provide this information to Plaintiffs. *See id.* Plaintiffs will supplement this submission once they receive this information. However, preliminary information indicates that Honda already has made 40,917 repairs or replacements under the extended warranty, representing an average value of $2,782,356 (40,917 repairs/replacements x $68/average cost to repair). Brisbois Decl. ¶ 8.

Documents that Honda produced in discovery confirm the settlement's value. Warranty claims information for the visors indicate the visor failure rate on the Class Vehicles is approximately 30 percent—that is, almost a third of the visors in the class vehicles will fail. (Declaration of Beth E. Terrell in Support of Plaintiffs' Motions for: (1) Final Approval of Class Settlement; and (2) Attorneys' Fees and Incentive Payments ("Terrell Final Approval Decl."), Ex. 4 at AHM 11–12.) The documents also indicate the failure rate for the visors at 36 months (that is, during the original warranty period) was approximately 12 percent. (*See id.* at AHM 13.) The remaining 18 percent of failures, therefore, occur after 36 months, when the

[1] Honda is still in the process of gathering information regarding the percentage of these reimbursement claims that are valid, reimbursable claims. Honda also is gathering information regarding the number of reimbursement claims that fall within the extended warranty, though this number is likely to be very small given that if the claim was covered by the warranty the class member would not have incurred our-of-pocket expenses. Once Plaintiffs receive this information, they will supplement this submission with updated information.

original warranty period was no longer in effect. It is reasonable to assume that 18 percent of the visors installed in Class Vehicles will fail after 3 years/36,000 miles. Given the size of the class (1,027,342 Class Vehicles), the warranty extension in this case to 7 years or 100,000 miles will allow an additional 184,921 visor replacements to be made at no cost to class members—that is, 18 percent of the number of class vehicles (1,027,342)). At $68 each, these additional visor replacements made possible by the settlement have an approximate value of **$12,574,666** (184,921 (the number of visors that will fail after 36,000 miles) x $68 (the cost to replace) = $12,574,666).

3. Notification to the Class

Through the national claims administration firm, Rust Inc., Honda, as part of its obligations under this settlement, directed and paid for notice to be sent to over 2.1 million class members who owned or leased one of the Honda Civic vehicles included within the settlement. (*See generally* Declaration of Joel Botzet with Respect to Notification ("Botzet Decl.").) This notice alone is a direct value to the class because it informs them of both their rights to seek reimbursement for their costs to replace the visors and the extended warranty related to the visors.

4. The Settlement Was Achieved Promptly and Efficiently

The substantial relief to the class described herein was obtained extremely quickly, which in itself created a significant benefit to the class. The speed of the resolution enhances the value to the class because the settlement means that the parties can locate and distribute benefits to the class members in 2011 rather than after years of litigation. In addition, the speed of the settlement reflects the skill and efficiency that Class Counsel demonstrated in this litigation and also serves the interests of both justice and the judicial system.

5. Procedural Safeguards

Finally, the settlement provides important procedural safeguards to consumers who otherwise would face a confusing and difficult process in attempting to get reimbursed for the

costs of replacing their sun visors. The settlement provides class members enforcement mechanisms, an appeals process, and the oversight of Class Counsel and the Court.

B. Class Counsel Have Prosecuted This Case Vigorously and Efficiently

1. Class Counsel Thoroughly Investigated the Claims Before Filing the Complaint

The settlement at issue here benefits approximately 2.1 million purchasers and lessees of certain Honda Civics who have experienced or will experience problems with defective sun visors ("Class Vehicles"). Class Counsel's work on behalf of the class began well before the filing of the lawsuit. Plaintiff Theron Cooper first contacted counsel in August of 2010 seeking assistance in connection with his failed Honda sun visor—which split open, blocking his view of the windshield. Mr. Cooper had previously attempted a self-help remedy (*i.e.,* taping the visor) that failed. Before purchasing a new visor, however, he checked the Internet and found scores of similar complaints from across the country. This discovery prompted him to contact attorney Steven N. Berk to determine if he had a claim for a new visor. (Declaration of Steven N. Berk in Support of Plaintiffs' Unopposed Motions for (1) Final Approval of Class Settlement, and (2) Attorneys' Fees and Incentive Payments ("Berk Final Approval Decl.") ¶ 4.)

Based on this call, Class Counsel began investigating the case. Their efforts included: (1) interviewing numerous prospective class members to fully understand the nature of the defect and Honda's reaction to efforts at seeking reimbursement; (2) engaging an expert witness on materials and failure analysis to examine the sun visors in order to assist counsel in guiding the investigation and to provide preliminary conclusions on the nature of the defect; (3) researching the experience of the class representatives; (4) reviewing carefully all public information available on the defect; (5) analyzing any statements made by Honda relating to the defect; (6) conducting extensive online research; (7) communicating with absent class members and analyzing the data presented by their experiences; and (8) researching and analyzing Honda's Technical Service Bulletins. (Berk Final Approval Decl. ¶ 5; *see also* Declaration of

Beth E. Terrell in Support of Preliminary Approval ¶ 7; Declaration of Steven Tindall in Support of Motion for Final Approval and Request for Attorneys' Fees and Costs ("Tindall Final Approval Decl.") ¶ 3.)

Only after completing this investigation (which included instructing their retained expert to perform forensic failure testing, and reaching the conclusion that the defect in the visor was widespread and common, did Class Counsel begin drafting a Complaint. (Berk Final Approval Decl. ¶ 6.) Initially, the claims against Honda in connection with its defective sun visor were filed on October 18, 2010 in Washington State Superior Court as a proposed class action on behalf of similarly-situated residents of Washington State. Prior to formal service of the Washington Complaint, and as a courtesy, Steven N. Berk contacted Roy M. Brisbois, an attorney whose firm was known to represent Honda in consumer litigation. Mr. Berk apprised Mr. Brisbois of the Washington filing, shared a copy of the Complaint, and asked if Mr. Brisbois would accept service for Honda. (*Id.* ¶ 7.)

Subsequently, the Parties agreed it would be most efficient to litigate all claims related to the defective sun visors in a single forum, and Honda requested that this matter be litigated before this Court. (Berk Final Approval Decl. ¶ 8.) Plaintiff Cooper voluntarily dismissed the Washington Complaint, and Class Counsel then drafted a new class action complaint, adapting it as necessary to meet the pleading formatting and standards of the State of California. On November 1, 2010, Mr. Cooper, along with California resident and Honda Civic owner Alice Tran, filed in this Court a Class Action Complaint for Injunctive Relief and Restitution against Honda—*Cooper, et al. v. American Honda Co., Inc.*, Case No. BC448670 (the "Complaint"). Because Honda is headquartered in California, filing in a California court allowed Plaintiffs to seek a nationwide class under California law.

Plaintiffs alleged five causes of action under California law: (1) an alleged violation of California's Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*; and multiple alleged violations of California's Unfair Competition Law ("UCL"), including (2)

unlawful business practices, (3) unfair business practices, (4) fraudulent business practices, and (5) false advertising, all pursuant to California Business & Professions Code § 17200 *et seq.* (*See* generally, Class Action Complaint for Injunctive Relief, and Restitution filed on November 1, 2010 ("Complaint").) Honda has asserted various defenses to Plaintiffs' claims and has denied that the visors in the Class Vehicles are defective or that members of the proposed class have suffered any damage. (*See* Joint Status Report filed with this Court on March 10, 2011 ("Joint Status Report").)

2. Class Counsel Diligently Pursued Key Information Regarding the Visors

After filing, Class Counsel continued their discovery efforts on behalf of Plaintiffs, now with the benefit of formal discovery tools. Class Counsel obtained and reviewed a range of internal Honda documents describing the nature of the defect, its root cause, and customer complaints. Significantly, Class Counsel were able to review and question (both informally and via deposition) Honda's internal documents demonstrating the improvements to the "replacement" sun visors and their impact on significantly lowering the failure rate. (Berk Final Approval Decl. ¶ 9.) Class Counsel thereafter corroborated the information in these documents and tested Honda's assertions by taking the deposition of the person at Honda "most knowledgeable" about the alleged defects in the sun visors, the cause of any such defects, the warranty claim history regarding them, and any countermeasures taken by Honda to address any defect in the sun visors. (*Id.*) These combined efforts enabled Class Counsel to test their own assumptions and corroborate the information Honda had provided informally. (*Id.*)

3. Class Counsel Efficiently Negotiated an Outstanding Settlement for the Class

Although both parties were amenable to reaching a mutually agreeable settlement, there were numerous issues that required negotiations and resolution, including the scope and geographic reach of the proper class, the proposed relief to Class Members, and various other contingencies. Accordingly, Class Counsel expended substantial effort negotiating these issues and exchanging various versions of draft settlement agreements with Honda. Those

discussions culminated in a written settlement agreement that was executed on February 24, 2011. At all times, the parties' negotiations were adversarial, non-collusive, and at arm's length. (Berk Final Approval Decl. ¶ 10.)

From the time settlement was reached up through the filing of the Motion for Preliminary Approval, Class Counsel continued to work on preparing for preliminary settlement approval and thereafter final approval. Doing so required still more negotiation on several issues including the precise class definition, the language of the Notice, the practical operation of the reimbursement and extended warranty program, and the award of attorneys' fees and costs. (Berk Final Approval Decl. ¶ 11.)

4. Honda Agreed to the Requested Fee Only After a Contested Mediation

At the time they filed their Motion for Preliminary Approval, the parties had agreed upon the relief to be provided to the class but still had not reached agreement regarding the amount of attorneys' fees and costs that Class Counsel would request to be awarded for their efforts in this case. The parties filed their Motion for Preliminary Approval, indicating that they would submit opposing briefs to the Court on the fee issue and that the class relief was in no way contingent on the Court awarding Plaintiffs' counsel their requested fee. (*See* Motion for Preliminary Approval at 10:17–11:2.)

After the Motion for Preliminary approval was filed, however, the parties agreed that it would be best to agree upon a fee before the settlement notice was mailed to the class. Accordingly, the parties retained the services of JAMS mediator Judge Von Kann (Ret.). As part of the mediation, the parties exchanged mediation briefs and participated in a mediation session that lasted an entire day. Through that process, the parties agreed to a resolution on the fees issue. (Berk Final Approval Decl. ¶ 11.) As with the negotiation on the class relief, at all times, the negotiations were arm's-length and non-collusive. (*Id.*)

5. Since Preliminary Approval, Class Counsel Have Devoted Numerous Hours to This Action and will Continue Working on Behalf of the Class Well Into the Future

After the Court entered an Order preliminarily approving the settlement on April 22, 2011, Class Counsel worked with Honda and the claims administrator on a number of administrative tasks, including the settlement website and scripts to be used by employees of the claims administrator. The claims administrator mailed notice to 2,064,360 million class members between June 21, 2011 and July 5, 2011. (Botzet Decl. ¶ 9.) Between July 12, 2011 and July 21, 2011, Honda provided the ICA with data files identifying class members, whose notice packages had been sent to their lenders rather than to their home addresses. (*Id.* ¶ 10.) During the week of July 30, the ICA re-mailed notice to these individuals, 35,334 in total, at the corrected addresses. (*Id.*) In total, 2,099,694 individuals were identified as potential class members and mailed notice. (*Id.*)

Since the notice was mailed, Class Counsel have been contacted by approximately 1,000 class members. Numerous staff members from Berk Law PLLC and Terrell Marshall Daudt & Willie PLLC have spent scores of hours responding diligently and thoughtfully to class members with questions regarding their eligibility for relief and/or the proper method for submission of their claims materials. These responses are not automated or simply a recorded voice directing class members to a website. Class Counsel endeavor to spend the time needed to respond individually to every person who called with questions regarding the settlement. (Berk Final Approval Decl. ¶ 13; Terrell Final Approval Decl. ¶ 3.)

In addition to preparing the Motion for Final Settlement Approval and supporting papers submitted herewith, Class Counsel anticipate substantial future work including: (1) assisting class members with the settlement claims process; (2) participating in the claims appeals process; (3) monitoring the claims process; (4) enforcing the settlement throughout its duration; and (5) addressing any appeals that might be taken by objectors to the settlement.

(Berk Final Approval Decl. ¶ 14; Terrell Final Approval Decl. ¶ 13; Tindall Final Approval Decl. ¶ 4.)

To date, Class Counsel have spent 1,153.8 hours related to the investigation, prosecution, settlement, and settlement administration of this case through August 8, 2011, and expect to spend a few hundred additional hours through the expiration of the Settlement Agreement, for a total exceeding 1,400 hours. (Berk Final Approval Decl. Ex. A; Terrell Final Approval Decl. ¶ 12; Tindall Final Approval Decl. ¶ 11.) Class Counsel's lodestar to date is $493,399. (Berk Final Approval Decl. ¶ 15–16, Ex. A; Terrell Final Approval Decl. ¶ 12; Tindall Final Approval Decl.") ¶ 11.)

Class Counsel also have incurred $21,706.04 in litigation costs and expenses. (Berk Final Approval Decl. ¶ 18–19, Ex. B; Terrell Final Approval Decl. ¶ 16, Ex. 7; Tindall Final Approval Decl. ¶ 10, Ex. A.) These costs—which include photocopying, legal research, travel, expert, and mediation expenses among others—were necessary to prosecuting this litigation. (*See id.*) Class Counsel are seeking a total of $430,000, representing $408,293.96 in fees and $21,706.04 in costs.

C. But for This Lawsuit, the Settlement Benefits Would Not Have Been Achieved

Honda has been aware of the pattern of defective sun visors in Civic models for several years. According to testimony from a senior Honda engineer and internal Honda documents, high numbers of warranty claims to replace the defective visors alerted Honda to the prevalence of the defect in 2006 model-year Civics as early as 2005. (*See* Terrell Final Approval Decl., Ex. 3 (Shannon Depo.) at 26:8–27:2.) As sun visor warranty claims mounted over the years—eventually numbering over 250,000 claims—Honda issued Technical Service Bulletins on May 16, 2008 and again on October 22, 2010 to inform authorized dealers about the nature of the visor defect and the appropriate repair and replacement protocol. (*See id.*, Exs. 5–6.) Nevertheless, no effort was taken by Honda to warn consumers, extend warranty coverage for the failed visors, or issue a complete recall. It was not until after this litigation was filed and

prosecuted and the parties had agreed to class-wide settlement terms that Honda agreed to change its policies.

III. ARGUMENT

A. Class Counsel Are Entitled to Their Reasonable Attorneys' Fees

1. Class Counsel Are Entitled to Fees As a Matter of Right

At the conclusion of a successful class action brought pursuant to California's Consumers Legal Remedies Act ("CLRA"), Class Counsel may apply to the Court for an award of "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Cal. Civ. Code § 1780(e). Under the CLRA, Plaintiffs are entitled to attorneys' fees as a matter of right: "[A]n award of attorney fees to 'a prevailing plaintiff' in an action brought pursuant to the CLRA is *mandatory*, even where the litigation is resolved by a pre-trial settlement agreement." Cal. Civ. Code § 1780(e) (emphasis added). The CLRA's mandatory provision of attorneys' fees to a prevailing plaintiff effectuates a crucial policy goal of the State: "[T]he availability of costs and attorneys fees ... is integral to making the CLRA an effective piece of consumer legislation, increasing the financial feasibility of bringing suits under the statute." *Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066, 1085, 90 Cal.Rptr.2d 334.

Here, Class Counsel have negotiated an outstanding settlement of CLRA claims that will bring quick, substantial relief to nearly 2.1 million consumers. Thus, Class Counsel are entitled to reasonable attorneys' fees and costs under CLRA's mandatory fee provision.

2. Class Counsel Are Entitled to Their Fees Under a Catalyst Theory

Honda has agreed to implement the terms of the settlement regardless of whether this Court grants final approval through what it calls its "adjustment program." Accordingly, it may be asserted that the adjustment program establishes substantially all or all of the relief sought by Plaintiffs. As noted above, however, Honda knew for years about the defect with its sun visors and did nothing to address it until after Plaintiffs filed and prosecuted this lawsuit.

Moreover, the class settlement offers several additional benefits above and beyond the adjustment program, including a notice process administered by an independent notice provider; greater protections for class members during the claims administration process, including an appeals process; representation by Class Counsel who are available to assist class members with questions regarding the settlement and to help them through the claims process; and oversight of the Court.

Even assuming, however, that the adjustment program was adequate on its own, Class Counsel are entitled to attorneys' fees since their work in this litigation was a "catalyst" of this result. A plaintiff is entitled to attorneys' fees when his or her lawsuit has acted as a "catalyst" speeding a defendant's response. As the California Supreme Court held in *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 21 Cal.Rptr.3d 331, "[t]he catalyst theory is an application of the ... principle that courts look to the practical impact of the public interest litigation in order to determine whether the party was successful, and therefore potentially eligible for attorney fees." *Id.* 34 Cal.4th at 565–66. An automotive defect case, *Graham* involved facts very much like those here—with the trial court concluding "that the lawsuit was in fact a substantial causal factor in DaimlerChrysler's change in policy with respect to its willingness to repurchase or replace the Dakota R/T or to offer consumers substantial discounts." *Id.* at 577.

A similar causal relationship can be demonstrated between the filing of this lawsuit and Honda's change in policy with respect to the defective sun visors. Honda has been aware of the pattern of defective sun visors in Civic models for several years. (*See* Terrell Final Approval Decl., Ex. 3 (Shannon Depo.) at 26:8–27:2; Exs. 5–6.) Nevertheless, there was no policy change by Honda with respect to the visors until after Plaintiffs filed this suit. Even Honda's "adjustment program" was not implemented until well after Plaintiffs filed the lawsuit and negotiated the settlement. In similar circumstances, courts have not hesitated to approve fee and cost awards to plaintiffs' counsel. *See, e.g., Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150

F.3d 1011, 1017–19, 1029–30 (Chrysler and NHTSA negotiated a "voluntary resolution" to the investigation and Chrysler announced a "Service Action" prior to settlement of class action; court found that class counsel was a substantial factor in bringing about Chrysler's decision); *Trew v. Volvo Cars of North Am., LLC* (E.D. Cal. Jul. 31, 2007 No. Civ. S-051379) 2007 WL 2239210, **1, 4 (Volvo reached agreement with CARB regarding defective electronic throttle modules; court held "[t]he chronology of the CARB and class settlement agreements demonstrates that the class action satisfies the 'catalyst' requirements").

In short, Plaintiffs are entitled to their requested fees both under a lodestar analysis and a catalyst theory. The only question before the Court is the *reasonableness* of the $430,000 negotiated fee-and-cost amount agreed to by the parties.

B. Plaintiffs' Fee Request Is Entitled to Relaxed Scrutiny Because It Is the Result of Arm's-Length Negotiations and Does Not Reduce the Class Relief in Any Way

"A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." *Hensley v. Eckerhart* (1983) 461 U.S. 424, 437; *see also In re Sony SXRD Rear Projection Television Class Action Litig.* (S.D.N.Y. May 1, 2008) No. 06 Civ. 5173(RPP), 2008 WL 1956267, at *15 ("The negotiation of attorneys' fees is generally encouraged").

It is especially appropriate that the fee request not result in additional major litigation in cases, such as here, in which the fee will be paid by Honda separately from, and without reducing, the benefits to the settlement class. Although it would have been permissible for Class Counsel to simultaneously negotiate for a lump-sum settlement that includes both the value of the class's claims and the value of counsel's fees, *see In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 552-53, 96 Cal.Rptr.3d 127, the parties here negotiated relief for the class separately and before negotiating a proposed fee award. (Berk Final Approval Decl. ¶ 11.) Honda had every interest in minimizing the fee, to reduce the amount of its total payout and was represented by experienced counsel.

Under these circumstances, when the fee is negotiated at arm's length and the amount does not reduce the class relief, "the Court's fiduciary role in overseeing the award is greatly reduced, because there is no conflict of interest between attorneys and class members." *McBean v. City of New York* (S.D.N.Y. 2006) 233 F.R.D. 377, 392; *see also Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 966 (when fee negotiated at arm's length, "the court need not inquire into the reasonableness of the fees . . . with precisely the same level of scrutiny as when the fee amount is litigated."); *Cummings v. Connell* (E.D. Cal. Nov. 27, 2006) No. Civ. S-99-2176-WBS-KJM, 2006 WL 3951867, * 2 (where the merits of the case were resolved before the agreement on fees "the court cannot conceive of any danger of collusion."); *Pelletz v. Weyerhaeuser Co.* (W.D. Wash. 2009) 592 F. Supp. 2d 1322, 1325 (approving negotiated, separately-paid fee that "is in addition to, and in no way diminishes, the benefit to the class"); *DeHoyos v. Allstate Corp.* (W.D. Tex. 2007) 240 F.R.D. 269, 322 ("[C]ourts are authorized to award attorneys' fees and expenses where all parties have agreed to the amount, subject to court approval, particularly where the amount is in addition and separate from the defendant's settlement with the class.")

Moreover, any reduction in the fee and cost amount awarded to Class Counsel would not benefit the class but would instead benefit only Honda. Honda is ably represented by competent counsel and agreed to the negotiated fee amount after a contested mediation. The Court's fiduciary obligation to the class members does not include an obligation to protect Honda's interests.

C. The Lodestar Method Confirms That the Requested Fee Amount Is Reasonable

While a relaxed level of scrutiny is appropriate under these circumstances, the Court ultimately must still decide whether the requested fee is reasonable. The percentage-of-recovery method is permissible where a common fund is obtained for the class, and the fees are paid from the fund. Where a defendant pays the fees separately pursuant to a fee-shifting statute like the CLRA, the lodestar method is generally preferred. *See In re Consumer Privacy*

Cases, supra, 175 Cal.App.4th at 556–57; *see also Deloach v. Philip Morris Cos.* (M.D.N.C. Dec. 19, 2003) No. 1:00CV01235, 2003 WL 23094907, at *4 ("Since no common fund or constructive common fund exists, the court concludes that it is more appropriate to use the lodestar methodology in awarding attorneys' fees in this case.").

The lodestar is calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. *In re Consumer Privacy Cases, supra,* 175 Cal.App.4th at 556–57. In determining a reasonable rate, the court considers the "'experience, skill and reputation of the attorney requesting fees.'" *Id.* (quoting *Trevino v. Gates* (9th Cir. 1996) 99 F.3d 911, 924). The court also considers "the prevailing market rates in the relevant community." *Id.* (quoting *Blum v. Stenson* (1984) 465 U.S. 886, 895). The Court may then enhance the lodestar by applying a multiplier to take into account the contingent nature and risk associated with the action, as well as other factors such as the degree of skill required and the result achieved for the class. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1130, 1137, 104 Cal.Rptr.2d 377. "Multipliers can range from 2 to 4 or even higher." *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 255, 110 Cal.Rptr.2d 145 (citing *Coalition for L.A. County Planning etc. Interest v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251, 142 Cal.Rptr.766); *Arenson v. Board of Trade of City of Chicago* (N.D. Ill. 1974) 372 F. Supp. 1349).

1. The Amount of Time Spent By Class Counsel Is Reasonable

Under the lodestar approach, the court first decides whether the amount of time reported by counsel is reasonable. Class Counsel have devoted 1,153.8 hours to this case over the past year. (*See* Terrell Final Approval Decl. ¶ 12; Berk Final Approval Decl. ¶¶ 15–16, Ex. A; Tindall Final Approval Decl. ¶ 11, Ex. B.) The declarations Class Counsel have submitted in support of this motion and final approval break down this total by timekeeper. (*Id.*) In addition, the declarations contain a detailed summary of the work underlying the reported time, performed from inception of the litigation to the filing of the instant motion. (*Id.*) These

summaries provide a robust record sufficient to evaluate the reasonableness of the time Class Counsel spent on the case. *See Winterrowd v. Am. Gen. Annuity Ins. Co.* (9th Cir. 2009) 556 F.3d 815, 827 (testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees).

The 1,153.8 hours expended to date were reasonably spent. As detailed in the procedural history above and the Class Counsel declarations, Counsel spent substantial time investigating the class claims, confirming their findings through formal and informal discovery, negotiating the settlement with Honda, and drafting preliminary and final approval papers,. Since the Court entered the order preliminarily approving the settlement, Class Counsel have answered written correspondence and telephone calls from approximately 1,000 class members, many of whom sought assistance understanding their rights under the settlement and completing their claim forms. (Terrell Final Approval Decl. ¶ 3; Berk Final Approval Decl. ¶ 13.) The services provided by Plaintiffs and their counsel were reasonable to bring this case to a successful conclusion and should be compensated.

Throughout this case, Plaintiffs' Counsel prosecuted the claims efficiently and effectively. Knowing it was possible they would never be paid for their work, counsel had no incentive to act in a manner that was anything but economical. *See Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 ("[L]awyers are not likely to spend unnecessary time on contingency cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee."). That said, counsel took their charge seriously and endeavored to represent the interests of the class members to the greatest extent possible.

2. Class Counsel's Hourly Rates Are Reasonable

Class Counsel's time when multiplied by their attorney fee rates represents a lodestar of $493,399. The rates of all attorneys, paralegals and legal assistants whose time is included in this application are listed in the Class Counsel declarations. These are the hourly rates Class

Counsel charge in similar matters and these rates have been approved by state and federal courts in many other contingent matters, including those prosecuted in Los Angeles County Superior Court. (Terrell Final Approval Decl. ¶ 16; Berk Final Approval Decl. ¶ 17; Tindall Final Approval Decl. ¶ 13.) Class Counsel's rates are comparable to those charged by attorneys practicing in California. *See* Tindall Final Approval Decl. ¶ 13 (citing Westlaw CourtExpress Legal Billing Report indicating California lawyers' rates for lawyers with comparable levels of experience range from $495 to $875 per hour).

3. The Fee Requested in This Case Is Less Than Class Counsel's Total Lodestar to Date and Thus Is Reasonable and Appropriate

In light of the outstanding result Class Counsel have achieved for the settlement class, the risks involved in taking the legal claims to trial, the complexity of the case, the continuing obligation that counsel has to devote time and effort to the litigation, and the fact that the litigated precluded counsel from taking other employment a risk multiplier would be appropriate. *See In re Consumer Privacy Cases, supra,* 175 Cal.App.4th at 556. Indeed, California courts routinely approve multipliers between one and four. *See, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, 75 Cal.Rptr.3d 413 (affirming multiplier of 2.50); *Wershba v. Apple Computer, Inc., supra,* 91 Cal.App.4th at 255 (approving a lodestar multiplier of 1.42 and noting that "multipliers can range from 2 to 4 or even higher"); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83, 249 Cal.Rptr.606 (affirming 2.34 multiplier); *Sternwest Corp. v. Ash,* (1986) 183 Cal.App.3d 74, 76, 227 Cal.Rptr. 804 (remanding for a lodestar enhancement of "two, three, four or otherwise."); *Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 52–53, 97 Cal.Rptr.2d 797 (2000) (citing federal case awarding a multiplier of 4); *Glendora Cmty Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 465, 479–80, 202 Cal.Rptr. 389 (approving fee award representing multiplier of 12); *Coalition for L.A. County Planning in the Pub. Interest v. Bd. of Supervisors* (1977) 76 Cal.App.3d 241, 251, 142 Cal.Rptr. 766 (affirming multiplier of approximately 2).

Here, Class Counsel do not request a multiplier on their lodestar of $493,399, but request instead that the Court award a fee of $408,293.96 ($430,000 – $21,706.04 in costs), which is $85,105.04 less than their lodestar. Class Counsel's request reflects a fractional multiplier of .95. This .95 fractional multiplier required by Class Counsel is far below the multipliers applied by other California courts in comparable cases and thus the fee is particularly modest under the circumstances.

a. Class Counsel Achieved Exceptional Results for the Class

Class Counsel achieved an excellent settlement for the Class. Class Counsel obtained an extended seven-year, 100,000 mile warranty on the visors and 100 percent reimbursement for those settlement class members who paid out of pocket to repair the visors. To date, class members have submitted reimbursement claims worth $456,650. Although this number may include some deficient claims, the number indicates that Honda is likely to pay out hundreds of thousands of dollars in cash reimbursements alone. Moreover, these amounts do not include the amount Honda will pay to replace settlement class members' visors pursuant to the extended seven-year, 100,000 mile warranty, which already have resulted in over 40,000 replacements, as discussed in Section II(A)(2), above.

Further, Class Counsel obtained the relief quickly, without exposing class members to the risks of trial. Class Counsel should be rewarded, not punished, for a successful, early resolution of complex litigation. *See In re Vitamin Cases* (Cal. Super. April 12, 2004) No. 4076, 2004 WL 5137597, *12 (affirming multiplier of 2.0) ("Limiting Plaintiffs' Counsel's multiplier because no class certification motion was filed or trial conducted would create a perverse financial incentive where, as here, Plaintiffs' Counsel negotiated an outstanding recovery without subjecting their clients to the uncertainties of class certification or trial.").

b. The Contingent Nature of This Case and the Novelty and Difficulty of the Questions Involved

One of the primary purposes of awarding a fee multiplier is to compensate counsel at a rate reflecting the risk of nonpayment in contingency cases. *Ketchum*, 24 Cal.4th at 1138. In

evaluating the contingent nature of a case, "a court should look at the circumstances that the plaintiffs faced at the outset of the litigation." *In re Vitamin Cases*, 2004 WL 5137597 at *12. "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." *Ketchum*, 24 Cal.4th at 1333.

Because Class Counsel agreed to prosecute this case on contingency with no guarantee of ever being paid, they faced substantial risk should they proceed to trial. At the time Class Counsel agreed to prosecute this case, notwithstanding a growing number of consumer complaints, Honda had not publicly acknowledged any problem with the sun visors and Honda's dealerships were not repairing sun visors beyond the initial, three-year warranty period. Class Counsel have a significant amount of experience in auto defect litigation and know from their own experience and the experience of their colleagues that any case involving defect claims against a major automotive manufacturer can, and often does, lead to costly litigation that goes on for years. *See, e.g., In re Gen. Motors Dex-Cool Prods. Liab. Litig.* (S.D. Ill. 2007) 241 F.R.D. 305 (nationwide class certification denied in a case involving defective intake manifold gaskets; class counsel ultimately achieved a nationwide settlement after spending 58,500 hours and $1.55 million in litigation costs to certify state classes in three state courts and prepare those cases for trial); *In re Bridgestone/Firestone, Inc.* (7th Cir. 2002) 288 F.3d 1012, 1019 (nationwide class certification denied in Ford Explorer roll-over litigation, which ultimately settled for coupons after seven years of litigation, including a 50-day bench trial in California state court); *see also Samuel-Bassett v. Kia Motors Am., Inc.* (Pa. Super. 2007) 2007 WL 4099951 (defective brake case brought in 2001; jury award of $600 per class member remains on appeal).

Counsel in this case should be awarded for their willingness to take on the risk of this lawsuit.

c. Counsel's Continuing Obligations to the Class

Under California law, class counsel have a continuing obligation to assist members of the class even after the judgment has been entered. *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546-547, 102 Cal.Rptr.3d 295 ("[C]lass counsel must represent all of the absent class members' interests throughout the litigation to the extent there are class issues."). Already, Class Counsel have received approximately 1,000 phone calls from class members with questions or comments regarding the settlement. (Berk Final Approval Decl. ¶ 13; Terrell Final Approval Decl. ¶ 3.) Other class members have contacted Class Counsel asking for updates on future developments, such as the date final approval is granted and the date the settlement becomes effective. (Berk Final Approval Decl. ¶ 13.) Given the size of the class (2.1 million), the number of people who have already contacted Class Counsel and the claims administrator, and the fact that many class members will be eligible to claim reimbursements for future sun visor failures within the seven-year extended warranty provided by this settlement, Class Counsel expect to continue to handle incoming questions on a regular basis. (Berk Final Approval Decl. ¶ 13; Terrell Final Approval Decl. ¶ 13; Tindall Final Approval Decl. ¶ 4.)

d. Preclusion of Other Employment

This lawsuit required Class Counsel to commit a significant number of hours in a short time period to investigate and resolve the claims of the Class. (Berk Final Approval Decl. ¶ 20; Terrell Final Approval Decl. ¶ 17; Tindall Final Approval Decl. ¶ 17.) The case was staffed primarily by six attorneys at three law firms, and required a significant commitment by those attorneys, making them unavailable to pursue other opportunities when they were working on investigating, litigating, and settling this case. (*Id.*) In committing these limited professional resources to this matter, the natural result was to delay progress on other matters and interfere with the investigation and filing of other potential cases. (*Id.*) This factor reinforces the reasonableness of the requested fee award.

D. Percentage-of-the-Fund Analysis Supports Plaintiffs' Fee Request

Courts generally use the percentage-of-the-fund method for determining the reasonableness of a request for attorneys' fees in cases involving a "common fund" out of which the attorneys' fees will be paid. As set forth above, that is not the situation here. In this case, Class Counsel's fees are to be paid separately from the relief provided to the class and do not reduce the amount that the class receives. Therefore, the lodestar method should be used. However, even if the Court used a "percentage-of-the-fund method" based on the value of the settlement as a "cross check" on the lodestar method, Plaintiffs' requested fee is reasonable.

The benchmark for an attorneys' fee award is twenty-five percent of the common fund. *See Torrisi v. Tucson Elec. Power Co.*, 8 F3d 1370, 1376 (9th Cir. 1993). Here, Plaintiffs' requested fee of $409,138.77 amounts to 13% of the value of the reimbursement claims and repairs made under the extended warranty thus far, and thus already is well below the benchmark. This number will only decrease as class members submit more reimbursement claims and have more visors replaced under the extended warranty. Thus, using the percentage-of-the-fund method as a "crosscheck" on the lodestar method, Plaintiffs' requested fee is reasonable.

E. The Payment of Costs Is Fair and Reasonable

Throughout the course of this litigation, Class Counsel have had to incur out-of-pocket costs totaling $21,706.04. (Berk Final Approval Decl. ¶ 18–19, Ex. B; Terrell Final Approval Decl. ¶ 16, Ex. 7; Tindall Final Approval Decl. ¶ 10, Ex. A.) These costs include: (1) filing fees; (2) copying, mailing, faxing and serving documents; (3) conducting depositions and obtaining deposition transcripts; (4) conducting computer research; (5) travel to depositions and hearings; (6) deposition transcripts; (7) expert fees; and (8) mediation expenses. (*See id.*) Class Counsel put forward these out-of-pocket costs without assurance that they would ever be repaid. (*Id.*) The expenses incurred were necessary to secure the resolution of this litigation. *See In re Immune Response Sec. Litig.* (S.D. Cal. 2007) 497 F. Supp. 2d 1166, 1177-1178

(finding that costs such as filing fees, photocopy costs, travel expenses, postage, telephone and fax costs, computerized legal research fees, and mediation expenses are relevant and necessary expenses in a class action litigation). The class notice informed class members that Class Counsel would seek a combined award of fees and costs no greater than $430,000. In light of the expenses Class Counsel have had to incur to bring this case to its current settlement posture; Class Counsel's request for a total award of $430,000, which includes $21,706.04 in costs, is reasonable.

F. The Incentive Awards Requested for the Named Plaintiffs Are Reasonable

Small service awards, which are in addition to claims-based recovery from the settlement, promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits such as the consolidated actions before this Court. *See In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 457, 463 (approving incentive awards of $5,000 from a total settlement of $1.75 million); *see also Manual for Complex Litigation* (Fourth) § 21.62, at 469 n.971 (2008) (service awards may be "warranted for time spent meeting with class members, monitoring cases, or responding to discovery"). "Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694; *see Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (approving a service award of $25,000)).[2]

Here, Plaintiffs ask the Court to approve modest incentive awards of $1,500 to each of the two named plaintiffs in this litigation, Theron Cooper and Alice Tran. Honda has agreed to pay these awards if approved. Mr. Cooper and Ms. Tran each spent a number of hours reviewing documents and consulting with counsel about the claims in this case, and were

[2] *See also Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 (approving $50,000 award); *Carroll v. Blue Cross & Blue Shield of Mass.* (D. Mass. 1994) 157 F.R.D. 142, 143, *aff'd* 34 F.3d 1065 (1st Cir. 1994) ($7,500 award); *Bogosian v. Gulf Oil Corp.* (E.D. Pa. 1985) 621 F. Supp. 27, 32 (awarding $20,000 to two class representatives); *Razilov v. Nationwide Mut. Ins. Co.* (D. Or. 2006) 2006 WL 3312024, **3-4 ($10,000 award).

prepared to maintain their involvement throughout the course of the litigation. (Berk Final Approval Decl. ¶ 21; Tindall Final Approval Decl., ¶ 18.) This commitment of personal time to support a case in which they had an extremely modest personal interest, but which provided substantial benefits to almost 2.1 million consumers, warrants Court approval of the requested incentive payments.

G. The Two Objections to Class Counsel's Requested Fees Should Be Overruled

As Plaintiffs point out in their Motion for Final Approval, the mere fact that there are objections to a settlement does not mean that the settlement should be rejected. A court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it. *See, e.g., Wershba v. Apple Computer, supra*, 91 Cal.App.4th at 245 (approving settlement where notice was sent to over 2.4 million class members and only 20 class members objected). Indeed, a court can approve a class action settlement as fair, adequate, and reasonable even over the objections of a large number of class members. *See Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291–96.

Here, out of almost 2.1 million potential settlement class members, only two individuals have objected to Plaintiffs' fee request. Settlement class member Thomas F. Whalen objects to the negotiated fee "on the grounds that it is an attempt to extort an unreasonably large fee for the attorneys based on a trivial defect." (*See* Terrell Final Approval Decl., Ex. 1 (Compendium of Objections) No. 20.) Mr. Whalen also recommends that the Court deny incentive awards to the Named Plaintiffs, although he does not specify a reason. (*See id.*) Settlement class member Christopher Hair objects to the negotiated fee because he "disagrees with the premise that the sun visors on Honda Civics which are part of the Class are defective." (*See id.* at No. 6.) Mr. Hair further contends that even if the visors are defective, "the contractual agreement (warranty) with Honda provides a sufficient remedy." (*Id.*) Extending the warranty related to the sun visors, according to Mr. Hair, is detrimental to Class Members and other Honda customers because the costs of this settlement will merely be passed along to other consumers.

Both of these objections are grounded in the assumption that relief for the class is not necessary either because the visors are not defective or because any such defect is "trivial." This assumption is belied by the numerous complaints regarding the visors that consumers have lodged online and with NHTSA, the nearly 300,000 visors that have already failed, the fact that, in some models, over 30 percent of the visors have failed, Honda's own admission that there was a problem with the visor's design, and by other objectors who are concerned that the settlement does not provide enough relief for the class. (*See* Terrell Final Approval Decl., Ex. 1 (Compendium of Objections), Nos. 1–5, 7–19, 21.)

Furthermore, neither of these objections calls into question the overall reasonableness of the negotiated fee, in light of the very real benefits conferred by the settlement and the substantial time and effort expended by Class Counsel, detailed above. Moreover, the level of objection here with respect to fees is de minimis by any standard. The claims administrator sent notice to 2,099,694 Class Members, and only two people have thus far objected with respect to the parties' negotiated attorney fees and costs of $430,000. A court may appropriately infer that the terms of a class action settlement are reasonable when few class members object to them. *See, e.g., Wershba*, 91 Cal.App.4th at 245 (approving settlement where notice was sent to over 2.4 million class members and only 20 class member objected).

Finally, neither objector provides any factual or legal support for the objection to the fee request. In light of the excellent result that this settlement achieves for the class, these objections should be overruled.

IV. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that the Court grant this motion and: (1) award Class Counsel an amount of $430,000 in attorneys' fees and expenses to be paid by Honda; and (2) award incentive payments of $1,500 to the each of the named Plaintiffs to be paid by Honda.

DATED this 8th day of August, 2011.

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PROOF OF SERVICE

I am a citizen of the United States and am employed in King County, Washington. I am over the age of eighteen (18) years and not a party to this action; my business address is 936 North 34th Street, Suite 400, Seattle, Washington, 98103-8869.

On August 8, 2011, I served the preceding document by placing a true copy thereof enclosed in a sealed envelope and served in the manner and/or manners described below to each of the parties herein and addressed as on the attached list.

☐ **BY MAIL:** I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with Terrell Marshall Daudt & Willie PLLC's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the addressee(s) designated.

☐ **BY OVERNIGHT COURIER SERVICE:** I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

☐ **BY FACSIMILE:** I caused said document to be transmitted to the telephone number(s) of the addressee(s) designated.

☒ **BY ELECTRONIC MAIL:** I caused said document to be transmitted to the email addresses of the addressee(s) designated.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, on the 8th day of August, 2011.

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