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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MARY QUACKENBUSH, GHERI SUELEN, ANNE PELLETTIERI, MARISSA FEENEY and CARYN PRASSE, Individually and On Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

AMERICAN HONDA MOTOR COMPANY, INC., a California corporation, and HONDA MOTOR COMPANY, LTD., a foreign corporation,

Defendants.

Case No. 3:20-cv-05599-WHA

Assigned to: Hon. William Alsup

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, COSTS AND CLASS REPRESENTATIVE SERVICE AWARD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: October 26, 2023
Time: 8:00 a.m.
Judge: Hon. William Alsup

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NOTICE OF MOTION AND MOTION

TO THE CLERK OF THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on Thursday, October 26, 2023, at 8:00 a.m., before the Honorable William Alsup, in Courtroom 12, 19th Floor, located at the Phillip Burton Federal Building & United States Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, Class Counsel will move under Fed. R. Civ. P. 23(h), 54(d)(4), and Civil L.R. 54-5 for an Order:

1. Directing Defendant American Honda Motor Company, Inc. ("Honda"), pursuant to 815 ILCS 505/10a(c), or other applicable law, to pay Class Counsel's reasonable attorney fees incurred in this litigation on behalf of Marissa Feeney and the Illinois Repair Class in the amount of $4,888,922.50.

2. Directing Honda, pursuant to 815 ILCS 505/10a(c), Fed. R. Civ. P. 23(h)(1), or other applicable law, to pay Class Counsel's costs in the amount of $680,291.93.

3. Awarding Class Representative Marissa Feeney an incentive award of $5,000.

4. Directing Honda to pay all future costs of class administration, including the costs of administering Rule 23(h) notice, distributing the judgment proceeds to the Illinois Class and any other administrative tasks that the Court orders.

This Motion is based on the Memorandum of Points and Authorities, declarations of Mark S. Greenstone, Marc L. Godino, Marissa Feeney and Kyle Mason, the exhibits filed herewith, the pleadings and other filings in this action, such further argument as the Court may allow at the hearing on this motion, and any other evidence and argument that may be presented to the Court.

DATED: September 19, 2023

GREENSTONE LAW APC

By: *s/Mark S. Greenstone*

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Attorneys for Plaintiffs and the Classes

I. INTRODUCTION

Honda concluded the Variable Valve Timing Control ("VTC") Actuator that is the subject of this case was "defective" and could harm other critical engine components before a single Class Vehicle was sold. Tr. Ex. 511, p. 1; Tr. Ex. 509, p. 3. Notwithstanding this fact, Honda refused to entertain any class-wide settlement proposal at any time, even after the claims of two certified classes survived summary judgment. Declaration of Marc L. Godino ("Godino Dec.") ¶ 27. As a result, the case proceeded to trial. The jury concluded Plaintiff Marissa Feeney proved, as to all Illinois Repair Class Members, all of the required elements to sustain her claim arising under the Illinois Consumer Fraud and Protection Act ("ICFA")—*i.e.*, that the VTC Actuator was defective, that Honda was aware of but failed to disclose the VTC Defect at the time of sale, and that knowledge of the VTC Defect would impact a reasonable consumer's purchasing decision. Dkt. Nos. 351; 362. The jury found in Honda's favor on Mary Quackenbush's claim arising under California's Consumers Legal Remedies Act ("CLRA"), which required the additional showing that the VTC Defect posed an "unreasonable" safety hazard and/or and "unreasonable" risk to the vehicle's central functionality. *Id.* Based on the parties' stipulated damages, the Court entered Final Judgment on behalf of the 2,571 Illinois Repair Class Members in the amount of $1,398,624, exclusive of interest, costs and attorneys' fees. Dkt. No. 368.

Class Counsel now seek fees in the amount of $4,888,922.50 as compensation for 7,043.71 hours of work over a three-year period, and reimbursement of costs in the amount of $680,291.93, all incurred achieving this important victory for consumers against one of the world's largest automobile companies. Class Counsel have deducted fees and expenses incurred pursuing claims on which Plaintiffs did not prevail and that can be readily segregated. Godino Dec. ¶ 8; Declaration of Mark S. Greenstone ("Greenstone Dec.") ¶ 4. In addition, although not required, Class Counsel have applied a 30-percent reduction factor to the time spent opposing Honda's

motion to dismiss and motion for summary judgment, two major briefings that separately addressed matters pertaining to non-Illinois claims. *Id.*[1]

Class Counsel's requested fees and costs should be awarded for the following reasons. ***First***, the ICFA expressly authorizes courts to award fees and costs to a prevailing party, and there is no question that Plaintiffs prevailed on the ICFA claim. ***Second***, the Illinois Supreme Court has recognized that fee awards can easily constitute the greatest part of a plaintiff's recovery and serve the purpose of encouraging consumers to pursue small claims that would otherwise go unremedied. *Cruz v. Northwestern Chrysler Plymouth Sales, Inc.*, 688 N.E.2d 653, 657 (Ill. 1997). As a result, Illinois courts have expressly rejected proportionality as a basis for determining fees. *Grove v. Huffman*, 634 N.E.2d 1184, 1190 (Ill. App. Ct. 1994). Further, prevailing plaintiffs need not reduce their fees for work performed in furtherance of non-prevailing issues where the matters are inextricably intertwined. *Straits Fin. LLC v. Ten Sleep Cattle Co.*, 900 F.3d 359, 373 (7th Cir. 2018). ***Third***, the fees and costs sought by Class Counsel were necessary to prevail on the Illinois Repair Class's Claims, which revolved around the same common nucleus of operative facts as the California claims on which Plaintiffs did not prevail. ***Fourth***, the verdict provides Illinois Repair Class Members with a one-hundred percent recovery. ***Fifth***, as documented below, Class Counsel did a very significant amount of work litigating this case through trial. ***Sixth***, Class Counsel were efficient and took measures to streamline litigation and trial wherever possible, including taking a limited number of fact witness depositions, stipulating to damages, dismissing duplicative claims, and dismissing Honda Motor Company, Ltd. (American Honda's Japanese parent company). ***Seventh***, Honda consistently declined to

[1] Class counsel have submitted detailed summaries of their time by timekeeper and task in the declarations filed with this motion. Should the Court wish to review Class Counsels' contemporaneous timesheets, Class Counsel respectfully request permission to submit them *in camera*. Loc. R. 54-5(b) (2).

entertain any class-wide settlement and, ultimately, shut down settlement negotiations and elected to go to trial. Plaintiffs submit that Honda wanted to win at trial and not settle because there are over a million other vehicles on the road with the same defective VTC Actuator. Having made its bed, Honda must now lie in it.

II. RELEVANT FACTS

Plaintiffs understand the Court is familiar with the underlying facts and repeat only those facts that are of particular importance to this briefing.

a. Class Counsel Performed a Significant Amount of Work

This case went through a motion to dismiss, class certification, summary judgment and trial. There were 32,837 documents produced collectively by the parties, their experts and third parties, equating to over 2 million pages of information. A total of nineteen individuals were deposed in twenty-four separate deposition sessions (several experts as well as Honda's key fact witness who was unavailable for trial, Michael Gibson, were deposed multiple times). Godino Dec. ¶ 26. Eight of those depositions were noticed by Plaintiffs, eleven were noticed by Honda. And, Plaintiffs litigated proactively. Before being served with discovery, Plaintiffs offered their vehicles for inspection. *Id*. ¶ 30. Experts from both sides flew across the country to inspect vehicles, and their parts were removed and preserved for later analysis. *Id*. When Honda failed to produce documents timely, Plaintiffs moved to compel and won. Dkt. No. 56. Honda's production included enormous databases with tens of thousands of Class Vehicle repair records. *Id*. Each side engaged four experts: (1) an automobile technical expert to opine concerning the nature and impact of the VTC Defect; (2) a metallurgist to examine VTC Actuators and related components removed from the Plaintiffs' vehicles and two exemplar vehicles; (3) a data analyst to analyze the VTC Actuator failure rate in the Warranty Data and related matters; and (4) a damages

expert. *Id*. ¶ 36. Class Counsel's extensive litigation efforts are detailed in the accompanying declaration of Marc L. Godino, incorporated by this reference.

b. The Work Performed was Necessary to Prosecute the Illinois Repair Class Claims

Plaintiffs' First Amended Complaint, Dkt. No. 20, sought recovery based on multiple legal claims and included Class Representatives from California, Illinois and Pennsylvania.[1] The central questions on which all claims hinged were the same: (1) Is the VTC actuator defective? (2) What is the significance of the VTC Defect, *i.e.*, is it just a noise as contended by Honda, or can it damage other engine components and lead to engine failure? (3) Was Honda aware of the defect at the time of sale? Virtually all of the work in this case centered around answering these common questions and was necessary to support all putative Class Members' claims.

This task was made particularly complex by the technical nature of the defect and Honda's defense. The Class Vehicles begin with the 2012 model year. The evidence at trial showed that Honda opened an investigation of the impact of the VTC Defect on the Class Vehicles' Timing Chain Tensioner in 2010. Tr. Ex. 509, p. 2. That investigation included a controlled study that concluded: "No additional testing required. The relationship between N/G VTC & tensioner damage is determined. (N/G VTC will cause the Tensioner to fail)." Tr. Ex. 510, p. 27. Honda disavowed that study during the litigation and at trial, claiming it did not replicate real-world conditions. *See, e.g.*, Dkt. No. 156 at 11 (Honda Motion for Reconsideration of Class Certification Order). And, Honda challenged Plaintiffs' contention that Tensioner failure could lead to engine failure. *See, e.g.*, Dkt. No. 82-9 at 6 (Declaration of Michael Gibson in Opposition to Class Certification Motion). This resulted in a highly technical battle of experts.

[1] Plaintiffs did not move to certify the claims of the Pennsylvania Plaintiff Caryn Prasse and they were ultimately settled individually. Time records referencing Ms. Prasse were deleted and not counted. Godino Dec. ¶ 8; Greenstone Dec. ¶ 4.

The expert reports of both sides' automobile technical experts (Michael Stapleford for Plaintiffs, Jason Arst for Defendants) focused *exclusively* on the nature of the VTC Defect and its impact. *See* Dkt. No. 71-1 (Stapleford Expert Report); Dkt. No. 85-1 (Arst Expert Report). These reports were equally relevant to California and Illinois claims. Both Mr. Arst and Mr. Stapleford were deposed twice, and were the parties' main live trial witnesses. Godino Dec. ¶ 44. Both sides also engaged metallurgists (Bruce Agle for Plaintiffs, Dr. Richard Baron for Defendants) to perform microscopic examination of Class Vehicle components. This was also for the purpose of understanding the impact of the VTC Defect and applicable to California and Illinois claims alike. Likewise, the reports of the two data analysts engaged by the parties (Lee Bowron for Plaintiffs, Dr. Paul Taylor for Defendants) focused on the incidence rate of the VTC Defect. *See* Dkt. No. 82-5 (Taylor Expert Report). The analyses of Mr. Bowron and Dr. Taylor were also equally relevant to all claims.

Virtually all of the evidence relied upon by Plaintiffs at class certification concerned the existence of the VTC Defect and its consequences, and Honda's knowledge thereof. *See* Dkt. No. 67-3 at 9-17 (Motion for Class Certification). Similarly, the existence of a class-wide design defect was a central focus of Defendants' Motion for Summary Judgment. *See* Dkt. No. 207-3 at 19-23 (Motion for Summary Judgment).

Trial was also focused almost exclusively on the existence and consequences of the VTC Defect. Plaintiffs presented seven witnesses: Michael Stapleford, Bruce Agle, Michael Gibson, David Newallis, Chris Sullivan, Marissa Feeney and Mary Quackenbush. With the exception of the two Plaintiffs (Ms. Feeney and Ms. Quackenbush) the testimony of all of these witnesses was focused on the nature and impact of the VTC Defect, and Honda's knowledge of the same. *Id*. The testimony of Honda's three witnesses (Mr. Gibson, Jason Arst and Dr. Paul Taylor) was also focused on the nature and impact of the VTC Defect, and applicable to all claims. *Id*.

c. The Verdict Fully Compensates Class Members

The verdict fully compensates Class Members and will not be reduced by the requested award of fees. The judgment entered by the Court was based on a stipulated damages amount of $544 per Class Member. Dkt. No. 292. That amount is Plaintiffs' expert's estimate of the average cost to replace a VTC actuator. *See* Dkt. No. 67-24 (Expert Report of Steven B. Boyles). Thus, the judgment fully compensates Class Members for the harm suffered at the point of purchase. *See Nguyen* v. Nissan N. Am., Inc., 932 F.3d 811, 817-819 (9th Cir. 2019) (recognizing average cost of repair as a proper measure of point of purchase damages in automotive defect cases).

d. Class Counsel were Efficient

At every stage of this case, Class Counsel litigated in an efficient manner that saved the parties, the Court and ultimately the jury time and resources. Class Counsel's efforts to reduce litigation time and expense include the following:

- At the commencement of discovery, without being asked, Class Counsel proactively offered Plaintiffs' vehicles for inspection. Class Counsel coordinated the inspections and prompt removal and storage of parts from Plaintiffs' vehicles for further analysis. This preserved evidence and streamlined discovery. Godino Dec. ¶ 30.
- Class Counsel noticed only three Honda fact witness depositions, Michael Gibson, David Newallis and Chris Sullivan. Two of these individuals (Gibson and Newallis) were designated by Honda in response to a Rule 30(b)(6) notice. *Id*. Honda investigated the VTC defect for nearly a decade and more depositions could have easily been noticed. Class Counsel avoided unnecessary duplication. Godino Dec. ¶ 31.
- Class Counsel refrained from unnecessarily delaying this case when Honda produced Customer Pay Repair Order ("CPRO") data during the Class Notice process, after the close of expert and fact discovery. This was important data, and Class Counsel would have been

justified in petitioning the Court to reopen discovery. Instead of doing so and incurring more fees and costs, Class Counsel analyzed this data and, ultimately, entered into a stipulation with Honda regarding its use at trial. Dkt. No. 343. That stipulation also obviated the need to call the CPRO data compiler Kendrick Kau as a live witness (whose subpoena Honda had moved to quash). Godino Dec. ¶ 32.

- Class Counsel have engaged the same two law firms throughout this case, unlike Honda which substituted DTO Law for its original counsel Bowman and Brooke LLP ("Bowman") midstream, and then engaged an entirely new national law firm, Lewis Brisbois Bisgaard & Smith LLP ("Lewis Brisbois"), to assist with trial. Even when unexpected events made Plaintiffs' lead trial counsel unavailable, Plaintiffs chose a substitute from their own ranks and were able to try the case with a brief one-month adjournment. Godino Dec. ¶ 33.
- Class Counsel took all depositions remotely via Zoom, rather than travel to witness locations. Class Counsel only traveled to the Plaintiffs' depositions. This saved hundreds of hours in attorney time and thousands of dollars in costs. Godino Dec. ¶ 34.
- To streamline trial, Class Counsel agreed to use David Newallis's video deposition testimony when Honda filed a motion to quash his subpoena, although he resided within the subpoena power of the Court. Godino Dec. ¶ 35.
- To streamline trial, Class Counsel stipulated to damages (Dkt. No. 292); dismissed Ms. Quackenbush's individual claim for breach of implied warranty (Dkt. No. 310); dismissed Defendant Honda Motor Co., Ltd.; and dismissed Plaintiffs' fraudulent omission claims. Godino Dec. ¶ 36.

By taking the above actions, Class counsel streamlined this case and avoided incurring unnecessary fees and costs.

e. Honda Refused to Discuss Class Settlement

Honda was not interested in settlement on any terms. Class Counsel and Plaintiffs personally attended via Zoom all four Settlement Conferences before Judge Spero on March 1, 2022; May 31, 2022; April 13, 2023; and June 8, 2023. Plaintiffs sent Honda a detailed written class settlement demand prior to the first Conference. Honda *never* provided a response. Honda declined to discuss class settlement during the first two Settlement Conferences. Godino Dec. ¶ 27. During the third conference, the parties' attorneys informally discussed a settlement structure, but were unable to make any real progress as Honda had not brought someone with settlement authority. Shortly thereafter, Honda abruptly terminated negotiations stating that it wished to proceed to trial. When asked directly at the pretrial conference about what happened, Honda's counsel conceded that Honda refused to engage further in settlement negotiations: Mr. Delgado: "I understand what you are saying, Your Honor. I think the discounting of even the number that was on the table was not something that Honda was interested in at that time." August 8, 2023 Final Pretrial Conf. Tr. at 70:19-22.

III. LEGAL STANDARD GOVERNING FEES

Because the Illinois Class prevailed on Illinois claims, Illinois law governs the substantive award of fees. *Vizcaino v. Microsoft Corp.,* 290 F.3d 1043, 1047 (9th Cir. 2002). The ICFA provides that a court may award reasonable attorney's fees and costs to the prevailing party. 815 ILCS 505/10a(c). The attorney's fee provision in the ICFA ensures that "defrauded consumers will be able to exercise their rights under the statute." *Krautsack v. Anderson*, 861 N.E. 2d 633, 645 (Ill. 2006). "Without such a provision, it would be difficult for injured consumers to obtain counsel in light of the sums of money that are in dispute in most consumer fraud litigation." *Grove*, 634 N.E.2d at 1190. The baseline for an attorney's fee award under the ICFA is the prevailing party's lodestar based on reasonable hourly rates in the relevant legal community.

Aliano v. Transform SR LLC, 167 N.E.3d 665, 678 (Ill. App. Ct. 2020); *Demitro v. Gen. Motors Acceptance Corp.*, 902 N.E.2d 1163, 1170-71 (Ill. App. Ct. 2009) ("In a contingent, statutory fee-shifting case such as this, a reasonable hourly rate is "the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation."). In determining whether to depart upward or downward from the relevant lodestar in a case brought pursuant to the ICFA, courts consider:

> [t]he time and labor required, the novelty and difficulty of the questions involved, the experience and ability of the prevailing party's attorney, the skill necessary to perform the legal services that were provided, and the benefits resulting to the prevailing party.

Kliendon v. Rizza Chevrolet, Inc., 527 N.E.2d 374, 378 (Ill. App. Ct. 1988); *Grove*, 634 N.E.2d at 1190.

IV. THE REQUESTED FEE IS REASONABLE

a. The Requested Fee is Reasonable Considering the Time and Labor Invested

Class counsel seek fees in the amount of $4,888,922.50 based on 7,043.71 hours of work. Class Counsel's lodestar by task is set forth the below. Godino Dec. ¶ 6. Detailed tables setting forth Class Counsel's lodestar by timekeeper and task are attached to the accompanying declarations of Messrs. Greenstone and Godino.

Class Counsel Lodestar by Task

Task Category	Hours	Lodestar
Investigation & Analysis	260.25	$153,003.50
Pleadings & Miscellaneous Court Filings (Complaints, Stipulations, Status Reports, etc.)	156.45	$102,465.00
Motion to Dismiss	184.65	$93,376.50
Motion for Class Certification	716.70	$512,149.75
Motion for Summary Judgment	542.10	$308,519.75

Motions – Post Trial	98.20	$79,272.50
Fact Discovery	1,757.15	$964,561.00
Experts & Expert Discovery	689.05	$544,416.50
Class Notice	313.75	$265,665.00
Settlement	107.11	$82,696.75
Trial & Trial Preparation	2,218.30	$1,782,796.25
Total	**7,043.71**	**$4,888,922.50**

To compute their lodestar, Class Counsel made multiple reductions. Class Counsel deleted entries for nominal billers; deleted attorney time that in Counsel's judgment was administrative in nature and could have been performed by a paralegal or staff member; and (3) deleted entries that appeared on their face exclusively related to California or equitable claims by performing a word search for any named plaintiff other than Marissa Feeney, and by performing various additional word searches ("warranty," "California," "CA," "injunctive," "equitable"). Godino Dec. ¶ 8; Greenstone Dec. ¶ 4. After making these deductions, Class Counsel then applied an across the board 30-percent reduction to *all* time entries relating to Honda's motion to dismiss and motion for summary judgment, since these two briefings contained multiple sections focused exclusively on non-Illinois claims. *Id.* Class Counsel also deleted entries concerning Honda's motion to strike the Amended Complaint's nationwide allegations since a nationwide class was not pursued. *Id.*

Class Counsel's methodology comports with Illinois law. Although fees can only be awarded for efforts in furtherance of ICFA claims, a plaintiff bringing multiple claims is entitled to recover fees for work performed on intertwined theories or claims. *Straits Fin. LLC v. Ten Sleep Cattle Co.*, 900 F.3d 359, 373 (7th Cir. 2018) ("Illinois courts have interpreted this fee provision to allow fee awards for work on an ICFA claim and 'for work on non-Act claims when the Act claim is so inextricably intertwined with the non-Act claims that it cannot be

distinguished.'"). If unrelated work is distinguishable from the ICFA claim, there is no entitlement to commensurate fees. *Id.* But when, on the other hand, a common effort furthers other claims that share facts, evidence, or legal theories that are "inextricably intertwined" with the ICFA claim, a plaintiff is entitled to all fees incurred. *See Dubey v. Pub. Storage, Inc.*, 918 N.E.2d 265, 283 (Ill. App. Ct. 2009) ("[P]laintiffs may also recover fees incurred for work on non-Act claims when the Act claim is so inextricably intertwined with the non-Act claims that it cannot be distinguished."); *Ardt v. State*, 687 N.E.2d 126, 130–31 (Ill. App. Ct. 1997) ("[W]here multiple claims for relief arise from a common core of facts or related legal theories, much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. In these circumstances, a fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit."). And, Illinois courts have rejected the argument that a prevailing ICFA plaintiff should only receive a fraction consistent with the number of claims alleged compared to the number of claims on which they prevailed. *See, e.g.*, *Grove*, 634 N.E.2d at 1190 (rejecting the argument that a plaintiff should recover in proportion with the number of claims upon which they prevailed).

This is true even when an ICFA plaintiff does not make a full recovery on other aspects of their case or when other parties or claims are dismissed. In *Ciampi v. Ogden Chrysler Plymouth, Inc.*, for example, the plaintiff filed suit against three separate defendants alleging fraud and other related claims in the purchase of a new car. 634 N.E.2d 448, 463 (Ill. App. Ct. 1994). By the time the case proceeded to trial, however, only the claims against a single defendant remained—the others having been dismissed on summary judgment. *Id.* Nonetheless, when the plaintiff prevailed against the lone remaining defendant at trial, she was entitled to recover her attorney fees on claims that relied on the same evidence as the ICFA claim. *Id.* ("Given the complexities of litigating Ciampi's claims against Ogden, Chrysler, and Peerless, as well as the materiality of these

issues as to all three defendants, we conclude the trial court did not err in finding Ogden to be responsible for attorney fees incurred throughout this case.").

As discussed above, the work relevant to the California and Illinois claims was heavily intertwined. The briefing on class certification, fact discovery, expert discovery and trial account for over 80-percent of Class Counsel's lodestar. Godino Dec. ¶ 6. This work would have been largely the same even if Class Counsel had pursued claims only for the Illinois Repair Class from the outset. Plaintiffs would have sought the same discovery, and Honda would have been obligated to produce the same documents concerning the long history of the VTC Defect, warranty data relating to VTC claims, etc. To prove-up the defect, Plaintiffs would needed to have engaged the same experts, taken the same Honda fact witness depositions, and presented the same case at trial.

This is because the underlying facts that support the claims are identical, and the ICFA and CLRA are similar statutes. Both statutes required Plaintiffs to prove that the VTC was defective, and that Honda knew about the Defect prior to sale. Dkt. No. 351 at 7 (Final Charge to Jury). In addition, the nature of the Defect and its potential *consequences* were relevant to proving both the ICFA and CLRA claims. A defect that harms other engine components is more likely to influence a reasonable consumer's purchasing decision (the ICFA standard), just as it is more likely to impact safety and/or central functionality (the CLRA standard). For these reasons, the focal point of expert discovery, fact discovery, class certification and trial was the existence and nature of the VTC Defect, something equally relevant to all claims. The parties' data analysts (Dr. Taylor and Lee Bowron) analyzed the VTC failure rate in the warranty data because this bore on the existence of a defect. Dkt. No. 82-5 (Taylor Expert Report). The parties' automobile technical experts (Jason Arst and Michael Stapleford) analyzed the nature of the VTC rattle and its consequences because this bore on the materiality of the defect. Dkt. No. 71-1 (Stapleford Expert Report); Dkt.

No. 85-1 (Arst Expert Report). The parties' metallurgists buttressed this analysis with microscopic parts examination. Godino Dec. ¶ 24. All of this work would have been necessary if only the Illinois Repair Class Claims were pursued. And under Illinois law, Class Counsel are entitled to be reimbursed for all of this time.

The *amount* of work performed by Class Counsel is also reasonable as it was necessary to digest the information produced by Honda, and navigate the complex technical issues that lie at the heart of the dispute. For example, there were 32,837 documents produced collectively by the parties, their experts and third parties equating to over 2 million pages of information. Godino Dec. ¶ 40. All of this information had to be reviewed. Each side retained four experts because the nature of the dispute required expert involvement. Indeed, with the exception of the Plaintiffs, all of the live witnesses at trial were experts. The substantial motion work (motion to dismiss, class certification, summary judgment, motions for reconsideration, motion to approve class notice, etc.), extensive fact discovery, extensive expert discovery, and a jury trial required the time reasonably invested by Class Counsel. Godino Dec. ¶¶ 23-37.

b. The Requested Fee is Reasonable Considering the Benefit to the Illinois Repair Class

The Illinois Repair Class will receive a one-hundred-percent recovery because of Class Counsel's efforts. Although Class Counsel's request of $4,888,922.50 in fees exceeds the $1,398,624 recovered on behalf of the Class, the differential is well within the boundaries of what Illinois courts have approved. And the result here is consistent with the ICFA's goal of encouraging plaintiffs to pursue relatively small, otherwise uneconomical claims where attorney's fees would consume the litigation.

The Illinois Supreme Court has specifically recognized that in consumer fraud cases, "attorney fees awards can easily constitute the largest part of the plaintiff's recovery" and that the Illinois Legislature intended the fee-shifting provision to encourage consumers to pursue smaller

claims that would otherwise go without redress. *Cruz*, 688 N.E.2d at 657 ("That provision is premised on the recognition that plaintiffs would be reluctant to seek redress for consumer fraud if the recovery would be nearly or completely consumed by attorney fees and was designed to encourage plaintiffs who have a cause of action to sue even if recovery would be small."). As a result, the proportionality requirement that this Court and others have applied to civil rights and other federal fee-shifting statutes,[1] has been explicitly rejected by the Illinois Appellate Court as contrary to the purpose of the ICFA. *Grove*, 634 N.E.2d at 1190 (discussing *Farrar v. Hobby*, 506 U.S. 103 (1992) and holding that "[t]o adopt defendant's suggestion would discourage plaintiffs with valid claims from pursuing relief under the Act simply because attorney fees may exceed recovery").

To the contrary, Illinois courts frequently make fee awards under the ICFA that exceed the plaintiff's recovery by a wide margin. *See, e.g.*, *id.* at 1185 (awarding $12,500 on a plaintiff's ICFA claim and $21,073.46 in attorney fees); *Cange v. Stoler and Co.*, 913 F.2d 1204, 1206 (7th Cir. 1990) (affirming an award of $43,666.79 on the plaintiff's ICFA claim and $80,218.35 in attorney fees); *Stola v. Am. Workman Professional, Inc.*, 2019 WL 6840387, at *2 (Ill. App. 2019) (awarding $300 under the ICFA, $4,075 for breach of contract, and $9,927.50 in attorney fees); *Demitro v. General Motors Acceptance Corp.*, 902 N.E.2d 1163, 1171-72 (Ill. App. 2009) (awarding $53,101 in attorney fees and $7,560.06 in compensatory damages under the ICFA and rejecting the argument that it was unreasonable for the plaintiff to have two lawyers at trial—"A litigants staffing needs often vary in direct proportion to the ferocity of her adversaries' handling of the case").

[1] *See, e.g.*, *Sierra Club v. Johnson*, 2010 WL 147951 (N.D. Cal. Jan. 12, 2010) (reducing a fee award in proportion to the plaintiffs success on particular claims)

In *Grove*, for example, the Illinois Appellate Court affirmed an award of $21,073.46 in attorney's fees when the ICFA damages award was only $12,500. 634 N.E.2d at 533. On appeal, the defendant argued that the fee award was erroneous because the award included work performed on non-ICFA claims and because it was not proportional to the damages award. *Id.* at 539-40.[1] The court rejected both arguments as contrary to the purpose of the ICFA. Even though the trial proceeded in two phases—one trial on the ICFA claim and a separate jury trial on related warranty claims—the court agreed with the trial court's finding that the award was appropriate because the two trials involved the same evidence and relevant issues; it also noted the trial court's finding that there was "tremendous overlap in interrelationship between the breach of warranty count and the consumer fraud action" and that there had been a reduction of $2,260 for work specifically related to the jury trial. *Id.* The court rejected the defendant's argument that an award of attorney's fees under the ICFA must be proportional to damages or "based on the degree of success." *Id.* ("To adopt defendant's suggestion would discourage plaintiffs with valid claims from pursuing relief under the Act simply because attorney fees may exceed the recovery.").

In a similar case, the Illinois Appellate Court allowed an attorney's fees award of $185,849.34 to stand even though it simultaneously reduced the damages award from $69,145 to $5,000 and vacated an award of punitive damages. *Dubey v. Public Storage, Inc.*, 918 N.E.2d 265, 284 (Ill. App. 2009). The court allowed the award of attorney's fees under the ICFA even though that claim was not included in the initial complaint, concluding the ICFA claims were "inextricably intertwined with the [non-ICFA] claims" and "based on the same evidence and the time spend on each issue could not be distinguished." *Id.* at 283.

[1] The *Grove* defendant also argued on appeal that the trial court erred in awarding attorney's fees because there was no finding of bad faith. 634 N.E.2d at 539. The court rejected this argument as well. *Id.* ("Section 10a(c) of the Act applies to cases involving innocent misrepresentations.").

In *Aliano v. Transform SR LLC*, the Illinois Appellate Court considered an whether an extremely high ratio of attorney fees award to actual damages—$267,470 in light of the prevailing plaintiff's recovery of $3.10, a ratio of 86,281—was reasonable under the circumstances. 167 N.E.3d at 672. Although the court remanded for the trial court to make additional findings as to the reasonableness of the fee, it noted that such a ratio could be appropriate. *Id.* at 679-80. The court questioned the "billing judgment" of plaintiff's counsel, but it also noted that the ICFA's fee-shifting provision was intended to serve as an incentive for attorneys to represent consumers with small-value claims. *Id.* Ultimately, the court concluded that the reasonableness of the fee would likely turn on the litigation conduct of the parties. *Id.* If the "grossly disproportionate" expenditure of time was driven by plaintiff's excessive settlement demands, "then a significant downward adjustment" to the lodestar would be appropriate. *Id.* If, on the other hand, plaintiff's counsel's efforts were necessary because of "militant defense tactics" employed by the defendants, the court held that an award of compensatory damages "grossly disproportionate to the compensatory damage award may well be reasonable." *Id.* at 680.

Honda was militant in its defense of this case. At the outset, it refused to produce documents in a timely manner. When Honda lost on Plaintiffs' motion to compel production (see Dkt. No. 56), it fired its first law firm (Bowman and Brooke) and hired DTO Law. The parties attended four settlement conferences and Honda never once seriously entertained any class settlement. Godino Dec. ¶ 27. Consequently, the Conferences were a waste of Class Counsel's time and money. Even though Honda's engineers had labeled the VTC Actuator "defective" and concluded that the VTC Defect will cause the Timing Chain Tensioner to fail (see Tr. Exs. 509 and 510), Honda doggedly contended this was not so in defiance of the obvious facts. To assist with trial, Honda brought on yet another national firm, Lewis Brisbois. Had Class Counsel not devoted their time and resources into this case, the Illinois Repair Class Members would have

received nothing. Instead, they all received full recovery for damage suffered at the point of purchase.

Compensating Counsel for the time that spent litigating on their behalf to deliver this benefit is reasonable and satisfies the purpose of the ICFA—that defrauded consumers pursue their claims even when the cost of litigation would otherwise exceed the recovery. *See Cruz*, 688 N.E.2d at 963 ("Indeed, in consumer fraud cases the attorney fee awards can easily constitute the largest part of a plaintiff's recovery. The legislature realized this when it enacted the fee-shifting provision of the Consumer Fraud Act. That provision is premised on the recognition that plaintiffs would be reluctant to seek redress for consumer fraud if the recovery would be nearly or completely consumed by attorney fees and was designed to encourage plaintiffs who have a cause of action to sue even if recovery would be small.")

c. The Requested Fee is Reasonable Considering Class Counsel's Experience and Ability, the Skill Required and the Prevailing Hourly Rates

The two law firms appointed by the Court as class counsel put forth a team of lawyers and professionals that specialize in automotive defect cases, class actions, and trial work. Collectively, Counsel was able to match Honda's prowess in litigating the highly technical mechanical issues involved, the resources that one of the world's largest car companies could muster, and the trial work of litigation boutique DTO Law and national trial firm Lewis Brisbois Bisgaard & Smith LLP. Class Counsel's primary billing attorneys included: [1]

- Mark Greenstone of Greenstone Law. Mr. Greenstone has practiced law for 25 years and is the founder of Greenstone Law. Since 2012, he has devoted his practice to almost exclusively to class action litigation, with a focus on automobile defect cases. Mr. Greenstone requests an hourly rate of $1,000. Greenstone Dec. ¶¶ 6-8.

[1] Detailed biographical information concerning all Class Counsel attorneys is contained in the Godino and Greenstone Declarations.

- Kevin Ruf of Glancy Prongay & Murray. Mr. Ruf has practiced law for 36 years and is a partner at Glancy. Mr. Ruf is an accomplished trial lawyer, with first-chair jury trial experience. Mr. Ruf intended to lead Class Counsel in this trial but was forced to step back because of a significant health issue—although he still appeared for part of the trial and cross examined Honda expert Dr. Paul Taylor. Mr. Ruf requests an hourly rate of $1,125. Godino Dec. ¶ 11.

- Marc Godino of Glancy Prongay & Murray. Mr. Godino has practiced law for 28 years and is a partner at Glancy. He specializes in representing plaintiffs in class action and automotive litigation. Mr. Godino requests an hourly rate of $1,000. Godino Dec. ¶ 10.

- David Stone of Glancy Prongay & Murray. Mr. Stone has practiced law for 29 years and is a partner at Glancy and specializes in complex and class action litigation. Mr. Stone requests and hourly rate of $1,000. Godino Dec. ¶ 13.

- Natalie Pang of Glancy Prongay & Murray. Ms. Pang has practiced law for 8 years and has participated in multiple trials. She is senior counsel at Glancy. Ms. Pang requests an hourly rate of $575. Godino Dec. ¶ 14.

- Benjamin Donahue of Greenstone Law. Mr. Donahue has practiced law for 9 years and is Senior Counsel at Greenstone law, where he focuses primarily on representing plaintiffs in automotive defect class actions. Mr. Donahue has significant trial experience having tried over ten cases, three as first chair. Mr. Donahue requests an hourly rate of $750. Greenstone Dec. ¶ 10.

Class Counsel's fees have been approved by federal courts in automobile defect litigation on multiple occasions. Godino Dec. ¶ 50; Greenstone Dec. ¶ 12. As the evidence submitted by Class Counsel and other recent fee awards demonstrates, the rates requested by Counsel falls well within prevailing rates for attorneys with comparable experience and skill level practicing in this District. *Chess v. Volkswagen Grp. of Am., Inc.*, 2022 WL 4133300, at *8 (N.D. Cal. Sept. 12, 2022) ("[T]ypically, 'affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases ... are satisfactory evidence of the prevailing market rate.'" (Citing *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990)). For example, when approving a fee request in another automotive class action, Judge Haywood Gilliam of this District noted that:

> Timekeepers' hourly rates range from $1,100 for partners with over 30 years of experience to $550-800 for associates with multiple years of experience. Requested hourly rates for staff and paralegals range from $150 to $250. The Court finds Plaintiff's counsel's billing rates in line with prevailing rates in this district for personnel of comparable experience, skill, and reputation.

Chess, 2022 WL 4133300, at *9; *see also In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, 2017 WL 1047834, at *5 (N.D. Cal. March 17, 2017) (finding rates ranging from $275 to $1,600 for partners, $150 to $790 for associates, and $80 to $490 for paralegals as reasonable). The rates requested by Counsel are generally lower than or comparable to those set by the Laffey Matrix. Godino Dec., ¶ 51. Although this Court and others have noted that the Laffey index is specific to the Washington-Baltimore area, they have also recognized that the index frequently falls below going rates in the Bay Area, accepting it as evidence of reasonable hourly rates in this District. *See Carlotti v. ASUS Computer Int'l.*, N, 2020 WL 3414653, at *5 (N.D. Cal. June 22, 2020) ("Although not determinative for reasonable billing rates in the Bay Area, the *Laffey* matrix has been accepted by the Ninth Circuit as evidence of reasonable hourly rates charged by Washington, D.C. attorneys. . . . One court observed that the *Laffey* matrix rates likely fall below reasonable billing rates in the Bay Area based on the locality pay differential between this geographic location and the Washington-Baltimore area.")

V. CLASS COUNSELS' COSTS SHOULD BE REIMBURSED

A. Class Counsel are Entitled to an Award of Costs Under the ICFA

Like reasonable attorney's fees, the ICFA specifically provides that a prevailing plaintiff may recover litigation costs. 815 ILCS 505/10a(c) ("[T]he Court . . . may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party."). Recoverable costs under Illinois law include "the expenses necessarily incurred in the assertion of [the plaintiff's] rights in court." *Galowich v. Beech Aircraft Corp.*, 441 N.E.2d 318, 321 (Ill. App. Ct. 1982). This includes the cost of conducting depositions. *See, e.g.*, *Straits Fin. LLC*, 2017 WL

5900280, at *2 (awarding costs associated with "filing, transcripts, copying, and witness depositions and trial testimony"). Travel costs for depositions and trial. *See, e.g.*, *Watson v. Ferguson*, 1986 WL 5202, at *7 (N.D. Ill. Apr. 29, 1986); *Straights Fin., LLC*, 2017 WL 5900280, at *2 (awarding deposition travel costs). Reasonable and necessary costs of mailing and copying. *Johnson v. Thomas*, 794 N.E.2d 919, 936 (Ill. App. Ct. 2003) (mailing and messaging services recoverable). And reasonable and necessary vendor costs. *Id.* ("[W]e have determined that expenses paid to a third party for the purposes of furthering specific litigation, including computerized legal research, messenger services, and court reporter fees, may be recovered."). The chart below reflects Counsel's outlay of costs in this case from the inception through September 19, 2023, which were reasonable and necessary in this case. Godino Dec. ¶ 53.

COMBINED EXPENSES	
CATEGORY OF EXPENSE	**TOTAL EXPENSES**
CLAIMS ADMINISTRATOR COSTS	34,575.74
COURIER AND SPECIAL POSTAGE	2,632.77
COURT FILING FEES	717.00
DOCUMENT MANAGEMENT	48,458.68
EXPERTS	300,539.35
ONLINE RESEARCH	66,615.56
PHOTOCOPYING	2,014.86
SERVICE OF PROCESS	14,538.99
TRANSCRIPTS	92,389.38
TRAVEL AIRLINE	12,774.52
TRAVEL AUTO	5,808.50
TRAVEL HOTEL	37,778.08
TRAVEL MEALS	4,439.80
WITNESS FEES	883.80
A/V LITIGATION SUPPORT VENDOR	56,124.90
Grand Total	**680,291.93**

Transcription costs of $92,389.38—which include court reporter and videographer costs related to the depositions taken by Plaintiffs, hearings, and trial—were necessary and the number

of depositions conducted by Plaintiffs is very reasonable considering the nature of this litigation. Indeed, Plaintiffs deposed only three non-expert fact witnesses, two of whom were Honda's Rule 30(b)(6) designees. Godino Dec. ¶ 31. Video deposition testimony of all three non-expert Honda witnesses was played at trial and the transcripts of the experts were used extensively in preparing for, and during, cross examination of Honda's experts.

Travel, meal, and lodging costs associated with depositions, hearings, meetings, and trial, Godino Dec. ¶ 54, were necessary and reasonable in this case. Counsel greatly reduced travel expenses in this case by conducting every deposition from their offices by video conference and traveling only to defend Plaintiffs' depositions. Godino Dec. ¶ 34. The majority of these costs were incurred during the pre-trial and trial stages of this case when Counsel, Plaintiffs, and expert witnesses all traveled to San Francisco. Godino Dec. ¶ 54.

Counsel incurred $66,615.56 in third-party legal research, $48,458.56 in document hosting costs, and $20,070.42 for witness fees, process server costs, courier, photo imaging, and special postage costs. Godino Dec. ¶ 53. These costs are not fixed, recurring costs but were rather incurred specifically for this litigation. These costs are reasonable considering the volume of the documents produced by Honda and hosted by a third-party vendor for over two years, and the significant research that was necessary in opposing Honda's motions, moving for class certification, navigating notice issues, and preparing for trial. Godino Dec. ¶¶ 23-37. At trial, Counsel incurred costs of $56,124.90 to hire an audio-visual litigation specialist who assisted counsel in presenting evidence at trial and preparing the three designated video deposition segments that Plaintiffs presented as part of their case. Godino Dec. ¶ 54. These costs were reasonable and necessary for the presentation of Plaintiffs' case.

Counsel incurred $300,539.35 in expert witness costs. As discussed above, these experts were essential to the Plaintiffs' case. *Supra* at 4-5. Automobile technical expert Michael

Stapleford was Plaintiffs' main live witness at trial. His testimony focused *exclusively* on the nature of the VTC Defect and its impact—it was not specific to any particular claim. *Id*. Likewise, metallurgist Bruce Agle testified at trial regarding his microscopic examination of Class Vehicle components. *Id*. This was also to assist the jury in understanding the impact of the VTC Defect, and applicable to California and Illinois claims alike. Data analyst Lee Bowron focused on the incidence rate of the VTC Defect. His work was applicable to all Class Members generally. *Id*. Finally, damages expert Steven Boyles conducted a damages analysis regarding the average cost of repair. *Id*. His work was cited by the Court on class certification, Dkt. No. 127, and ultimately resulted in a damages stipulation that streamlined the trial and greatly benefited Illinois Repair Class Members. These expert costs are reasonable and necessary in a complex product defect case such as this and are fairly awarded under the ICFA's fee shifting provision.

Illinois courts are split regarding the recovery of expert witness costs under the ICFA. Some courts conclude that expert witness testimony is a necessary litigation cost. *See, e.g.*, *Johnson*, 794 N.E.2d at 935 ("Such recoverable costs would include expenses for expert witnesses."); *Uniroyal Goodrich Tire Co. v. Mut. Trading Corp.*, 63 F.3d 516, 526 (7th Cir. 1995) (holding that expert witness costs were "reasonably necessary for [the plaintiff] to prove its case"). Others, however, have determined that expert costs are not recoverable because they are not specifically enumerated in 815 ILCS 505/10a(c)'s fee shifting provision. *See, e.g.*, *TruServ Corp. v. Ernst & Young, LLP*, 876 N.E.2d at 77, 85-86 (Ill. App. Ct. 2007) (citing *Vicencio v. Lincoln-Way Builders, Inc.*, 789 N.E.2d 290 (Ill. 2003). Respectfully, *TruServ* wrongly applied the Illinois Supreme Court's holding in *Vicencio* and its reasoning conflicts with the legislative intent of the IFCA—encouraging injured consumers to seek redress regardless of the size of their claim. *Krautsack*, 861 N.E. 2d at 645. The *TruServ* Court relied upon the Illinois Supreme Court's opinion in *Vicencio*, noting that "the supreme court has held that the fees charged by expert

witnesses are not recoverable under statutory provisions that permit a prevailing party to recover costs." 876 N.E.2d at 85. *Vicencio*, however, involved Illinois' general cost-taxing statute, not a true fee-shifting statute such as the ICFA that the Illinois Supreme Court has noted is specifically designed to encourage plaintiffs to bring consumer fraud actions for the public good. *See Krautsack*, 861 N.E. 2d at 645.

Plaintiffs, therefore, respectfully submit that the court should reject the analysis in *TruServ* and follow cases like *Johnson* and *Uniroyal* and conclude that Class Counsel's expenditures for expert witness fees are recoverable as costs under the IFCA. Disallowing expert costs would contravene the purpose of the ICFA in any case where technical expertise or expert testimony is required. There can be no doubt that expert costs were necessary in this litigation to prove the Illinois Repair Classes' claims—indeed, courts have granted summary judgment on similar claims where a plaintiff failed to support their case with necessary expert testimony. *See, e.g.*, *Sonneveldt v. Mazda Motor of Am., Inc.*, 2023 WL 2292600, at *17 (C.D. Cal. Feb. 23, 2023) (granting summary judgment and decertifying classes after Plaintiffs failed to produce admissible expert testimony on the relevant defect).

Finally, Counsel incurred the cost of providing notice to the Illinois class through mass mailings performed by a third-party administrator on Plaintiffs and Counsel's behalf. To date Class Counsel have paid $89,461.54 in notice costs. Mason Dec. ¶ 2. Of this amount, the notice administrator estimates $34,575.74 was incurred sending notice to the Illinois Repair Class. Mason Dec. ¶ 2. Counsel seek reimbursement of this portion of the notice costs only. These costs were reasonable, necessary, performed at the Court's direction and pursuant to Rule 23(c), and recoverable under the ICFA. *Johnson*, 794 N.E.2d at 935 (noting that mailing and copying costs are recoverable "when such expenses are extraordinary in terms of volume and cost, *e.g.*, in class action suits requiring extensive mailing or voluminous copying").

B. Class Counsel are Entitled to an Award of Expert and Notice Costs Under Fed. R. Civ. P 23(h)

Class Counsel are hopeful that the Court will have Honda pay its expert and notice costs, not the Class. Nevertheless, Class Counsel note that "[a]n attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation costs from that fund." *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1023–24 (E.D. Cal. 2019) (citing *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)). This includes expert witness costs. *Id.* (citing *Wininger v. SI Mgmt. L.P.*, 301 F.3d 1115, 1121 (9th Cir. 2002); *In re Wash. Pub. Power Supply System Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) (the class "should share the wealth with the lawyers whose skill and effort helped create it"); *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) ("Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit[.]")

Here, Class Counsel advanced $300,539.35 in expert costs and $34,575.74 in notice costs on behalf of the Illinois Repair Class. Godino Dec. ¶ 53; Mason Dec. ¶ 2. Those 2,571 Class Members are now set to receive a one-hundred-percent recovery because of Counsel's efforts and financial outlay. It is fair and reasonable for the Class to reimburse Counsel for this significant cost paid on their behalf, should the Court conclude that expert or notice costs are not recoverable under the ICFA.

C. Honda Should Pay Further Administrative and Notice Costs

Honda should pay the costs of administrating the class on a going forward basis. Once a defendant's liability has been determined, it should bear the cost of providing notice to the class and administrating the case going forward. *See Hunt v. Imperial Merch. Servs., Inc.*, 560 F.3d 1137, 1143-44 (9th Cir. 2009) (concluding that it is appropriate for defendant to pay notice costs after a defendant's liability has been established). Here, Honda's liability under the ICFA has

been established. Illinois courts have specifically interpreted the ICFA's fee shifting provision, moreover, to include the costs of mass copying and mailings in a class action. *See Johnson*, 794 N.E.2d at 935 (noting that mailing and copying costs are recoverable "when such expenses are extraordinary in terms of volume and cost, *e.g.*, in class action suits requiring extensive mailing or voluminous copying").

VI. PLAINTIFF FEENEY IS ENTITLED TO A SERVICE AWARD

Class Counsel request a $5,000 service award for Marissa Feeney. Although this Court has recognized that "[g]enerally, a class representative should not get a bonus," *Morris v. Fidelity Investments*, 2019 WL 4040069, at *3 (Aug. 26, 2019), the requested award is appropriate here. Ms. Feeney dedicated a significant amount of time to this case, far beyond what is required in a typical class case that settles. She worked to comply with the defendant's discovery requests and sat for a deposition. Declaration of Marissa Feeney ¶¶ 5-6. And beyond that, she traveled to San Francisco twice from Illinois to be present for jury selection and again for trial. Feeney Dec. ¶ 9. She assisted Counsel in preparing for trial, she testified at trial and was present for the entire proceedings. Godino Dec. ¶ 48. Ms. Feeney also personally attended all four Settlement Conferences. Feeney Dec. ¶ 7. The Illinois Class benefited from Ms. Feeney's commitment to this case and a $5,000 incentive award is reasonable.

VII. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that her motion for attorneys' fees, costs and class representative service award be granted.

Respectfully submitted,

DATED: September 19, 2023

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Attorneys for Plaintiffs and the Classes

PROOF OF SERVICE BY ELECTRONIC POSTING

I, the undersigned say:

I am not a party to the above case and am over eighteen years old. On September 19, 2023, I served true and correct copies of the foregoing document, by posting the document electronically to the ECF website of the United States District Court for the Northern District of California, for receipt electronically by the parties listed on the Court's Service List.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 19, 2023, at Los Angeles, California.

s/ Mark S. Greenstone
Mark S. Greenstone

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Class Counsel

UNITED STATES DISTRICT COURT
NOTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

Quackenbush et al.,

Plaintiff(s),

vs.

American Honda Motor Company, Inc. et al.,

Defendant(s).

Case No. 3:20-cv-05599-WHA

[PROPOSED] ORDER GRANTING PLAINTIFF MARISSA FEENEY AND CLASS COUNSEL'S MOTION FOR ATTORNEY FEES, COSTS AND INCENTIVE AWARD

Pursuant Rule 54(d)(2), (3) and Rule 23(h) of the Federal Rules of Civil Procedure and Civil L.R. 54-5, Plaintiff Marissa Feeney and Class Counsel have moved the Court for awards of attorney fees and costs, and an incentive award. The Court concludes that the Motion should be GRANTED.

Class counsel is awarded $ _____ in fees and $ _____ in expenses. Plaintiff Marissa Feeney is awarded $ _____ as an incentive award. Defendant American Honda Motor Company, Inc. is ordered to pay the costs of notice to the Illinois Repair Class going forward and the costs of administration associated with distributing the judgment in their favor to individual Class Members.

IT IS SO ORDERED:

Dated: _____, 2023

_____
THE HONORABLE WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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Attorneys for Plaintiffs and the Classes

Class Counsel

UNITED STATES DISTRICT COURT
NOTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

Mary Quackenbush *et al.*,

Plaintiff(s),

vs.

American Honda Motor Company, Inc. *et al.*,

Defendant(s).

Case No. 3:20-cv-05599-WHA

DECLARATION OF MARISSA FEENEY

I, Marissa Feeney, declare as follows:

1. I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. I am a resident of the State of Illinois and am the owner of a 2014 Honda CR-V, that I purchased used from Serra Honda O'Fallon in O'Fallon, Illinois on or about October 4, 2019.

3. In the fall of 2020 I contacted Greenstone Law APC to discuss VTC Actuator problems that my CR-V had experienced with Greenstone law, and ultimately agreed to serve as a class-representative in this case. I take my role as a class representative seriously and have provided information to counsel as requested and stayed abreast of the status of the case.

4. Prior to being added to the First Amended Complaint ("FAC"), I discussed my experience with counsel and provided relevant documentation. I then reviewed the allegations in the FAC before it was filed.

5. Throughout the course of this case, I have had many telephone conferences with my counsel to discuss the factual basis of my claims and the status of the case. I personally reviewed Defendants' interrogatories and document requests, and my responses thereto, and searched for all responsive documents in my possession, including service records and other information, and provided them to my counsel.

6. On May 6, 2021, I brought my vehicle to Serra Honda O'Fallon so that it could be inspected. On June 7, 2021, I was deposed by Defendants in a deposition conducted by Zoom which lasted almost a full day. Following my deposition, I reviewed my deposition transcript.

7. I personally attended via Zoom all four Settlement conferences in this case occurring on March 1, 2022, May 31, 2022, April 13, 2023 and June 8, 2023.

8. As trial approached in summer 2023, I made arrangements to stay in San Francisco the last week of July and first week of August. When the trial was moved to late August, I rearranged my schedule and missed the first week of law school so that I could personally attend.

9. I traveled to San Francisco to attend jury selection on August 8, 2023, and then again on August 20, 2022 to be present for the entire trial. Including travel time from Illinois, I was gone for nearly two weeks.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this September 19, 2023 at Carbondale, Illinois.

By: _____
Marissa Feeney

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Class Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

Quackenbush, et al., Plaintiff(s), vs. American Honda Motor Company, Inc. et al., Defendant(s).	Case No. 3:20-cv-05599-WHA **DECLARATION REGARDING NOTICE ADMINISTRATION COSTS FOR ILLINOIS REPAIR CLASS**

I, Kyle Mason, declare:

1. I am a Senior Director for the Court appointed Notice Administrator, Postlethwaite & Netterville, APAC ("P&N"),[1] a full-service administration firm providing legal administration services, including the design, development, and implementation of unbiased complex legal notification programs. The following statements are based on my personal knowledge as well as information provided by other experienced employees working under my supervision.

2. As of September 18, 2023, P&N has incurred $89,461.54 in fees and costs for the implementation of the notice plan and administration. We estimate $34,575.74 of the costs incurred to date are reasonably attributed to the Illinois Repair Class. Costs incurred on a per notice basis were allocated to the Illinois Repair Class for the actual volume multiplied by the unit cost. In some cases, a minimum fee was applied per our typical invoice practices. All costs associated with notice setup and design and for the setup and hosting of the website and IVR were allocated to the Illinois Repair Class since these costs are incurred and remain constant regardless of class size. Class Member support and communications costs on a per minute basis were allocated based on the percentage of Illinois Repair Class Members. All notice administration hours were allocated to the Illinois Repair Class. These hours fall within our typical range for invoiced hours for the services provided.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of September 2023 in Los Angeles, California.

DocuSigned by:
Kyle Mason
A535420EFBA1480...

Kyle Mason

[1] As of May 21, 2023, the Directors & employees of Postlethwaite & Netterville (P&N), APAC joined EisnerAmper as EAG Gulf Coast, LLC. Where P&N is named as an entity, EAG Gulf Coast, LLC employees will service work contracted with P&N.