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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 OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL

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 respectfully submit this memorandum in support of final approval of the settlement agreement that was reached between Plaintiffs and American Honda Motor Co., Inc. ("Honda"). Plaintiffs have submitted under separate cover their Unopposed Motion for Award of Attorney's Fees and Expenses and Incentive Payments to Named Plaintiffs.

Plaintiffs and Honda have come to a fair and equitable settlement of a nationwide class action that provides substantial benefits to approximately one million owners of certain models of Honda Civics that were sold with defective sun visors (the "Class Vehicles").[1] The sun visors that were installed in the Class Vehicles were prone to failure. Prior to this lawsuit, consumers were dependent on Honda's discretion and Good Will for the repair of defective sun visors that were outside the initial 3-year/36,000-mile warranty period, forcing Class Members with failed visors to pay out-of-pocket to repair them or to attempt various "self help" remedies (such as using tape or a binder clip to keep the visor together.

The agreed-to settlement will greatly benefit Class Members by reimbursing them for the costs associated with past and future problems with the sun visors in Class Vehicles. The settlement obligates Honda to extend its initial warranty on the subject sun visors (which had already expired for hundreds of thousands of owners) to seven years or 100,000 miles. On a going-forward basis, settlement class members who experience problems with their sun visors within the new, extended warranty period will receive replacement sun visors at no charge.

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[1] The Class Vehicles include all 2006, 2007 and 2008 models of Honda Civics. It also includes the following 2009 Honda Civic models: All 2009 Civic Hybrids, 2009 Civic 2-Doors with VINs 2HGFG1…9H500001 through 2HGFG1…9H523741, 2009 Civic 4-Doors with VINs 19XFA1…9E000001 through 19XFA1…9E001024, VINs 1HGFA1…9L000001through 1HGFA1…9L014540, VINs 2HGFA1…9H500001 through 2HGFA1…9H511481, and VINs 2HGFA1…9H300001 through 2HGFA1…9H339040, 2009 Civic GXs with VINs 1HGFA4…9H000001through 1HGFA4…9H000783, 2009 Civic Si 2-Doors with VINs 2HGFG2…9H700001through 2HGFG2…9H702985, and 2009 Civic Si 4-Doors with VINs 2HGFA5…9H700001through 2HGFA5…9H704700.

Further, Honda will reimburse those settlement class members who previously paid out-of-pocket to repair or replace their sun visors upon the submission of appropriate supporting materials. The proposed settlement also provides for direct mail notice to inform class members of the extended warranty and the availability of reimbursement, a consistent and uniform claims process overseen by Honda with a formal appeals process for denied claims.

These favorable settlement terms were achieved after Plaintiffs performed an extensive pre-filing investigation (including retaining an automotive expert), requested and reviewed documents and data from Honda relating to the root cause and the nature and extent of the sun visor failure, and several months of negotiations between Plaintiffs' counsel and Honda.

Although the claims submission period is ongoing (and will continue for several more months), the claims submitted to date reflect the substantial benefit that the settlement provides to the Class Members. As of July 30, 2011, the independent claims administrator retained by the parties had mailed almost 2,100,000 notices to potential class members; more than 6,369 claims for reimbursement (representing 7375 visors) had been made as of July 29, 2011—claims which will require Honda to pay $456,650 in cash reimbursements. Further, to date Honda has made 40,917 repairs or replacements under the extended warranty, at a cost of approximately $2,782,356.

In total, the extended warranty and reimbursement program has yielded a value to date of $3,239,006. As explained in more detail below, the terms of the proposed settlement are eminently fair and confer a substantial benefit upon the class. Accordingly, final approval of this settlement should be granted.

II. AUTHORITY AND ARGUMENT

A. The Settlement Is Fair, Adequate, and Reasonable

Before granting final approval of a class action settlement, a reviewing court must first find that the settlement "is fair, reasonable, and adequate." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800 [56 Cal.Rpt.2d 483] (citing *Officers for Justice v. Civil Serv. Comm'n.*

(9th Cir. 1982) 688 F.2d 615, 625; Fed. R. Civ. P. 23(e)). In evaluating whether a class settlement is fair, adequate, and reasonable, courts generally refer to eight criteria, with differing degrees of emphasis: the likelihood of success by plaintiffs; the amount of discovery or evidence; the settlement terms and conditions; the recommendation and experience of counsel; the future expense and likely duration of litigation; the recommendation of neutral parties, if any; the number of objectors and the nature of objections; and the presence of good faith and the absence of collusion. 2 Herbert B. Newberg & Alba Conte, Newberg on Class Actions ("Newberg") § 11.43 "General Criteria for Settlement Approval" (3d ed. 1992). This list is "not exhaustive and should be tailored to each case." *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at 1801.

A settlement following sufficient discovery and genuine arm's-length negotiation is presumed fair. *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at 1802; *Knight v. Red Door Salons, Inc.* (N.D. Cal. Feb. 2, 2009, No. C 08-1520-SC) 2009 WL 248367, at *4; *see also Garner v. State Farm Mut. Ins. Co.* (N.D. Cal. Apr. 22, 2010, No. C 08 1365 CW (EMC)) 2010 WL 1687832, at *13 ("Where a settlement is the product of arms-length negotiations conducted by capable and experienced counsel, the court begins its analysis with a presumption that the settlement is fair and reasonable."). This is because "[t]he extent of the discovery conducted to date and the stage of the litigation are both indicators of counsel's familiarity with the case and of Plaintiffs having enough information to make informed decisions." *Knight*, 2009 248367, at *4.

In the end, "[s]ettlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027; *see also Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at 1801 ("Ultimately, the trial court's determination is nothing more than an amalgam of delicate balancing, gross approximations and rough justice") (internal quotations and marks omitted). Here, the record before the Court

demonstrates that the settlement agreement satisfies this standard and that final approval is appropriate.

1. The Settlement Offers Substantial Benefits, While Continued Litigation Poses Considerable Risks

The benefits of settlement and the plaintiffs' chances of success are typically evaluated together. *See, e.g., Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 488 ("An important consideration in judging the reasonableness of a settlement is the strength of the plaintiffs' case on the merits balanced against the amount offered in the settlement.") (internal marks omitted). In their Complaint, Plaintiffs alleged that Honda acted deceptively in designing, manufacturing, and servicing sun visors installed in certain Honda Civic models and that these sun visors contain defects in design and material that cause them to split and malfunction. Plaintiffs believe they have a strong case on the merits. Through discovery, Plaintiffs developed substantial evidence tending to show that Honda knew the visors were defective and failed to provide this information to consumers.

However, since the inception of the litigation, Honda has insisted that members of the proposed class have not suffered any damage. (*See* Joint Status Report filed March 10, 2011.) Honda also denies that it violated California's Consumers Legal Remedies Act (CRLA), California's Unfair Competition Law (UCL) or California's Business and Profession Code Section 17200, and disputes that Plaintiffs' claims are cognizable because the defective visors do not present a safety issue. (*Id.*) Assuming the Plaintiffs were able to certify the case as a class action, at trial, Plaintiffs would have to persuade a jury that the visors failed due to the defect rather than the individual customers' use and that the defect threatened the safety of the class members. *See Daugherty v. Am. Honda Motor Co.* (2006) 144 Cal.App.4th 824 [51 Cal.Rptr.3d 118] (dismissing plaintiffs' CLRA claim on the pleadings because plaintiffs' complaint was "devoid of factual allegations showing any instance of physical injury or any

safety concerns posed by the defect"). Even if Plaintiffs prevailed at trial, any recovery could be delayed for years by appeals of any favorable verdict.

Another risk Plaintiffs faced going forward is that this Court would decline to certify this case as a class action. Throughout this litigation, Honda has denied that class certification is appropriate here. *See* Joint Status Report filed March 10, 2011. For example, Honda has denied that California law governs the sale of class vehicles outside of the State of California and has argued that choice-of-law issues alone render the proposed class unmanageable. (*Id.*) Plaintiffs believe that substantial authority undermines Honda's position. *See, e.g., Clothesrigger, Inc. v. GTE Co.* (1987) 191 Cal.App.3d 605, 612–13 [236 Cal.Rptr. 605] (holding that California consumer statutes apply to non-California members of a nationwide class where the defendant is a California corporation and some or all of the challenged conduct emanates from California). However, the Court could have refused to certify the class if Honda were able to present convincing case law and facts to support its position, leaving only the named Plaintiffs to pursue their individual claims.

Under the settlement, by contrast, settlement class members avoid these risks and obstacles to recovery and receive substantial benefits. Prior to this action being filed, consumers could be charged for replacements if their sun visors failed outside of the warranty period. Under the settlement, for past failures, Honda agrees to reimburse settlement class members for 100 percent of their out-of-pocket expenses relating to the cost of purchasing a replacement sun visor. Settlement class members are not limited to one reimbursement, but can submit claims for every replacement sun visor they purchased. (SA at III.A.) Honda has also agreed to a significant warranty extension (7 years and/or 100,000 miles (whichever first occurs) instead of the standard 36 months or 36,000 miles, whichever first occurs) in which the cost of replacing a failed sun visor will be completely covered under the warranty. (SA at III.B.) Honda has agreed to provide this relief regardless of whether the Court grants final approval to the settlement. (*See* Preliminary Approval Order, Ex. 1.)

The settlement agreement also provides numerous benefits for settlement class members that go beyond the substantive relief. First, the settlement agreement includes a notice program, which provided individual mailed notice to all settlement class members. Second, the settlement provides settlement class members with claims handling by Honda and has a third-party administrator, which has implemented the notice program and maintains a settlement website that (1) provides instructions on how to file claims and how to contact the claims administrator, Honda, and class counsel; and (2) makes available to class members copies of key documents in this case, including the claim form, notice, and settlement agreement. (SA ¶ IV.A.) Third, the settlement agreement provides an appeal process paid for by Honda for any settlement class member who is dissatisfied with the relief provided. (SA ¶ III.C.) Fourth, under the settlement, class counsel are available to answer settlement class member questions and assist settlement class members with the notice and claims process. Fifth, the settlement agreement provides class members with the protections of court oversight and enforcement.

In these circumstances, settlement approval is appropriate. *See Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 249 [110 Cal.Rpt.2d 145] (approving class settlement despite the fact that the defendant had entered into a concurrent global settlement with the FTC where the class settlement provided enforcement mechanisms, a notice process, and the oversight of class counsel); *Hanlon v. Chrysler Corp.*, *supra*, 150 F.3d at 1030 (approving class settlement despite the fact that defendant had voluntarily agreed outside of the class settlement context to replace the defective car part free of charge).

The claims submitted thus far confirm that the settlement provides substantial value to the settlement class members. As of July 30, 2011, the independent claims administrator had mailed 2,099,694 notices to potential class members. (Declaration of Joel Botzet with Respect to Notification ("Botzet Decl.") ¶¶ 9–11.) As of July 30, 2011, 206,593 notices had been returned as undeliverable. (*Id.* ¶ 12.) Therefore, 1,893,101 class members have successfully been mailed notice of this lawsuit.

As of July 29, 2011, Honda had received claims for 6639 unique VINS representing 7375 sun visor replacements for a total value of $456,650. (Declaration of Roy Brisbois in Support of Final Approval of Settlement ("Brisbois Decl.") ¶ 8.) The average number of sun visors per claimant is 1.11 at an average reimbursement amount of $68.78. Honda is in the process of compiling information regarding the number of claimants who had a visor that failed after the original three-year, 36,000-mile warranty had expired as well as the number of claims that have been rejected or sent notice of a deficiency. The parties will submit this information as soon as they receive it as well as updated numbers regarding the total value of the settlement to the class. These totals do not include the number of visors replaced under the extended warranty, which Honda is compiling, but preliminary information indicates that the value of the extended warranty will be substantial. (*Id.*) Already, Honda has replaced or repaired 40,917 visors under the extended warranty, representing a cash value of $2,782,356. (*Id.*) Therefore, with approximately four months left in the claims period and potentially years left in the extended warranty, reimbursement claims and warranty replacements represent a total value of $3,239,006.

2. The Substantial Amount of Discovery Completed Supports Final Approval of the Settlement

While courts consider the amount of discovery as a factor in determining the fairness of settlement, "formal discovery is not a necessary ticket to the bargaining table." *In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459; *see also Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 963 (finding that counsel had a "good grasp on the merits" of the dispute before settlement talks began).

Here, although the parties reached settlement early in the litigation, they arrived at the proposed settlement terms only after being informed of the nature, extent, and likely cause of the proposed defect. Plaintiffs' counsel conducted extensive pre-filing discovery before filing Complaints in Washington and California. (*See* 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.") ¶¶ 4–6.) After filing, Plaintiffs obtained and reviewed a range of internal Honda documents describing the nature of the defect, its root cause, and customer complaints. Plaintiffs thereafter corroborated the information in these documents and tested Honda's assertions, deposing 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. (*See id.* ¶ 9.) Through these efforts, Plaintiffs were well-informed regarding the strengths and weaknesses of their position. For example, Plaintiffs learned that test results strongly indicate that Honda's most recent design change has fixed the problem with the visors. (*See* Declaration of Beth E. Terrell in Support of Plaintiffs' Unopposed Motions for (1) Final Approval of Class Settlement, and (2) Attorneys' Fees and Incentive Payments ("Terrell Final Approval Decl."), Ex. 4 (claims rate data and durability test results indicating that the number of warranty claims for 2009 Civics dropped from 4,293 to 680 and durability improved substantially after Honda changed the design of the sun visor for later 2009 models), Ex. 3 (Shannon Depo.) at 94:25–105:24 (Honda's "person most knowledgeable" explaining that Honda had identified the cause of the defective visors and confirming that as of 2009 defective parts had been used up and visors were produced with an effective countermeasure in place).) Armed with this information, the parties were able to confidently craft a class definition that included those vehicles with defective visors and Plaintiffs felt secure that the settlement would provide effective relief for class members.

3. The Positive Recommendation and Extensive Experience of Counsel Support Final Approval of the Settlement

A settlement is presumed fair if it is endorsed by experienced, competent counsel equipped with enough information to act intelligently. *See Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at 1802. Class counsel in this case, who are greatly experienced and skilled in

class action litigation, support the settlement as fair, reasonable, and adequate, and in the best interests of the class as a whole. (Berk Final Approval Decl. ¶ 3; Terrell Final Approval Decl. ¶ 18; Declaration of Steven Tindall in Support of Motion for Final Approval and Request for Attorneys' Fees ("Tindall Final Approval Decl.") ¶ 5). Indeed, based on class counsel's extensive knowledge and experience in litigating similar consumer actions, and class counsel's thorough evaluation of the strengths and weaknesses of this case gained through years of discovery, class counsel believe this settlement to be an excellent result. *Id.*

4. Future Expense and Likely Duration of Litigation Support Final Approval of the Settlement

Another factor for the Court to consider in assessing the fairness of a settlement is the expense and likely duration of the litigation had a settlement not been reached. *See Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at 1801.

As discussed above, the settlement guarantees a substantial recovery for the settlement class while obviating the need for lengthy, uncertain, and expensive pretrial practice, including a lengthy and uncertain class certification process, trial, and appeals. Even if the class were to prevail against Honda at class certification and trial, Honda would likely appeal any adverse rulings against it, thus delaying any relief to the settlement class for an indefinite amount of time and subjecting the class to the risk of an adverse ruling by the Court of Appeals.

5. The Small Number of Objectors and the Nature of the Objections Support 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* (2001) 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). 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, the claims administrator has sent notice to almost 2.1 million class members, and only 21 people (that is, approximately one out of every 100,000 class members, or 0.001 % of the class) have objected to date. (*See* Terrell Final Approval Decl. ¶ 2, Ex. 1 (Compendium of Objections).[2]) This de minimis level of objection is far smaller than that approved by courts in similar instances. *See Lelsz v. Kavanagh* (N.D. Tex. 1991) 783 F. Supp. 286, 289 (approving settlement for class of 5,693 where 370 objected); *Parker v. Anderson* (5th Cir. 1982) 667 F.2d 1204, 1207 (affirming approval of settlement where one class member out of 11 objected).

Moreover, the 21 objections received to date do not demonstrate that the settlement is anything but fair, adequate, and reasonable. The theme of the majority of the objections is that the settlement could have in some way been "better." For example, some class members object because, although the settlement provides full reimbursement for the out-of-pocket cost of replacing the sun visors, it does not reimburse class members for other, incidental expenses they incurred. (*See* Terrell Final Approval Decl., Ex. 1 (Compendium of Objections), No. 8 (objecting because the settlement does not provide reimbursement for the cost of driving to the dealership and missing a day's work); No. 21 (objecting because the settlement does not provide reimbursement where a class member previously purchased an extended warranty now provided by the settlement); No. 13 (objecting on the ground that the settlement does not provide class members compensation for the labor of fixing the visor themselves).) Other class members believe that the warranty on the visors should be unlimited, extending through the life of the car. (*Id.*, Nos. 3, 5, 7, 16, 17, 19.)

Although Plaintiffs appreciate and respect the comments and concerns outlined in these objections, none of them counsels against final approval. "A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable." *Wershba v. Apple Computer*,

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[2] The deadline to object to the settlement is August 26, 2011. After this deadline has passed, Plaintiffs will respond to any further objections that they receive.

supra, 91 Cal.App.4th at 250 (citing *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139 [269 Cal.Rptr. 844] (settlements found to be fair and reasonable even though monetary relief was "relatively paltry"); *City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455 (settlement amounted to only "a fraction of the potential recovery")). "Compromise is inherent and necessary in the settlement process. Thus, even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Wershba v. Apple Computer*, *supra*, 91 Cal.App.4th at 250 (quotations and internal marks omitted). Where settlement class members are "close to being made whole," it is appropriate to overrule objections and approve the settlement. *Id.* at 251 (citations omitted).

Here, the settlement provides 100 percent reimbursement for those settlement class members who paid out of pocket to repair the defective visors. Plaintiffs also have obtained a substantial warranty extension to 7 years or 100,000 miles, whichever occurs first. Therefore, the settlement will allow class members whose visors fail to have them replaced for free until as late as 2016 for some class members. Attempting to obtain an unlimited warranty extension through litigation is a prospect riddled with risk and delay. Honda maintains that any future problems with the visors occur due to individual misuse rather than an inherent defect and that a certain percentage of visors fail over the lifetime of the car regardless of the presence or absence of any alleged defect. This argument grows stronger the more miles a vehicle has on it and the older the vehicle. To obtain a verdict awarding an unlimited warranty, Plaintiffs would have had to convince a jury that a defect, rather than ordinary wear and tear, caused the visors to fail, even in older, higher-mileage vehicles—an argument that is difficult to prove on a class-wide basis for a class of over 2.1 million vehicles.

Some class members who seek an unlimited warranty do so on the ground that the settlement does not guarantee the replacement visors will be defect-free. See Terrell Final

Approval Decl., Ex. 1 at Nos. 2, 3, 12. These objections should be overruled. Plaintiffs have obtained substantial discovery from Honda, confirming that (1) Honda studied the design of non-defective visors used in vehicles in Japan; (2) Honda re-designed its U.S. visors so that they use the same design as visors installed on Japanese vehicles; (3) Honda conducted durability tests showing that the newly-designed visors perform well; (4) Honda installed the non-defective visors in certain 2009 Civics and in those models manufactured after 2009, and the warranty claims for the Civics with the newly-designed visors fell drastically. (*See* Terrell Final Approval Decl., Exs. 3–4.) For these reasons, the parties are confident that the new replacement visors will be effective.

Some class members assert the warranty period should be extended because their visors failed before 100,000 miles but they did not fix them at the time of the failure and now they are ineligible for recovery because their vehicles have more the 100,000 miles on them. (Terrell Final Approval Decl., Ex. 1 (Compendium of Objections), Nos. 1, 4, 9, 10, 11, 14, 15.) These class members are mistaken. The settlement provides relief for class members whose visors fail before seven years or 100,000 miles. Any class member whose visor failed before 100,000 miles but who is denied a claim should be able to successfully appeal this determination.

Likewise, it is reasonable to limit reimbursement for past failures to the cost of repairing the visors. To recover incidental expenses on behalf of class members such as travel costs to the dealership or a missed day of work (*see, e.g.*, Terrell Decl., Ex. 1 at No. 18), Plaintiffs would have to prove that the defective visor proximately caused each claimed expense. For class members who claim they are entitled to the out-of-pocket costs incurred traveling to the dealership, this would mean evaluating the circumstance of each claimed trip to prove that it was undertaken solely to fix the defective visor. In the case of the woman who already had purchased an extended warranty, the circumstances surrounding her purchase of the extended warranty (that covered far more than her car's sun visor) would have to be evaluated to determine whether she received benefits from the warranty other than protections

from the cost of repairing a failed sun visor. Given the size of the class (over two million notices were mailed) and the individualized nature of such evaluations, a court is unlikely to certify such a claim. Moreover, to the extent an individual class member has substantial incidental expenses not covered by the settlement, he or she is free to choose to opt out of the settlement and pursue such claims individually.[3]

In short, given that the settlement provides reimbursement for out-of-pocket costs for replacing the visors and provides a 7-year/100,000-mile extended warranty on the visors, settlement class members here are indeed "close to being made whole." *Wershba,* 91 Cal.App.4th at 251. Therefore, Plaintiffs respectfully request that the Court overrule the objections and approve the settlement.

6. Presence of Good Faith and the Absence of Collusion Support Final Approval of the Settlement

Courts recognize that arm's-length negotiations conducted by competent counsel are *prima facie* evidence of fair settlements. As the United States Supreme Court has held, "One may take a settlement amount as good evidence of the maximum available if one can assume that parties of equal knowledge and negotiating skill agreed upon the figure through arms-length bargaining . . . ." *Ortiz v. Fibreboard Corp.* (1999) 527 U.S. 815, 852, 119 S. Ct. 2295, 144 L. Ed. 2d 715; *see also Dunk v. Ford Motor Co., supra,* 48 Cal.App.4th at 1802; *M. Berenson Co., Inc. v. Faneuil Hall Marketplace, Inc.* (D. Mass. 1987) 671 F. Supp. 819, 822 ("where . . . a proposed class settlement has been reached after meaningful discovery, after arm's-length negotiation by capable counsel, it is presumptively fair").

Here, the proposed settlement is the result of intensive, arm's-length negotiations between experienced attorneys who are highly familiar with class action litigation in general,

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[3]Two class members object to an award of attorneys' fees on the ground that the settlement is not necessary. Plaintiffs address these objections in their fee petition. *See* Plaintiffs' Memorandum in Support of Plaintiffs' Unopposed Motion for an Award of Attorneys' Fees and Expenses and Incentive Payments to Named Plaintiffs at Section III.G.

and with the legal and factual issues of this case in particular. To reach this settlement, the parties to this action engaged in extensive negotiations, including two lengthy meetings. At the first meeting, the parties met in person and agreed generally on relief for the settlement class. At the second meeting after the parties had agreed upon the relief for the settlement class, the parties engaged a well-respected mediator, the Honorable Curtis von Kann (ret.) to assist them in resolving their dispute over appropriate attorneys' fees and incentive awards for the class representatives. These discussions, which at all times were at arm's-length and non-collusive, culminated in a nationwide settlement agreement. (Berk Final Approval Decl. ¶ 11.)

B. The Class Members Have Received the Best Notice Practicable

This Court has already determined that the notice program in this case meets the requirements of due process and applicable law, provides the best notice practicable under the circumstances, and constitutes due and sufficient notice to all individuals entitled thereto. *See* Preliminary Approval Order, ¶ 10. This notice program has been fully implemented by independent claims administrator, Rust Consulting, Inc. (the "ICA").

Between June 1, 2011 and June 3, 2011 counsel for Honda provided the ICA with a computer-readable list of class members' names, Vehicle Identification Numbers, and last known addresses ("Class List"). (Botzet Decl. ¶ 8.) After receiving the Class List, the ICA updated the class members' addresses using the National Change of Address database and eliminated incomplete and duplicate records. (*Id.*)

Between June 21, 2011 and July 5, 2011, the ICA mailed the court-approved notice and claim form to 2,064,360 potential settlement class members. (Botzet Decl. ¶ 9, Ex. A.) The notice also directed class members to a dedicated settlement website and to class counsel if they wanted further information regarding the case or the settlement. Through July 30, 2011, the Post Office had returned 206,593 undeliverable notice packages and 9,849 notice packages with forwarding addresses attached. (*Id.* ¶ 12–13.) The ICA promptly re-mailed all notices that were returned by the U.S. Postal Service with forwarding address information. (*Id.* ¶ 13.)

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. (Botzet Decl. ¶ 10.) During the week of July 30, the ICA re-mailed notice to these individuals, 35,334 in total, at the corrected addresses. (*Id.*) As this Court recognized at the preliminary approval stage, the notice provisions implemented here satisfy the requirements of due process. *See Silber v. Mabon* (9th Cir. 1994) 18 F.3d 1449, 1454.

As of July 30, 2011, there have been approximately 8,880 visits to the settlement website. (Botzet Decl. ¶ 6.) In addition, class counsel received and responded to approximately 1,000 telephone calls and letters from class members. (Berk Final Approval Decl. ¶ 13 Terrell Final Approval Decl. ¶ 3.) Class counsel answered questions regarding the settlement and assisted many settlement class members in completing the claim form. (*Id.*) Class counsel has observed that class members have generally expressed positive views about the terms of the settlement and have been pleased that they have the ability to replace their visors or obtain reimbursement for past repairs. (*See id.*, Ex. 2 (noting that she was in favor of the settlement and thanking class counsel "for speaking on behalf of all class members").)

C. Relatively Few Class Members Have Chosen to Opt-Out of the Settlement

Pursuant to the Court's Preliminary Approval Order, any settlement class member wishing to be excluded from the settlement was required to submit a "request for exclusion" to the ICA postmarked no later than August 26, 2011. As of July 30, 2011, the ICA had received only 623 timely exclusion requests from settlement class members. (Botzet Decl. ¶ 14.) These 623 opt-outs represent a tiny fraction (.030%)—that is, three-hundreths of one percent—of the 2,099,694 members of the class who received the Court-approved notice.

III. CONCLUSION

The settlement that Plaintiffs reached with Honda is reasonable and fair. For these reasons, Plaintiffs respectfully request that the Court enter the Proposed Order of Final Settlement Approval and of Dismissal with Prejudice submitted herewith. At the final approval

hearing scheduled for 11:00 a.m. on Friday, September 16, 2011, class counsel will address any remaining questions the Court may have.

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.

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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.

Beth Terrell

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