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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 06 2011

John A. Clarke, Executive Officer/Clerk
BY Kim Hilaire, Deputy

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

REPLY IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL

Complaint Filed: November 1, 2010

CLASS ACTION

Judge: Hon. William F. Highberger

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

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I. INTRODUCTION

Plaintiffs and class counsel have achieved an excellent result for the class and believe the settlement they reached with Honda fully merits final approval. Class members overwhelmingly agree: out of a class estimated at 2,099,694 individuals, only 1,012 have submitted exclusion requests[1] and only 46 objected to the settlement.[2] (*See* Supplemental Declaration of Joel Botzet with Respect to Notification ("Supp. Botzet Decl.") ¶ 14; Supplemental 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 ("Supp. Terrell Decl.") ¶¶ 2–5.) By contrast, 8,960 have already filed claims for reimbursements and 60,210 have had their visors repaired or replaced under the extended warranty provided under the Settlement. (Declaration of Julie Li Fo Sjoe ¶¶ 5–12.)

When considering final approval of a class settlement under Rule 23, the Court's inquiry is whether the settlement is "fair, adequate, and reasonable." *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)). As the court recognized in *Dunk*, the trial court's ultimate determination will involve a consideration of several factors, including the "reaction of the class members." *Id.* Plaintiffs addressed each of these factors in their Memorandum of Points and Authorities in Support of Plaintiffs' Unopposed Motion Final Approval ("Final Approval Motion") and also addressed the objections they had received at the time they filed their Final Approval Motion. Because the deadline for objections had not yet passed, Plaintiffs now revisit the "class members' reaction" factor here, and address the objections that they have received since they filed the Final Approval Motion.[3]

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[1] Some of the 1,012 exclusion requests may be untimely. The parties will meet and confer regarding whether to recommend allowing the untimely exclusions.

[2] The parties understand that the Court received some objections that the parties did not receive. Class Counsel has reviewed these objections and their content is substantially similar to the objections received by counsel and that are addressed herein.

[3] Class Counsel will address objections to their fee application in a separate reply brief.

Under the Court-approved notice program, 2,099,694 class members were mailed notices by direct mail. Less than eleven percent were returned undeliverable and without forwarding addresses. (Supp. Botzet Decl. ¶¶ 9, 11, 12.) A case website received 13,458 unique visits. (*Id.* ¶ 6.) Given the scope of such notice, the modest number of opt-outs and objectors combined with the robust claims rate constitute strong evidence that the settlement is fair, adequate and reasonable.

As discussed below, the content of the objections also does not counsel against final approval. Class counsel fully appreciate the important role that objectors can play in the class settlement approval process and are prepared to respond to the legitimate concerns of any objector. However, given the nature of this settlement, the tremendous relief it provides, the scope of the notice, and the overwhelmingly positive response of the class, none of these objections should be allowed to deprive the class members of the benefits they are entitled to receive under the settlement.

A. Class members' Positive Reaction Supports 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 224, 245 [110 Cal.Rpt.2d 145] (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, class member response to the settlement has been overwhelmingly positive. Plaintiffs have talked to hundreds of class members, the majority of whom support the settlement. (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

Decl.") ¶ 3; 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 Decl.") ¶ 13.) Further, counsel and the court have received at least eight written letters supporting the settlement. (*See* Supp. Terrell Decl., Ex. 33.) In these letters, Settlement Class Members write, "Thank you for letting me show my support for this settlement" (Hogle letter); "We are grateful Honda is being held accountable" (Williams letter); "I like the settlement and it should be approved" (Velez letter); "I CONCUR WITH THE LAWSUIT and urge the court to proceed with the legal actions and provide payment to all eligible Class Members" (Ridgeway letter) (emphasis in original); "I wish to express my full support. Without the expense of similar court actions automobile manufacturers seem to loose [sic] any incentive to use top quality materials in their products" (Dickert letter); "I look forward to the settlement so that I may have [my visor] replaced under the extended warranty settlement" (McPhee letter); "I like the settlement and that it should be approved" [sic] (Yoon letter); "I am writing to say I like this settlement and it should be approved" (Post letter). *See id.*

With a class estimated at 2,099,694 individuals (and direct, individual notice successfully mailed to 89% of them), the forty-six objecting class members represent only .0022% of the class, and the 1,012 opt-outs only 0.048197 %. The scarcity of objections and opt-outs indicates broad, class-wide support for the settlement and supports approval. *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).

B. The Objections Lack Merit

Approximately 46 class members filed objections to the proposed settlement. While class counsel understand and appreciate the comments and concerns outlined in their objections, none of them counsels against final approval. The objectors did not offer reasonable or workable alternatives to address any alleged weaknesses in the settlement; rather,

the theme of the objections is that the settlement could have in some way been "better." As the Ninth Circuit has explained:

> Of course it is possible . . . that [a] settlement could have been better. But this possibility does not mean [a] settlement presented [is] not fair, reasonable or adequate. Settlement 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. In this regard, the fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness.

(9th Cir. 1998) *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027.

This settlement followed a substantial period of investigation, informal discovery, settlement discussions, confirmatory discovery, and careful evaluation of Plaintiffs' claims. It also reflects both the strengths and weaknesses of the parties' claims and defenses. Both sides were required to make concessions to reach closure. Moreover, the settlement provides the substantial benefits of requiring 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 and reimbursing class members for the reasonable out-of-pocket costs associated with sun visor problems.

C. Objections That the Warranty Extension Is Not Sufficient Should Be Overruled

Some class members have objected that the seven-year 100,000 warranty extension provides insufficient relief. (*See* Supp. Terrell Decl., Ex. 17 ("As an owner of a sunvisor which may be OR MAY MANIFEST THE DEFECT at some future date, I believe I should receive no-cost repair or replacement of the sunvisor WHENEVER THAT DEFECT MIGHT EMERGE") (caps in original); Ex. 18 ("I object to the portion of the settlement limiting claims to 100,000 miles"); Ex. 15 ("There should not be any limit on getting free replacement sun visors from Honda"); Ex. 19 ("I would expect to have the visors replaced until I no longer own the vehicle or until Honda replaces the visors with something that doesn't break"); Ex. 20 ("Honda Motor should provide this repair free for the life of its car"); Ex. 21 ("I think the

settlement is unfair to certain class members because it limits settlement to those who have under 100,000 miles on their vehicle"); Ex. 14 ("I do not understand what the mileage limitation has to do with the quality or faultiness of the visor."); Ex. 22 ("I object to the settlement because the length of time, and mileage; of the extended warranty are not long enough"); Ex. 23 ("I should not ever have to pay for the replacement of the visor due to it cracking/splitting open"); Ex. 8 ("I feel *strongly* that the proposed cap of *100,000 miles* is an unsatisfactory solution") (emphasis in original)). For the following reasons, these objections should be overruled.

"A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable." *Wershba v. Apple Computer*, *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 , as suggested by some objectors, 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.

D. Objections That the Settlement Does Not Guarantee a Defect-Free Visor Should Be Overruled

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* Supp. Terrell Decl., Ex. 16 ("[M]y concern is that my sun-visors will split again after the extended warranty expires"); Ex. 24 (objecting "there has been no attempt to make [the sun visors] better"); Ex. 25 (objecting that "the settlement does not require Honda to solve the problem, which is the poor design of the sun visors"); Ex. 26 (objecting that the defective visors "were replaced with the same visor indicated as having a defect from that which required replacement"); Ex. 27 (asking the court "not to approve the settlement unless Honda corrects the defective visor problem instead of replacing broken visors with defective ones"); Ex. 22 (suggesting that Honda "re-design the visor as a single piece visor (such as the CR-V)"); Ex. 21 (objecting that the settlement "does not address the underlying manufacturer's defect"); Ex. 8 (submitting that a settlement "whose basis is the *replacement of one bad part with another bad part* is no settlement at all") (emphasis in original)). 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.

E. Objections That the Settlement Does Not Cover Visors That Failed Before 100,000 Miles Should Be Overruled

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. (Supp. Terrell Decl., Exs. 11–14) These class members are mistaken and misunderstand the relief available under the settlement. The settlement provides relief for class members whose visors fail before seven years or 100,000 miles. Plaintiffs' counsel have attempted or will attempt to contact any class member who has objected to the settlement on this ground to advise them that they should be able to recover under the settlement and to contact their dealers. Any class member whose visor failed before 100,000 miles but who is denied a claim should be able to successfully appeal this determination.

F. Other Objections Should Be Overruled

Class member Lorelei Ballard has objected that the proposed settlement "does not benefit Class Vehicle owners who made extra efforts to preserve the life of their sun visors." (Supp. Terrell Decl., Ex. 10.) According to Ms. Ballard, she stored her Civic in a garage and always used a sunshade. In her view, her sun visor has not failed as a result of her particular care. (*See id.*) Although class counsel is sympathetic to Ms. Ballard's concerns, it is reasonable to limit the settlement to only those class members who have suffered damages. *See, e.g.,* (9th Cir. 2000) *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 461–63 (approving settlement allocation plan that would leave some class members without damages because they "could never get" damages should they proceed to trial); (W.D. Wash. 2004) *In re PPA Prod. Liab. Litig.*, 227 F.R.D. 553, 562 ("Placing a lower value on claims that would have been

barred by a defense . . . is hardly evidence of a conflict"). Because Ms. Ballard's sun visor has not failed, Honda would have had a defense to her claim—namely, that she lacks damages. Not providing monetary relief to her on this ground is therefore reasonable.

Class member James McHale objects to the settlement because it requires him to provide proof that his visor failed within the 100,000 extended warranty period. Supp. Terrell Decl., Ex. 9. While class counsel again is sympathetic to Mr. McHale's concerns, it is reasonable to limit settlement to those class members who can provide proof that they are eligible for settlement relief. *See* 3 David G. Leitch, Gary L. Sasso, and D. Matthew Allen, Successful Partnering Between Inside and Outside Counsel § 60A:47 (noting it is "entirely reasonable to require individual class members to come forward with proof of eligibility to share in the settlement akin to what they would have had to produce in a trial on their claims"). Without a requirement that class members come forward with some proof of eligibility, the possibility of fraudulent claims increases. Thus, this objection should be overruled.

II. CONCLUSION

For all these reasons and for the reasons set forth in Plaintiffs Unopposed Motion for Final Approval, Plaintiffs respectfully request that the Court overrule the objections listed in the Terrell Final Approval Declaration, Ex. 1 [compendium objections], the objections attached as Exhibits 8 through 32 to the Supplemental Terrell Declaration, and any further objections received by the Court but not counsel.

DATED this 6th day of September, 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 September 6, 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.

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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 6th day of September, 2011.

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