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Superior Court of California
County of Los Angeles

SEP 16 2011

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

John A. Clarke, Executive Officer/Clerk
By K. Krestienicz, Deputy
K. KRESTIENICZ

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

~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' 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.

~~PROPOSED~~ ORDER GRANTING PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES
AND INCENTIVE PAYMENTS TO NAMED PLAINTIFFS - 1

1 Plaintiffs' Motion for Attorneys' Fees and Costs and Incentive Payments to the Named
2 Plaintiffs (the "Fee Motion") came before the Court for hearing on September 16, 2011,
3 pursuant to this Court's April 22, 2011 Order granting preliminary approval to the proposed
4 Settlement. The Court has read and considered the Fee Motion; all supporting declarations and
5 other materials relating to the Fee Motion; and the objections to the Fee Motion, including the
6 Objection of Thomas F. Whalen, dated July 14, 2011 and the Objection of Christopher Hair,
7 dated July 6, 2011.

8 **I. THE REQUESTED AWARD OF ATTORNEYS' FEES IS APPROPRIATE**
9 **UNDER THE LODESTAR METHOD**

10 At the conclusion of a successful class action brought pursuant to California's
11 Consumers Legal Remedies Act ("CLRA"), Class Counsel may apply to the Court for an award
12 of "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties'
13 agreement." Cal. Civ. Code § 1780(e). "[A]n award of attorney fees to 'a prevailing plaintiff'
14 in an action brought pursuant to the CLRA is *mandatory*, even where the litigation is resolved
15 by a pre-trial settlement agreement." *Kim v. Euromotors West/The Auto Gallery* (2007) 149
16 Cal.App.4th 170, 178–79, 56 Cal.Rptr.3d 780 (emphasis added).

17 Where a defendant pays the fees separately pursuant to a fee-shifting statute like the
18 CLRA, the lodestar method is preferred. *See In re Consumer Privacy Cases, supra*, 175
19 Cal.App.4th at 556–57; *see also Deloach v. Philip Morris Cos.* (M.D.N.C. Dec. 19, 2003) No.
20 1:00CV01235, 2003 WL 23094907, at *4 ("Since no common fund or constructive common
21 fund exists, the court concludes that it is more appropriate to use the lodestar methodology in
22 awarding attorneys' fees in this case."). The lodestar is calculated by multiplying the number
23 of hours reasonably expended on the litigation by a reasonable hourly rate. *In re Consumer*
24 *Privacy Cases, supra*, (2009) 175 Cal.App.4th 545, 556–57, 96 Cal.Rptr.3d 127. In
25 determining a reasonable rate, the court considers the "experience, skill and reputation of the
26 attorney requesting fees." *Id.* (quoting *Trevino v. Gates* (9th Cir. 1996) 99 F.3d 911, 924).

27 The court also considers "the prevailing market rates in the relevant community." *Id.* (quoting
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1 *Blum v. Stenson* (1984) 465 U.S. 886, 895). The Court may then enhance the lodestar by
2 applying a multiplier to take into account the contingent nature and risk associated with the
3 action, as well as other factors such as the degree of skill required and the result achieved for
4 the class. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1130, 1137, 104 Cal.Rptr.2d 377.
5 "Multipliers can range from 2 to 4 or even higher." *Wershba v. Apple Computer* (2001) 91
6 Cal.App.4th 224, 255, 110 Cal.Rptr.2d 145 (citing *Coalition for L.A. County Planning etc.*
7 *Interest v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251, 142 Cal.Rptr.766; *Arenson v.*
8 *Board of Trade of City of Chicago* (N.D. Ill. 1974) 372 F. Supp. 1349)

9 The Court has considered these factors and determines that the requested award of
10 attorneys' fees and reimbursement of expenses is appropriate. The hours that Class Counsel
11 has spent to date were reasonably spent. The rates charged by Class Counsel also are
12 reasonable.

13 The \$408,293.96 fee requested by Class Counsel is less than their total lodestar incurred
14 to date. Even if it were more, a multiplier would be reasonable given the outstanding result
15 Class Counsel have achieved for the settlement class, the risks involved in taking the legal
16 claims to trial, the complexity of the case, the continuing obligation that counsel has to devote
17 time and effort to the litigation, and the fact that the litigation precluded counsel from taking
18 other employment. See *In re Consumer Privacy Cases, supra*, 175 Cal.App.4th at 556.

19 **II. CLASS COUNSEL'S REQUEST FOR REIMBURSEMENT OF COSTS IS**
20 **REASONABLE**

21 The Court further finds that Class Counsel's request for reimbursement of costs is also
22 reasonable. Throughout the course of this litigation, Class Counsel incurred out-of-pocket
23 costs totaling \$21,706.04. These costs include: (1) filing fees; (2) copying, mailing, faxing and
24 serving documents; (3) conducting depositions and obtaining deposition transcripts; (4)
25 conducting computer research; (5) travel to depositions, hearings, and mediation sessions; (6)
26 expert fees; and (7) mediation expenses. Courts allow recovery of pre-settlement litigation

costs in the context of class action settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 974 (9th Cir. 2003). Reimbursement of reasonable costs is fully in keeping with applicable law. Based on a review of Class Counsel's expense reports, the Court is satisfied that the requested costs are relevant to the litigation and reasonable in amount.

III. INCENTIVE AWARDS FOR THE NAMED PLAINTIFFS ARE APPROPRIATE

Plaintiffs request modest incentive awards of \$1,500 to each of the two named plaintiffs in this litigation, Theron Cooper and Alice Tran. The trial court has discretion to award incentives to the class representatives. *In re Mego Fin'l Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000). Here, the record indicates that Mr. Cooper and Ms. Tran each spent time reviewing documents and consulting with counsel about the claims in this case and were prepared to maintain their involvement throughout the course of the litigation. In light of these facts, the Court finds that each Class Representative's contribution to the litigation and settlement process was sufficient to warrant an incentive payment award.

When compared to service awards in other cases, the \$1,500 payments requested here are justified.¹ In light of the Class Representatives' efforts and the risks undertaken to obtain the Settlement for the Class, the Court hereby approves the payment of \$1,500 each to Theron Cooper and Alice Tran.

IV. THE TWO OBJECTIONS TO THE FEE MOTION LACK MERIT

Of the almost 2.1 million Settlement Class Members to receive direct mailed Notice of the Settlement, only two timely objected to Class Counsel's request for an award of attorneys' fees and costs in this matter. The Court has considered the two objections and finds that they are without merit and that they are hereby overruled.

¹ 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).

1 Settlement class member Thomas F. Whalen objects to the negotiated fee "on the
2 ground that it is an attempt to extort an unreasonably large fee for the attorneys based on a
3 trivial defect." Mr. Whalen also recommends that the Court deny incentive awards to the
4 Named Plaintiffs, although he does not specify a reason. Settlement class member Christopher
5 Hair objects to the negotiated fee because he "disagrees with the premise that the sun visors on
6 Honda Civics which are part of the Class are defective." Mr. Hair further contends that even if
7 the visors are defective, "the contractual agreement (warranty) with Honda provides a sufficient
8 remedy." Extending the warranty related to the sun visors, according to Mr. Hair, is
9 detrimental to Class Members and other Honda customers because the costs of this settlement
10 will merely be passed along to other consumers.

11 Both of these objections are grounded in the assumption that relief for the class is not
12 necessary either because the visors are not defective or because any such defect is "trivial."
13 The record contains substantial evidence that this assumption is without merit. For example,
14 the record indicates that (1) there have been numerous complaints regarding the visors that
15 consumers have lodged online and with NHTSA; (2) nearly 300,000 visors have already failed;
16 (3) in some models, over 30% of the visors have failed; (4) Honda has admitted there was a
17 problem with the visor's design; and (5) other objectors are concerned that the settlement does
18 not provide enough relief for the class.

19 In addition, neither of these objections calls into question the overall reasonableness of
20 the negotiated fee, in light of the benefits conferred by the settlement and the substantial time
21 and effort expended by Class Counsel. Therefore, these objections are overruled.

22 * * *

23
24 Due and adequate notice having been given to the Class as required in this Court's April
25 22, 2011 Preliminary Approval Order, and the Court having considered all papers filed and
26

1 proceedings had herein, and otherwise being fully informed, and good cause appearing
2 therefore,

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

4 1. This Court hereby finds and concludes that due and adequate notice was directed
5 to all persons and entities who are Class members, advising them of Class Counsel's intent to
6 seek attorneys' fees and expenses, the proposed Class Representatives' stipends, and of their
7 right to object thereto.

8 2. A full and fair opportunity was accorded to all such persons and entities to be
9 heard with respect to the Fee Motion.

10 3. The objections to the Fee Motion do not counsel against approval of Plaintiffs'
11 counsel's requested fees and are hereby overruled.

12 4. The Court hereby grants Class Counsel's request for reimbursement of
13 \$21,706.04 in out-of-pocket costs, plus attorneys' fees in the amount of \$408,293.96, for a
14 combined total of \$430,000.

15 5. In addition to any relief they may receive under the Settlement Agreement, the
16 Court approves payment of a \$1,500 incentive payment to Theron Cooper and Alice Tran.

17 6. The awarded attorneys' fees and costs shall be paid pursuant to the terms,
18 conditions and obligations of the Settlement Agreement.

19 7. The awarded fees and expenses shall be directed to Class Counsel for
20 distribution in a manner that reflects each firm's contribution to the initiation, prosecution and
21 resolution of this litigation.

22 Without affecting the finality of this Order, the Court reserves continuing and exclusive
23 jurisdiction over parties to the Settlement Agreement to settle any disputes related to the
24 allocation of the costs and fees awarded by this Order.

25
26 IT IS SO ORDERED.

1 Dated: 9/16, 2011.

2 WILLIAM F. HIGHBERGER

3 THE HON. WILLIAM F. HIGHBERGER

4 Presented by:

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27 ~~PROPOSED~~ ORDER GRANTING PLAINTIFFS' MOTION
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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.

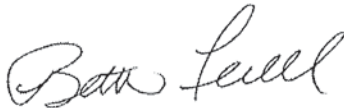
☐ **BY OVERNIGHT COURIER SERVICE:** I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

☐ **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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