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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VINCE EAGEN, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

AMERICAN HONDA MOTOR CO., INC.,

Defendant.

) Case No. 3:12-CV-01377-SI

)
) Assigned to: Hon. Susan Illston

) **ORDER GRANTING JOINT MOTION**
) **TO PARTIALLY REOPEN THE FINAL**
) **JUDGMENT FOR THE SOLE PURPOSE**
) **OF PROVIDING DIRECT NOTICE TO**
) **SETTLEMENT CLASS MEMBERS IN**
) **WASHINGTON STATE TO WHOM**
) **DIRECT NOTICE WAS**
) **INADVERTENTLY NOT MADE**

The parties' joint motion to partially reopen the final judgment is scheduled for a hearing on December 18, 2015. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matter is appropriate for resolution without oral argument, and VACATES the hearing. The Court GRANTS the motion.

DISCUSSION

The parties to the above-captioned litigation (the "Litigation") entered into a Class Action Settlement Agreement and Release, dated September 9, 2013, together with exhibits (collectively, the "Settlement Agreement"), that set forth the terms and conditions for a proposed settlement. The Settlement Agreement was submitted to this Court on September 11, 2013 (Dkt. 73-1). Unless otherwise defined herein, terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement, which is incorporated herein by reference.

1 The Settlement Agreement provides Settlement Class Members full cash reimbursement of
2 out-of-pocket expenses for repairs incurred relating to Engine Misfire, *i.e.*:

3 the alleged condition in the Settlement Class Vehicles equipped with
4 engines with variable cylinder management (“VCM-2”) where the
5 cycling of the cylinder under certain drive conditions allows for spark
6 plug cooling, which may result in carbon fouling of the spark plugs,
and is defined by the diagnostic trouble code (“DTC”) numbers P0301,
P0302, P0303, or P0304.

7 Settlement Agreement (Dkt. 73-1) at Section I(I). This specific form of relief required Settlement
8 Class Members¹, who did not exclude themselves from the settlement, to submit to the Settlement
9 Administrator a signed Claim Form together with proof of payment and documentation indicating
10 the date of the repair. *Id.* at Sections III(B) & IV(B).

11 Separately, the Settlement Agreement provides to all Settlement Class Members (who did
12 not exclude themselves) a three-year extension of the Settlement Class Vehicles’ 5-year / 60,000
13 mile Powertrain Warranty as to Engine Misfire for a total of eight (8) years from the original
14 purchase or lease date with no mileage limitation. *Id.* at Section III(A).

15 On October 9, 2013, the Court entered its Order Preliminarily Approving Class Action
16 Settlement (“Preliminary Approval Order”) (Dkt. 89) and also specified the manner by which
17 Defendant American Honda Motor Co., Inc. (“AHM”) was to provide notice to the Settlement
18 Class Members. Specifically, the Preliminary Approval Order, incorporating the Settlement

19 ¹ The Settlement Agreement defines the Settlement Class Members as:

20 All purchasers and lessees who reside in, and who purchased or leased their vehicles
21 in the United States (other than for purposes of resale or distribution), of any: (a)
22 Model-Year 2008, 2009, 2010, 2011, and 2012 Honda Accord vehicles equipped with
23 a 6-cylinder engine with VCM-2; (b) Model-Year 2008, 2009, 2010, 2011, 2012, and
24 2013 Honda Odyssey vehicles equipped with a 6-cylinder engine with VCM-2; (c)
Model-Year 2009, 2010, 2011, 2012, and 2013 Honda Pilot vehicles equipped with a
6-cylinder engine with VCM-2; (d) Model-Year 2010 and 2011 Honda Accord
Crosstour vehicles equipped with a 6-cylinder engine with VCM-2; and (e) Model
Year 2012 Crosstour vehicles equipped with a 6-cylinder engine with VCM-2.

25 The Settlement Agreement excluded from the Settlement Class: (1) Honda; (2) any affiliate,
26 parent, or subsidiary of Honda; (3) any entity in which Honda has a controlling interest; (4) any
27 officer, director, or employee of Honda; (5) any successor or assign of Honda; (6) any Judge to
whom the Litigation is assigned; (7) anyone who purchased a Settlement Class Vehicle for the
purpose of resale; and (8) any owners or lessees of Settlement Class Vehicles that were not
distributed for sale or lease in the United States.

1 Agreement, required AHM to “mail[] or arrang[e] for the mailing by first-class mail, postage
2 prepaid of the Notice and Claim Form from the information compiled from the Class List to each
3 Settlement Class member on the Class List.” (Dkt. No. 73-1, Settlement Agreement, Section IV.)

4 After entry of the Preliminary Approval Order directing dissemination of Notice in
5 accordance with the Notice plan set forth in the Settlement Agreement, the Settlement
6 Administrator caused the Notice to be mailed to Settlement Class Members via first class U.S.
7 Mail, postage prepaid. (See Dkt. 106 ¶¶ 4-7.) Settlement Class Members’ mailing addresses were
8 obtained via a good faith search of Department of Motor Vehicle registration data for each State,
9 the District of Columbia, Puerto Rico and Saipan, and procedures were put into place for updating
10 mailing addresses and the handling of returned mail. (*Id.*) In addition, a dedicated settlement
11 website containing the Settlement Agreement, the Notice, the Claim Form, and other relevant
12 settlement and Court documents was created, and a toll-free telephone number with live-agent
13 support and prerecorded frequently asked questions dedicated to this settlement was also put into
14 place. (*Id.* ¶¶ 8-9, 12.) Both remain operative to this day. (*Id.* ¶¶ 10, 12.)

15 Following the dissemination of the Notice, and the posting of the Notice on the settlement
16 website, Settlement Class Members were given an opportunity to: (i) submit timely requests for
17 exclusion from the Settlement Class; or (ii) object to the Settlement Agreement (including the
18 Class Counsel Fees and Expenses Award and Named Plaintiff’s Incentive Award) and provide
19 notice of their intent to appear at the Final Approval Hearing.

20 From among a Settlement Class of over 1.87 million current or former owners or lessees of
21 Settlement Class Vehicles (Dkt. 106, ¶ 4-5), the Court reviewed each of the objection letters
22 submitted by the parties (Dkt. 103-2; 104-4; 104-5; 106-1; 106-2), which were less than 25 in
23 number—some of which were procedurally deficient, and one of which was withdrawn (*see* Dkt.
24 103 at 1 n.1; 104 ¶¶ 9-12). The Court also received from the Settlement Administrator copies of
25 two-hundred and eighteen (218) requests for exclusion from the settlement (Dkt. 104 ¶¶ 5-6; 104-1;
26 104-2).

27 The Final Approval Hearing was held on March 21, 2014, at 9:00 a.m. No Settlement Class
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1 Members provided notice of their intent to appear at the Final Approval Hearing to object to, or
2 otherwise comment on, the settlement, and, in fact, no Settlement Class Members did appear at the
3 Final Approval Hearing.

4 On March 27, 2014, following the March 21, 2014 Final Approval Hearing, the Court
5 issued its Order Granting Final Approval of Class Action Settlement and Application for
6 Attorneys' Fees, and Class Representative Payment, and Final Judgment and Order of Dismissal
7 with Prejudice ("Final Order and Judgment") (Dkt. 109). The Final Order and Judgment approved
8 the settlement described in the Settlement Agreement.

9 On November 18, 2015, the parties filed a Joint Motion to Partially Reopen the Final Order
10 and Judgment for the Sole Purpose of Providing Direct Notice to Settlement Class Members in
11 Washington State to Whom Direct Notice Was Inadvertently Not Made (the "Motion"). The
12 Motion is made on the grounds that the vendor hired by AHM to mail settlement class Notice to all
13 Settlement Class Members in the nationwide settlement class inadvertently failed to mail notice to
14 the Settlement Class Members with Settlement Class Vehicles registered in the state of Washington
15 (the "Omitted Owner Group"), and the requested relief is necessary to ensure that the Omitted
16 Owner Group is afforded an opportunity to exercise all rights afforded to them under the
17 Settlement Agreement and the Final Order and Judgment entered in this case.

18 Accordingly, the parties move the Court to exercise its powers under Rules 60(b)(6) and
19 23(d)(2) of the Federal Rules of Civil Procedure to: (1) partially reopen the Final Order and
20 Judgment for the sole purpose of permitting supplemental notice of the Settlement to be directly
21 mailed to the Omitted Owner Group, and afford an opportunity for them to be heard; (2) approve
22 the supplemental settlement Notice to the Omitted Owner Group that is attached to this Order;
23 (3) approve a schedule for members of the Omitted Owner Group to take action, if desired,
24 concerning the settlement; and (4) grant all other appropriate relief.

25 The Court has read and considered the Motion, and all documents and evidence in support,
26 including the revised supplemental Notice and revised Claim Form, and finds that there is
27 sufficient basis to grant the relief requested in the Motion.

1 NOW THEREFORE, for good cause shown, the Court GRANTS the Motion and makes the
2 following findings and orders:

3 1. The Final Order and Judgment (Dkt. 109) remains in all respects final as to all
4 parties other than the Omitted Owner Group.

5 2. The Court hereby partially reopens the Final Order and Judgment solely as to the
6 Omitted Owner Group consisting of:

7 All purchasers and lessees who reside in the State of Washington, and
8 who purchased or leased their vehicles in the United States (other than
9 for purposes of resale or distribution), of any: (a) Model-Year 2008,
10 2009, 2010, 2011, and 2012 Honda Accord vehicles equipped with a
11 6-cylinder engine with VCM-2; (b) Model-Year 2008, 2009, 2010,
12 2011, 2012, and 2013 Honda Odyssey vehicles equipped with a 6-
13 cylinder engine with VCM-2; (c) Model-Year 2009, 2010, 2011, 2012,
14 and 2013 Honda Pilot vehicles equipped with a 6-cylinder engine with
15 VCM-2; (d) Model-Year 2010 and 2011 Honda Accord Crosstour
16 vehicles equipped with a 6-cylinder engine with VCM-2; and (e)
17 Model Year 2012 Crosstour vehicles equipped with a 6-cylinder
18 engine with VCM-2.

19 Excluded from the Omitted Owner Group are: (1) AHM; (2) any affiliate, parent, or subsidiary of
20 AHM; (3) any entity in which AHM has a controlling interest; (4) any officer, director, or
21 employee of AHM; (5) any successor or assign of AHM; (6) any Judge to whom the Litigation is
22 assigned; (7) anyone who purchased a Settlement Class Vehicle for the purpose of resale; (8) any
23 owners or lessees of Settlement Class Vehicles that were not distributed for sale or lease in the
24 United States; and (9) any Settlement Class Members that previously received Notice.

25 3. The parties stipulate, and Court approves, the Settlement Administrator being
26 charged with mailing Supplemental Notice to the Omitted Owner Group, and administering the
27 relief to the Omitted Owner Group provided in the Settlement Agreement, pursuant to the terms of
28 that agreement and pursuant to the Final Judgment and Order. AHM, or its indemnitees, will bear
all costs and expenses related to the supplemental Notice.

4. The Settlement Administrator will continue to maintain the website
(www.engineemisfiresettlement.com), which makes available documents relating to the settlement
(including the supplemental Notice and revised Claim Form) available for download.

5. The Court hereby approves the form of the supplemental Notice, without material

1 alteration from Exhibit D annexed to the Declaration of Michael B. Shortnacy filed concurrently
2 with the Joint Motion to Partially Reopen the Judgment (Dkt. 114-6), and the procedure for
3 disseminating supplemental Notice to the Omitted Owner Group. The parties are directed to
4 correct the time of the supplemental hearing as stated in the supplemental Notice; the supplemental
5 hearing shall be held on **April 22, 2016 at 10:00 a.m.**

6 6. The Court finds that the supplemental Notice posted on the Website and mailed to
7 the Omitted Owner Group informs the Omitted Owner Group of the material terms of the
8 Settlement Agreement and their rights and responsibilities in connection with the settlement, and
9 further finds that the supplemental Notice: (i) is the best practicable notice; (ii) is reasonably
10 calculated, under the circumstances, to apprise members of the Omitted Owner Group of the
11 existence of the Litigation and of their right to object or to exclude themselves from the proposed
12 settlement; (iii) is reasonable, and constitutes due, adequate and sufficient notice to all persons
13 entitled to receive notice; and (iv) meets all applicable requirements of Due Process and applicable
14 law.

15 7. Pursuant to Rule 23(c)(2)(B) and Rule 23(e), the Court orders that the Settlement
16 Administrator mail the supplemental Notice via postage prepaid first class U.S. mail to the persons
17 on the Omitted Owner Group list, and that such mailing be completed no later than January 29,
18 2016. The supplemental Notice shall be accompanied by a Claim Form that does not materially
19 differ from the form annexed as Exhibit F to Declaration of Michael B. Shortnacy filed
20 concurrently with AHM's Motion to Partially Reopen the Judgment.

21 8. The Court further orders the posting of the supplemental Notice and revised Claim
22 Form on the Website as promptly as practicable subsequent to the date of entry of this Order. The
23 Court further orders the Settlement Administrator to file with the Court proof of mailing of the
24 supplemental Notice and publication of both the supplemental Notice and revised Claim Form on
25 the Website at or before the Supplemental Hearing.

26 9. The Court orders each member of the Omitted Owner Group who has not submitted
27 a timely request for exclusion from the Settlement Class and who wishes to object to the fairness,
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1 reasonableness or adequacy of the Settlement Agreement as to the Omitted Owner Group only, to:
2 (i) mail to the Settlement Administrator, and serve upon Class Counsel and AHM's Counsel at the
3 addresses listed on the supplemental Notice, (ii) postmarked no later than March 15, 2016, (iii) a
4 statement of the objection signed by the member of the Omitted Owner Group and containing all of
5 the following information:

6 (a) the objector's full name, current address and telephone number;

7 (b) identify the date of acquisition and Vehicle Identification Number for his, her or its
8 Settlement Class Vehicle;

9 (c) state that the objector has reviewed the Settlement Class definition and understands that
10 he, she or it is a member of the Omitted Owner Group;

11 (d) provide a written statement of all grounds for the objection accompanied by any legal
12 support for such objections;

13 (e) copies of any papers, briefs or other documents upon which the objection is based; and

14 (f) a statement of whether the objector intends to appear at the Supplemental Hearing.

15 10. In addition, any member of the Omitted Owner Group objecting to the settlement
16 shall provide a list of all other objections submitted by the objector and/or by the objector's
17 counsel, to any class action settlements submitted in any state or federal court in the United States
18 in the previous five (5) years. If the member of the Omitted Owner Group or his, her or its counsel
19 has not objected to any other class action settlement in the previous five years, he, she or it shall
20 affirmatively so state in the objection.

21 11. No later than March 30, 2016, the Settlement Administrator will submit to the Court
22 all objections it received from members of the Omitted Owner Group.

23 12. Any member of the Omitted Owner Group who does not both provide a notice of
24 intention to appear in accordance with the deadlines and other specifications set forth in the
25 supplemental Notice, and file an objection in accordance with the deadlines and other
26 specifications set forth in the Settlement Agreement and the supplemental Notice (as applicable),
27 will be deemed to have waived any objections to the settlement, and shall be foreclosed from
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1 seeking any adjudication or review of the settlement by appeal or otherwise, subject to the
2 discretion of the Court.

3 13. The submission of an objection shall allow Class Counsel or AHM's Counsel to
4 take the deposition of the objecting member of the Omitted Owner Group pursuant to the Federal
5 Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant
6 to the objection. Failure by an objector to make himself or herself available for a deposition or
7 comply with expedited discovery requests may result in the Court striking the objection. The Court
8 may tax the costs of any such discovery to the objector or the objector's counsel if the Court
9 determines that the objection is frivolous or is made for an improper purpose.

10 14. Members of the Omitted Owner Group may exclude themselves from the settlement
11 (i.e., "Opt-Out"), relinquishing their rights to any benefits under the Settlement Agreement. A
12 member of the Omitted Owner Group wishing to exclude himself, herself or itself must send the
13 Settlement Administrator a letter postmarked no later than March 15, 2016, containing: (i) the
14 name of the member of the Omitted Owner Group, current address, and telephone number; (ii) the
15 approximate date of acquisition and VIN for his, her or its Settlement Class Vehicle; and (iii) a
16 clear statement communicating that he, she or it elects to be excluded from the Settlement Class,
17 does not wish to be a Settlement Class Member and elects to be excluded from any amended final
18 judgment entered pursuant to the settlement.

19 15. Any request for exclusion must be postmarked no later than March 15, 2016. Any
20 member of the Omitted Owner Group who does not submit a timely, written Opt-Out from the
21 Omitted Owner Group in accordance with the requirements set forth in the Notice will be bound by
22 all proceedings, orders, and judgments in the Litigation, even if such member of the Omitted
23 Owner Group has previously initiated or subsequently initiates individual litigation or other
24 proceedings encompassed by the Release and the Released Claims, as defined in the Settlement
25 Agreement.

26 16. Not later than March 30, 2016, the Settlement Administrator shall provide the
27 Court, Class Counsel and AHM's Counsel a list identifying each member of the Omitted Owner
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1 Group who submitted an exclusion request together with copies of the exclusion requests together
2 with a declaration attesting to the completeness and accuracy thereof.

3 17. The Court hereby enjoins members of the Omitted Owner Group from asserting
4 Engine Misfire claims as set forth in the Second Amended Complaint (and anyone who purports to
5 act on the behalf of any such member of the Omitted Owner Group) unless and until they have
6 timely excluded themselves from the Settlement Class as set forth in the Notice: (i) from filing,
7 commencing, prosecuting, intervening in or participating as plaintiff, claimant or class member in
8 any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction
9 based on, relating to or arising out of the claims and causes of action asserted by the Second
10 Amended Complaint, or the facts and circumstances alleged in the Second Amended Complaint,
11 and/or the Released Claims; (ii) from filing, commencing or prosecuting a lawsuit or
12 administrative, regulatory, arbitration or other proceeding as a class action on behalf of any
13 members of the Omitted Owner Group who have not timely excluded themselves (including by
14 seeking to amend a pending complaint to include class allegations or seeking class certification in a
15 pending action), based on, relating to or arising out of the claims and causes of action asserted by
16 the Second Amended Complaint, or the facts and circumstances alleged in the Second Amended
17 Complaint, and/or the Released Claims; and (iii) from attempting to effect an opt-out of a class of
18 individuals in any lawsuit or administrative, regulatory, arbitration or other proceeding based on,
19 relating to or arising out of the claims and causes of action asserted by the Second Amended
20 Complaint, or the facts and circumstances alleged in the Second Amended Complaint, and/or the
21 Released Claims.

22 18. The Court hereby directs the Settlement Administrator to maintain a post office box
23 in the name of the Settlement Administrator to be used for receiving requests for exclusion,
24 objections, notices of intention to appear and any other communications.

25 19. The Court hereby approves the revised Claim Form, which is annexed as Exhibit F
26 to the Declaration of Michael B. Shortnacy filed concurrently with, and in support of, the Motion.

27 20. The parties shall file any memoranda or other materials in response to any timely
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1 and properly filed objection to the Settlement Agreement by a member of the Omitted Owner
2 Group, no later than April 8, 2016. Such materials shall be served on Class Counsel, AHM's
3 Counsel, and on any member of the Omitted Owner Group (or his, her or its counsel, if
4 represented) to whose objection to the Settlement Agreement the memoranda or other materials
5 respond.

6 21. Pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure and in accordance
7 with 28 U.S.C. § 1715(d), the Court sets **April 22, 2016 at 10:00 a.m.**, as the date and time of the
8 Supplemental Hearing, at which the Court will determine whether there is any reason not to issue
9 an Order entering an amended Final Approval Order and Judgment as to the Omitted Owner
10 Group. The Supplemental Hearing shall be held at the United States District Court, Northern
11 District of California, San Francisco Courthouse, Courtroom 10 - 19th Floor, 450 Golden Gate
12 Avenue, San Francisco, CA 94102.

13 22. The Court reserves the right to adjourn or continue the Supplemental Hearing, or
14 any further adjournment or continuance thereof, and to approve modifications to the Settlement
15 Agreement as applied to the Omitted Owner Group, if any, consented to by the Class Counsel and
16 AHM's Counsel without further notice.

17
18 **IT IS SO ORDERED.**

19
20 Dated: December 7, 2015

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22 _____
23 SUSAN ILLSTON
24 UNITED STATES DISTRICT JUDGE