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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

10 DORI H. KOVEN, on behalf of herself and all
11 those similarly situated,

Case No.: 2:10-cv-00638

11 Plaintiff,

12 vs.

CLASS ACTION COMPLAINT

13 AMERICAN HONDA MOTOR CO., INC.

Demand for Jury Trial

14 Defendants.

15 Plaintiff Dori H. Koven, on behalf of herself and all others similarly situated, alleges as
16 follows:

17 JURISDICTION & VENUE

18 1. This Court has subject matter jurisdiction over this action pursuant to the Class Action
19 Fairness Act of 2005, 28 U.S.C. 1332(d), because at least one Class member is of diverse citizenship
20 from Defendant; there are more than 100 Class members nationwide; and the aggregate amount in
21 controversy exceeds \$5,000,000.00.

22 2. This Court has personal jurisdiction over Honda because Honda is a foreign corporation
23 registered to do business in the State of Nevada, does substantial business in the State of Nevada, has
24 sufficient minimum contacts in Nevada, or otherwise intentionally avails itself of the markets within
25 Nevada through the promotion, sales, marketing, and distribution of its vehicles to render the exercise
26 of jurisdiction by this Court proper and necessary. Moreover, a substantial part of the events or
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omissions giving rise to the claims herein alleged occurred in Nevada and a substantial part of property that is the subject of this action is situated in Nevada.

3. Venue is proper in this District under 28 U.S.C. §1391(a) because a substantial part of the events or omissions giving rise to the claim occurred in Nevada, or a substantial part of property that is the subject of the action is situated in Nevada. Further, venue is proper in this District under 28 U.S.C. §1391 (a) and (c) because Honda resides in this District. Pursuant to 28 U.S.C. §1391 (c), a defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. Thus, because Honda resides in this District, Honda transacts business in this District, and a substantial part of the events giving rise to the claims arose in this District, venue is proper.

NATURE OF THE CASE

4. The XM Radio system on 2008 through 2009 Honda Accords, 2007 through 2009 Honda Civics, 2007 through 2009 Honda CR-V's, 2007-2009 Honda Elements, 2007-2009 Honda Odysseys, and 2007 through 2009 Honda Ridglines ("Class Vehicles") suffers from a defect that causes the radio to suddenly lose all sound, yet permits the digital audio display to continue working normally (the "Radio Defect"). Sound from the radio can only be reestablished after the consumer cycles the ignition switch to the "off" position, and then back to the "on" position. Although the Radio Defect is covered by Honda's warranty, Honda has failed, and continues to fail to repair the Radio Defect.

5. Honda knows of the Radio Defect. Nevertheless, Honda has not told current owners and lessees of Class Vehicles about the Radio Defect, has not disclosed the Radio Defect to purchasers of Class Vehicles, has not repaired or replaced the Radio Defect, and continues to promote the XM Radio system on the Class Vehicles.

6. As a result of Honda's practices, Plaintiff, and the other members of the proposed class have suffered injury in fact, including economic damages, and have lost money or property.

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THE PARTIES

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2 7. Plaintiff Dori H. Koven is a resident of Las Vegas, Nevada, located in the County of
3 Clark.

4 8. Defendant American Honda Motor Co., Inc., (“Honda” or “Defendant”) is a corporation
5 organized under the laws of the State of California, is a registered foreign corporation in the State of
6 Nevada, and conducts significant amounts of business in Nevada.

7 9. Honda is the U.S. sales, marketing, and distribution subsidiary of its Japanese parent
8 company, Honda Motor Co., Ltd.

FACTUAL ALLEGATIONS

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10 10. Honda markets, distributes, and/or warrants Honda Accord, Honda Civic, Honda CR-V,
11 Honda Element, Honda Odyssey and Honda Ridgline vehicles in the United States.

12 11. Honda has offered a radio system known as XM Radio in its 2008 through 2009 Honda
13 Accords, 2007 through 2009 Honda Civics, 2007 through 2009 Honda CR-V’s, 2007 through 2009
14 Honda Elements, 2007 through 2009 Honda Odysseys, and 2007 through 2009 Honda Ridglines.

15 12. Honda has widely advertised the XM Radio system on its website, in its product
16 brochures, and in multiple other media for the purpose of inducing consumers to purchase its vehicles
17 with the XM Radio feature. For example, in past press releases, one Honda Executive Vice President
18 noted: "XM is proving to be a very popular feature that our customers want to see offered on a broader
19 range of models," and "It's a feature that adds real value to the product and the customer experience."

20 13. Honda provides owners and lessees of Class Vehicles with express warranties. The
21 express warranties state that Honda will repair or replace, free of charge, any part that is defective in
22 material or workmanship under normal use for 3 years or 36,000 miles, whichever comes first (the
23 “Warranty Period”).

24 14. Under normal use, the Class Vehicles have suffered from the Radio Defect during the
25 Warranty Period.

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1 15. Upon numerous occasions during the Warranty Period, sound from the Class Vehicles’
2 radio will “cut out,” only to be reestablished after the consumer cycles the ignition switch to the “off”
3 position, and then back to the “on” position.

4 16. Upon information and belief, Honda, well aware of the Radio Defect, informed its
5 employees and agents through its “ServiceNews” publication not to fix the Radio Defect when
6 presented by a consumer. Upon information and belief, the “ServiceNews” publication stated:

7 **XM Sound Cuts Out; OK
After Cycling Ignition Switch**

8 Currently Applies To: '08–09 Accord, '07–09 Civic,
9 '07–09 CR-V, '07–09 Element, '07–09 Odyssey, and
'07–09 Ridgeline

10 **A bad XM receiver can cause the sound to cut out**
11 when you quickly surf through channel selections,
12 yet the audio display continues to work normally. The
sound comes back when you cycle the ignition switch
to LOCK (0) and then to ON (II).

13 An updated XM receiver is in the works, so **if you get**
14 **a vehicle in your shop for this problem, don’t replace**
15 **the XM receiver at this time.** We’ll let you know when
the updated unit is available in an upcoming S/B.

16 17. Honda has long known that the Class Vehicles have the Radio Defect. Honda has
17 exclusive access to information about the Radio Defect through its dealerships, pre-release testing data,
18 warranty data, customer complaint data, and replacement part sales data, among other sources of
19 aggregate information. In contrast, the Radio Defect was not known or reasonably discoverable by the
20 Plaintiff and Class members prior to purchase.

21 18. Honda has actively concealed the Radio defect from consumers. Honda knew that
22 potential car buyers and lessees would deem the Radio Defect to be material such that reasonable
23 consumers who knew of the Radio Defect either would have paid less for the Class Vehicles, would
24 not have paid for the XM Radio service, or would not have purchased or leased a Class Vehicle at all.

25 19. When presented with the Class Vehicles for repair, Honda failed and refused to repair
26 the Radio Defect.

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1 20. As a result of Honda's practices, Plaintiff and Class members purchased vehicles they
2 otherwise would not have purchased, paid more for those vehicles than they otherwise would have
3 paid, ordered and paid for XM Radio service they would not have ordered or paid for, were subjected
4 to annoyance and unreasonable interruption in their use and enjoyment of their vehicle, and paid, and
5 will continue to pay repair costs and radio service costs for interrupted service as a result of the Radio
6 Defect.

7 **PLAINTIFF'S EXPERIENCE**

8 21. In November of 2008, Plaintiff purchased a 2008 Honda Accord from Findlay Honda
9 of Henderson, Nevada, which came with the factory equipped XM Radio system. Plaintiff decided to
10 purchase an Accord with the factory equipped XM Radio system because of the price, and because she
11 trusted Honda's advertisements and assurances from Honda's sales staff that the Accord was a reliable
12 and enjoyable vehicle. Honda did not inform Plaintiff before her purchase that the Accord's XM Radio
13 system was defective or that it would need to be replaced due to the sound "cutting out" periodically.

14 22. Plaintiff would not have purchased her vehicle had she known those facts.

15 23. In June of 2009, seven months after purchasing her vehicle, Plaintiff took her Accord
16 to Findlay Honda of Henderson, Nevada, informing the service department that the, "XM Radio will
17 turn off when driving sometimes... and I have to restart the car to get the XM Radio sound back on."
18 Plaintiff requested that Honda repair or replace the defective XM Radio system.

19 24. The Honda technician told Plaintiff that Honda would not repair or replace the defective
20 XM Radio system, that it was Honda's policy not to repair or replace the defective XM Radio system,
21 and that Plaintiff should come back sometime in the future to see if Honda has changed its policy.

22 25. Plaintiff's occupation requires her to be in her vehicle for significant amounts of time
23 and the Radio Defect has caused Plaintiff much annoyance and stress and has substantially reduced
24 the value of her Accord in her eyes.

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CLASS ACTION ALLEGATIONS

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2 26. Plaintiff brings this action on behalf of herself and a class of persons initially defined
3 as follows:

4 All residents of the United States, including the Commonwealth of
5 Puerto Rico; U.S. Virgin Islands, and Guam, who currently own or
6 lease, or previously owned or leased a Class Vehicle with an XM Radio
7 system (the "Class")

8 27. Excluded from the Class are Honda and Honda Motor Co., Ltd.; any affiliate, parent,
9 or subsidiary of Honda or Honda Motor Co., Ltd.; any entity in which Honda or Honda Motor Co.,
10 Ltd., has a controlling interest; any officer, director, or employee of Honda or Honda Motor Co., Ltd.;
11 any successor or assign of Honda or Honda Motor Co., Ltd.; anyone employed by counsel for
12 Plaintiffs in this action; any Judge to whom this case is assigned as well as his or her immediate family
13 and staff; and anyone who purchased a Class Vehicle for the purpose of resale.

14 28. This action has been brought and may properly be maintained on behalf of the Class
15 proposed above under the criteria of Federal Rule of Civil Procedure Rule 23.

16 29. Numerosity. Members of the Class are so numerous that their individual joinder herein
17 is impracticable. Hundreds of thousands of Class Vehicles have been sold or leased in the United
18 States, with a substantial portion of those sales occurring in Nevada. Class members may be notified
19 of the pendency of this action by mail, supplemented (if deemed necessary or appropriate by the Court)
20 by published notice.

21 30. Existence and predominance of common questions. Common questions of law and fact
22 exist as to all members of the Class and predominate over questions affecting only individual Class
23 members. These common questions include the following:

- 24 a. Whether Honda provided Plaintiff and Class members with a vehicle installed
25 with a Radio Defect or defective radio component;
- 26 b. Whether Honda had knowledge of the Radio Defect prior to its sales or leases
27 of the Class Vehicles;
- 28 c. Whether Honda disclosed the Radio Defect to purchasers or lessees of the Class
Vehicles;

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- d. Whether Honda has refused to repair or replace the Radio Defect;
- e. Whether Honda has a duty to disclose the Radio Defect to Plaintiff and other Class members;
- f. Whether Honda has engaged in unlawful, unfair, or fraudulent business practices;
- g. Whether Honda breached the express warranties by refusing to provide warranty coverage for the Radio Defect or any of its component parts;
- h. Whether Honda has breached its implied warranty of merchantability;
- i. Whether Plaintiff and the other Class members are entitled to equitable relief, including but not limited to restitution or a preliminary and/or permanent injunction; and
- j. Whether Plaintiff and the other Class members are entitled to damages and other monetary relief.

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31. Typicality. Plaintiff's claims are typical of the claims of the Class, because, among other things, Plaintiff purchased one of the Class Vehicles, which contains the same defective Radio Defect found in all other Class Vehicles.

32. Adequacy. Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the members of the Class she seeks to represent. Plaintiff has retained counsel competent in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. The interests of members of the Class will be fairly and adequately protected by Plaintiff and her counsel.

33. Superiority. The class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each Class member, while meaningful on an individual basis, is not of such magnitude as to make the prosecution of individual actions against Honda economically feasible. Even if Class members themselves could afford such individualized litigation, the court system could not. In addition to the burden and expense of managing myriad actions arising from the Radio Defect, individualized litigation presents a potential for inconsistent or

1 contradictory judgments, individualized litigation increases the delay and expense to all parties and
2 the court system presented by the legal and factual issues of the case. By contrast, the class action
3 device presents far fewer management difficulties and provides the benefits of single adjudication,
4 economy of scale, and comprehensive supervision by a single court.

5 34. In the alternative, the Class may be certified because:

- 6 a. the prosecution of separate actions by the individual members of the Class
7 would create a risk of inconsistent or varying adjudication with respect to
8 individual Class members which would establish incompatible standards of
9 conduct for Honda;
- 10 b. the prosecution of separate actions by individual Class members would create
11 a risk of adjudications with respect to them which would, as a practical matter,
12 be dispositive of the interests of other Class members not parties to the
13 adjudications, or substantially impair or impede their ability to protect their
14 interests; and
- 15 c. Honda has acted or refused to act on grounds generally applicable to the Class,
16 thereby making appropriate final and injunctive relief with respect to the
17 members of the Class as a whole.

18 **FIRST CAUSE OF ACTION**

19 **(Breach of Express Warranty)**

20 35. Plaintiff, on behalf of herself and all others similarly situated, incorporates by reference
21 and realleges all paragraphs alleged herein.

22 36. Honda provided all purchasers and lessees of the Class Vehicles with the express
23 warranties described herein, which became part of the basis of the bargain. Accordingly, Honda's
24 express warranties are express warranties under Nevada common law and Nevada Revised Statutes
25 §104.2313.

26 37. In addition, Honda made affirmations of fact or promises to Class members that the
27 vehicles Honda sold would be fully operational and reliable. These warranties were made in
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1 advertisements, in Honda's brochures, on Honda's website, and in uniform statements provided by
2 Honda to be made by salespeople. These affirmations and promises were express warranties, and were
3 part of the basis of the bargain between the parties.

4 38. Honda expressly warranted that the Class Vehicles would be covered under its warranty
5 for 3 years or 36,000 miles, whichever came first.

6 39. Honda expressly warranted it would repair or replace any part that was defective in
7 material or workmanship in the Class Vehicles free of charge.

8 40. The XM Radio system and its component parts were manufactured and/or installed by
9 Honda in the Class Vehicles and are covered by the express warranties.

10 41. Honda breached the express warranties by:

- 11 a. Providing 3 year/36,000 mile express warranty with the purchase or lease of the
12 Class Vehicles, thereby warranting to repair or replace any part defective in
13 material or workmanship at no cost to the owner or lessee;
- 14 b. Selling and leasing Class Vehicles with XM Radio systems that were defective
15 in material and workmanship, requiring repair or replacement within the
16 Warranty Period; and
- 17 c. Refusing to honor the express warranties by not repairing or replacing the
18 defective XM Radio system or any of its component parts.

19 42. These express warranties were further breached because the Class Vehicles sold to the
20 Class members were not fully operational or reliable. Honda exacerbated the breach by failing to
21 provide reliable automobiles after the defects were acknowledged. Honda further breached the
22 warranty by specifically directing its employees and agents to not repair or replace the Radio Defect
23 when presented by consumers.

24 43. As a direct and proximate result of Defendant's breach of express warranty, Plaintiff
25 and the Class have been damaged by receiving vehicles that were worth far less than what they paid
26 to purchase or lease the vehicles.

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1 44. As a direct and proximate result of Defendant's breach of express warranty, Plaintiff
2 and the Class received goods whose unreliable condition substantially impairs their value to Plaintiff
3 and the Class.

4 45. Plaintiff and the Class were unaware of these defects and reasonably could not have
5 discovered them when they leased or purchased their automobiles from Honda.

6 46. As a direct and proximate cause of Honda's breach, Plaintiff and the other Class
7 members have suffered damages and continue to suffer damages, including economic damages at the
8 point of sale or lease and thereafter, that is, the difference between the value of the vehicle as promised
9 and the value of the vehicle as delivered. Additionally, Plaintiff and the other Class members either
10 have incurred or will incur economic damages at the point of repair in the form of the cost of repair.

11 47. Plaintiffs and the other Class members are entitled to legal and equitable relief against
12 Honda, including damages, consequential damages, specific performance, rescission, attorneys' fees,
13 costs of suit, and other relief as appropriate.

14 **SECOND CAUSE OF ACTION**

15 **(Breach of Implied Warranty of Merchantability)**

16 48. Plaintiff, on behalf of herself and all others similarly situated, incorporates by reference
17 and realleges all paragraphs alleged herein.

18 49. The vehicles Honda provided to Plaintiff and the Class violated Honda's implied
19 warranty of merchantability including Nevada Revised Statutes §104.2314. Because of the Radio
20 Defect, the Class Vehicles are not reliable and thus not fit for ordinary purposes.

21 50. Furthermore, upon information and belief, the Radio Defect has caused the vehicles
22 to depreciate in value

23 51. As a direct and proximate result of Defendant's breach of merchantability, Plaintiff and
24 Class members received goods whose defective condition substantially impairs their value to Plaintiff
25 and the Class.

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1 52. As a direct and proximate result of Defendant's breach of merchantability, Plaintiff and
2 the Class have been damaged as a result of the products' malfunctioning and the non-use or interrupted
3 use of their vehicles' XM Radio system.

4 53 Plaintiff and the Class were unaware of these defects and reasonably could not have
5 discovered them when they leased or purchased their automobiles from Honda.

6 54. As a direct and proximate cause of Honda's breach, Plaintiff and the other Class
7 members have suffered damages and continue to suffer damages, including economic damages at the
8 point of sale or lease and thereafter, that is, the difference between the value of the vehicle as promised
9 and the value of the vehicle as delivered. Additionally, Plaintiff and the other Class members either
10 have incurred or will incur economic damages at the point of repair in the form of the cost of repair.

11 55. Plaintiffs and the other Class members are entitled to legal and equitable relief against
12 Honda, including damages, consequential damages, specific performance, rescission, attorneys' fees,
13 costs of suit, and other relief as appropriate.

14 **THIRD CAUSE OF ACTION**

15 **(Unjust Enrichment, in the Alternative)**

16 56. Plaintiff, on behalf of herself and all others similarly situated, incorporates by reference
17 and realleges all paragraphs alleged herein. Plaintiff pleads this cause of action in the alternative
18 should Plaintiff's statutory claims fail or be dismissed.

19 57. Honda had knowledge of the Radio Defect on the Class Vehicles.

20 58. Honda failed to disclose the Radio defect on the Class Vehicles to Plaintiff and the
21 Class either at the time of the vehicles' lease or purchase or at times after Honda had knowledge of
22 the Radio Defect.

23 59. During the periods when Honda was leasing and selling the Class Vehicles, Plaintiff
24 and the Class conferred upon Defendant, without knowledge of the defective condition affecting select
25 models, payment for these vehicles, which are benefits that were clearly non-gratuitous.

26 60. Honda appreciated, accepted and retained the non-gratuitous benefits conferred by
27 Plaintiff and the Class despite Defendant's knowledge of the defects affecting the select automotive
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1 vehicle models. Retaining the non-gratuitous benefits conferred upon Honda by Plaintiff and the Class
2 under these circumstances is unjust and inequitable, and Honda should pay restitution.

3 **FOURTH CAUSE OF ACTION**

4 **(Violation of Nevada’s Consumer Fraud Act)**

5 61. Plaintiff, on behalf of herself and all others similarly situated, incorporates by reference
6 and realleges all paragraphs alleged herein.

7 62. Pursuant to Nevada Revised Statutes §41.600, an action may be brought by any person
8 who is a victim of consumer fraud.

9 63. “Consumer fraud” means a deceptive trade practice as defined in NRS 598.0915 to
10 598.0925, inclusive.

11 64. Pursuant to Nevada Revised Statute §598.0915 through §598.0925, a person engages
12 in a “deceptive trade practice” if, in the course of his or her business or occupation, he or she:

- 13 a. Represents that goods or services for sale or lease are of a particular standard,
14 quality or grade, or that such goods are of a particular style or model, if he or
15 she knows or should know that they are of another standard, quality, grade,
16 style or model;
- 17 b. Advertises goods or services with intent not to sell or lease them as advertised;
- 18 c. Knowingly makes any other false representation in a transaction;
- 19 d. Knowingly fails to disclose a material fact in connection with the sale or lease
20 of goods or services.

21 65. Honda's acts and practices, as alleged in this complaint, constitute unlawful, unfair
22 and/or fraudulent business practices in violation of Nevada Revised Statutes §598, et. seq.

23 66. The business practices engaged in by Honda that violate Nevada Revised Statutes §598
24 include failing to disclose material facts at the point of sale, the point of repair, or otherwise, that the
25 XM Radio system was defective or that Honda was capable of immediately repairing or replacing the
26 defective radio system.

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1 67. Further business practices engaged in by Honda that violate Nevada Revised Statutes
2 §598 were Honda's representations that the Class Vehicles with the XM Radio system were of a high
3 standard, quality and grade, and fully functioning. Honda knew, when it made such representations,
4 that the Class Vehicles with the XM Radio system were of an inferior standard, quality or grade.

5 68. Further business practices engaged in by Honda that violate Nevada Revised Statutes
6 §598 include advertising the Class Vehicles as reliable, with fully functioning XM Radio systems, yet
7 intending not to sell or lease them as advertised (due to the Radio Defect,) and knowingly making
8 representations to consumers that the Class Vehicles had fully functioning XM Radio systems, when
9 in fact they did not.

10 69. These acts and omissions were material to Plaintiff and the Class. The Radio Defect
11 presents a serious reliability issue. If Plaintiff and the Class had known that the Class Vehicles had
12 the Radio Defect, Plaintiff and the Class would not have leased or purchased their Honda vehicles.

13 70. Upon information and belief, despite its early knowledge of the Radio Defect,
14 Defendant uniformly concealed this defect from consumers.

15 71. As a direct and proximate result of Honda's unfair and fraudulent business practices as
16 alleged herein, Plaintiff and the Class suffered injury in fact and lost money or property, i.e., they
17 purchased or leased a vehicle they otherwise would not have purchased or leased, paid for an XM
18 Radio system and service that they would not have paid for, and are left with Class Vehicles of
19 diminished value and utility because of the Radio Defect. Meanwhile, Honda has sold and leased more
20 Class Vehicles with Radio Defects than it otherwise could have and charged inflated prices for Class
21 Vehicles, unjustly enriching itself thereby.

22 72. Due to Honda's unfair, fraudulent and deceptive trade practices as herein described,
23 Plaintiffs and Class members are entitled to any damages that the Plaintiff and Class members have
24 sustained and costs in the action and reasonable attorney's fees.

25 **PRAYER FOR RELIEF**

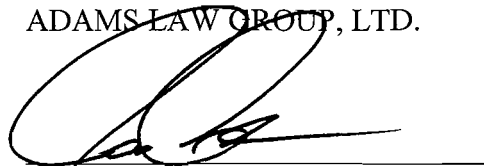
26 WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment against
27 Honda as follows:
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- A. For an order certifying this case is a class action pursuant to Federal Rule of Civil Procedure 23;
- B. For an order appointing Plaintiff as class representative and Adams Law Group, Ltd., as class counsel;
- C. For an order awarding Plaintiff and the members of the Class damages, incidental and consequential damages, specific performance, and/or rescission;
- D. For an order awarding Plaintiff and the members of the Class restitution, or other equitable relief as the Court deems proper;
- E. For an order enjoining Honda from continuing to engage in unlawful business practices as alleged herein;
- F. For an order awarding Plaintiff and the Class all costs of this action, including attorney fees and costs, pre-judgment and post-judgment interest; and
- G. For an order granting any such other relief as the Court deems just and proper.

Dated this 3 day of May, 2010.

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