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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 STACIE ZAKSKORN, et al.,

No. 2:11-CV-02610-KJM-KJN

12  
13 Plaintiffs,

14 v.

ORDER

15 AMERICAN HONDA MOTOR CO.,  
16 INC., et al.,

17 Defendants.

18 Plaintiffs Stacie Zaskorn, Rachele Schreiber and Javier Hidalgo renew their  
19 motion to appoint class counsel. Supp. Mot. Appointment Class Counsel (“Mot.”) at 1, ECF  
20 No. 64. Defendants do not oppose the motion, and the court decides the motion without  
21 argument. For the reasons below, the motion is GRANTED.

22 I. BACKGROUND

23 Plaintiffs allege the braking system installed in Honda Civic automobiles  
24 manufactured between 2008 and 2011<sup>1</sup> “suffers from one or more design and/or manufacturing  
25 defects that causes the . . . front brake pads to wear out prematurely[] and require replacement  
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27 <sup>1</sup> The *Zaskorn* complaint alleges defects in model-year 2008 to 2010 Civic  
28 automobiles, while the *Hidalgo* complaint alleges defects in model-year 2008 to 2011 Civic  
automobiles. The proposed settlement includes model-year 2006 to 2011 Civic automobiles.

1 approximately every 7,500 to 15,000 miles, far more frequently than in a properly functioning  
2 braking system . . . .” First Am. Compl. ¶ 1, ECF No. 29. Despite being aware of this defect,  
3 plaintiffs continue, American Honda Motor ( “AHM”) did not inform purchasers or lessees of  
4 the defect or repair the defect under warranty. *Id.* ¶¶ 1–2.

5 Plaintiffs Zakskorn and Schreiber filed a putative class-action suit against AHM  
6 on October 4, 2011. Compl. at 35, ECF No. 1. Plaintiff Hidalgo filed a separate action, also on  
7 behalf of a putative class, on November 22, 2011. The court subsequently deemed the actions  
8 related, Feb. 14, 2012 Order at 1–2, ECF No. 20, and consolidated the cases, May 2, 2014  
9 Order at 2, ECF No. 63. On plaintiffs’ motion, the court granted preliminary approval of a  
10 proposed class settlement but, finding five firms unjustified based on the record before it,  
11 denied without prejudice appointment of class counsel. *Id.* at 14.

12 II. STANDARD

13 In appointing class counsel, the court must ensure that counsel is able to “fairly  
14 and adequately represent the interests of the class.” FED. R. CIV. P. 23(g)(4). In so doing, the  
15 court considers:

- 16 (i) the work counsel has done in identifying or investigating  
17 potential claims in the action;  
18 (ii) counsel’s experience in handling class actions, other  
19 complex litigation, and the types of claims asserted in the  
20 action;  
21 (iii) counsel’s knowledge of the applicable law; and  
22 (iv) the resources that counsel will commit to representing the  
23 class . . . .

24 *Id.* 23(g)(1)(A)(i)–(iv). Additionally, the court may “consider any other matter pertinent to  
25 counsel’s ability to fairly and adequately represent the interests of the class,” “order potential  
26 class counsel to provide information on any subject pertinent to the appointment” and “include  
27 in the appointing order provisions about the award of attorney’s fees or nontaxable costs . . . .”

28 *Id.* 23(g)(1)(B)–(D).

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1            “In the absence of agreement between all involved counsel, the Court must itself  
2 endeavor to select counsel best able to represent the interests of the purported class.” *Four in*  
3 *One, Inc. v. S.K. Foods, Inc.*, 2009 WL 747160, at \*2 (E.D. Cal. Mar. 20, 2009) (citing FED. R.  
4 CIV. P. 23(g)(2)). “This decision should . . . be made using . . . [information on any subject  
5 pertinent to appointment] . . . , but . . . the court is to go beyond scrutinizing the adequacy of  
6 counsel and make a comparison of the strengths of the various applicants.” FED. R. CIV. P.  
7 23(g)(2) advisory committee’s note (2003). “Even [where] . . . a uniform consensus as to  
8 representation has been reached . . . , the Court must still . . . review[] the agreement to ensure  
9 that the proposed representation adequately serve[s] class interests.” *Four in One, Inc.*, 2009  
10 WL 747160, at \*2 n.3.

### 11            III.            ANALYSIS

12            Plaintiffs renew their motion to the court to appoint as class counsel: (1) Caddell  
13 & Chapman, (2) Strategic Legal Practice, APC (“SLP”), (3) the Law Office of Robert L. Starr,  
14 (4) Mazie Slater Katz & Freeman, LLC and (5) Bursor & Fisher, PA. Mot. at 1–2. In  
15 explaining how they “came to propose designation of five firms as class counsel,” plaintiffs  
16 describe “the background of the case[, which] provides valuable context.” *Id.* at 1.

17            In October 2011, Caddell & Chapman filed a complaint on behalf of plaintiffs  
18 Zaskorn and Schreiber, while in November 2011, Bursor & Fisher separately filed a complaint  
19 on behalf of plaintiff Hidalgo. *Id.* After becoming aware of the respective actions, “counsel in  
20 both cases agreed to proceed cooperatively rather than pursue competing cases.” *Id.* In April  
21 2012, SLP, “who had filed a similar case involving the same Honda defect and dismissed the  
22 case in order to work with Caddell & Chapman in the interest of efficiency,” also associated as  
23 co-counsel. *Id.* At the time of that association, Starr and Mazie Slater Katz & Freeman were  
24 already working with SLP as co-counsel on the third case. *Id.*

25            Having already found each of the firms “capable of adequately representing the  
26 class,” May 2, 2014 Order at 14, the court does not revisit adequacy and considers only  
27 whether “the proposed representation adequately serve[s] class interests,” *Four in One, Inc.*,  
28 2009 WL 747160, at \*2 n.3. Appointing multiple firms runs the risk of “engender[ing]

1 duplication of effort not in the best interest of either a focused or efficient class representation.”

2 *Id.* However, counsels here have agreed to work cooperatively, and each has been involved  
3 with the case for a substantial period of time. Mot. at 1–2.

4 Further, the instant settlement agreement includes the following terms:

5 1.7 “Class Counsel Fees and Expenses” means the amount  
6 approved by the Court pursuant to paragraph 12 for payment to  
7 Class Counsel as attorneys’ fees, costs and litigation expenses, or  
8 \$850,000, whichever is less.

9 . . . .

10 12.2 Class counsel may apply to the Court for an award of  
11 reasonably attorneys’ fees and expenses, not to exceed the total  
12 sum of \$850,000. AHM will not oppose Class Counsel’s  
13 application for attorneys’ fees and expenses not exceeding the  
14 total combined sum of \$850,000. AHM agreed not to oppose this  
15 amount after an arms-length adversarial negotiation with Class  
16 Counsel, in a mediation session presided over by an experienced  
17 neutral mediator, which occurred after all other terms of the  
18 Settlement were agreed.

19 . . . .

20 12.5 Class Counsel Fees and Expenses shall be in addition to the  
21 benefits provided directly to the Settlement Class, and shall have  
22 no effect on the benefits made available to the Settlement Class.

23 Caddell Decl. Ex. 1 ¶¶ 1.7, 12.2, 12.5, ECF No. 55-2. The payment of fees and costs thus does  
24 not bear on “the benefits made available to the Settlement Class,” *id.* ¶ 12.5, and AHM has  
25 agreed to pay a sum certain, at maximum, regardless of the number of firms involved, *see id.*  
26 ¶¶ 1.7, 12.2. Accordingly, and in light of the more developed record, the court finds the  
27 proposed class counsel to “fairly and adequately represent the interests of the class.” FED. R.  
28 Civ. P. 23(g)(4).

IV. CONCLUSION

As set forth above, the motion is GRANTED. The court appoints as class  
counsel: (1) Caddell & Chapman, (2) Strategic Legal Practice, APC, (3) the Law Office of


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1 Robert L. Starr, (4) Mazie Slater Katz & Freeman, LLC and (5) Bursor & Fisher, PA. Caddell  
2 & Chapman is designated liaison counsel.

3 IT IS SO ORDERED.

4 DATED: July 2, 2014.

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7 UNITED STATES DISTRICT JUDGE  
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