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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15 PAUL H. SCHUMER, On
16 Behalf of Himself and All
17 Others Similarly Situated,
18
19 Plaintiff,
20
21 v.
22 AMERICAN HONDA MOTOR
23 COMPANY, INC.
24
25 Defendant.

26 CIVIL ACTION NO.
27 CLASS ACTION
28 **CV10-3639 GAF (JEMx)**
29 **CLASS ACTION COMPLAINT**
30 **FOR DAMAGES AND OTHER**
31 **RELIEF**
32 JURY TRIAL DEMANDED

I/S
21

33 **CLASS ACTION COMPLAINT**

34 Plaintiff, Paul H. Schumer ("Plaintiff" or "Schumer"), by and through his
35 undersigned counsel, brings this action on behalf of himself and all other persons
36 similarly situated against Defendant, American Honda Motor Company, Inc.
37 ("Honda" or "Defendant"), and in support thereof, avers as follows:

38 **NATURE OF ACTION**

39 1. Plaintiff brings this action individually and on behalf of a proposed
40 Class and Sub-Class (collectively "Class" or "Classes"), as more fully defined
41 below, for the benefit and protection of all current and former owners and lessees
42 of model year 2008 and 2009 Honda CBR 1000RR Motorcycles originally
43 equipped with the 999cc DOHC liquid-cooled inline four-cylinder engine

1 (“Engine(s)”), purchased or leased in the United States (the “Motorcycles”).
2 Plaintiff brings this class action on behalf of himself and all other similarly
3 situated persons to obtain damages, restitution, as well as injunctive and other
4 relief.

5 2. This action is brought to remedy violations of state consumer
6 protection and/or warranty statutes in connection with Defendant’s misconduct,
7 including its conscious effort to conceal material facts concerning the design,
8 manufacture, performance history and propensity for the Motorcycles to burn an
9 unacceptably high amount of oil during the distribution, marketing, sale,
10 advertisement and customer service performed with respect to these Motorcycles.

11 3. Plaintiff asserts claims under the Unfair Competition Law (“UCL” or
12 “Section 17200”), Business and Professions Code §§ 17200, *et seq.*, the
13 Consumers Legal Remedies Act (“CLRA”), Civil Code § 1750, *et seq.*, the Song
14 Beverly Consumer Warranty Act (“Song Beverly Act”), Civil Code § 1790, *et*
15 *seq.*, and also asserts claims for breach of express warranty and for unjust
16 enrichment.

17 PARTIES

18 4. Plaintiff is, and at all times relevant to this action has been, a resident
19 of Los Angeles, Los Angeles County, California. Plaintiff, thus, is a citizen of
20 California. On or about July 27, 2009, Plaintiff purchased a new Motorcycle (VIN
21 JH2SC59118M000965) for his personal use from an authorized Honda dealer
22 located in Hollywood, California. Plaintiff’s Motorcycle came equipped with an
23 Engine.

24 5. Defendant is, and at all times relevant to this action has been, a
25 California corporation that maintains its principal place of business within this
26 judicial district, in Torrance, California. Honda, thus, is a citizen of California. A
27 copy of the requisite Declaration pursuant to Cal. Civ. Code § 1780(c) is attached
28

1 as Exhibit "A."

2 JURISDICTION AND VENUE

3 6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §
4 1332(d)(2) because the matter in controversy, upon information and belief,
5 exceeds \$5,000,000, exclusive of interest and costs, and this is a class action in
6 which certain of the Class members and Defendant are citizens of different states.

7 7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391,
8 because Defendant is a resident of this judicial district, Defendant is headquartered
9 in this judicial district, engages in substantial business throughout this district and
10 many of the acts complained of herein emanated from or took place within this
11 district.

12 FACTUAL ALLEGATIONS

13 8. This is an action brought against Honda on behalf of Plaintiff and all
14 current and former owners and lessees of the Motorcycles.

15 9. The piston rings on the Motorcycles are defective, resulting in the
16 Engines burning an unacceptably high (and undisclosed) amount of oil. As a
17 result, the Motorcycles are substantially likely to fail during their useful life,
18 thereby imposing tremendous repair and/or replacement expenses on Plaintiff and
19 the Class. Moreover, because the Motorcycles suffer from this inherent defect, the
20 Motorcycles are prone to on-the-road failures during use, which poses a serious
21 safety risk to Plaintiff, Class members and others. As a result of the defect, the
22 Engines on the Motorcycles often must be repaired and/or replaced, at significant
23 expense to Class members. Moreover, due to the defect, Class members, including
24 Plaintiff, are required to purchase significantly more oil than would be required
25 absent the defect.

26 10. On or about July 27, 2009, Plaintiff purchased a new 2008 Honda
27 CBR1000RR Motorcycle from Honda of Hollywood, an authorized Honda
28

1 Motorcycle dealer in Hollywood, California.

2 11. Soon after purchase, Plaintiff's Motorcycle began to burn oil in
3 excessive amounts. On or about August 25, 2009, with approximately 755 miles
4 on his Motorcycle, Plaintiff noticed that his oil was low and, as a result, he had to
5 add approximately 8 ounces of oil to his Motorcycle. Then, with approximately
6 1,119 miles on his Motorcycle, Plaintiff again had to add 8 ounces of oil to his
7 Motorcycle. On or about September 28, 2009, with approximately 1,690 miles on
8 his Motorcycle, Plaintiff again had to add approximately 15 ounces of oil to his
9 Motorcycle.

10 12. On or about October 27, 2009, with approximately 2,166 miles on his
11 Motorcycle, Plaintiff added approximately 20 ounces of oil to his Motorcycle.
12 Plaintiff then brought his Motorcycle to Honda of Hollywood and informed it of
13 the ongoing problem with his Motorcycle. As per instructions provided by Honda,
14 a smoke test was performed on Plaintiff's Motorcycle by Honda of Hollywood,
15 which told him, wrongly, that there was no problem with the Motorcycle. The
16 smoke test, as Honda is well aware, does not address the defect at issue.

17 13. Plaintiff's Motorcycle continued to burn oil, and, as a result, he
18 contacted Honda of Hollywood, which stated that it could not assist him and,
19 instead, directed him to contact Honda.

20 14. Consistent with the directive he received from Honda of Hollywood,
21 Plaintiff contacted Honda directly approximately one day later to complain about
22 the excessive oil consumption his Motorcycle was experiencing. Specifically,
23 Plaintiff telephoned Honda's toll-free number, which was contained in the
24 warranty booklet, and spoke with a case manager. The case manager had little or
25 no technical knowledge and, as such, Plaintiff requested to speak with one of her
26 superiors. A superior was placed on the line, and admitted that to his knowledge,
27 he knew of no Honda engine that burned oil at the rate of Plaintiff's Motorcycle.

1 Although Plaintiff requested that Honda repair or replace the defective
2 Motorcycle, the Honda representative denied that the Motorcycle was defective
3 and told Plaintiff to again go an authorized dealership to have the same smoke test
4 performed. Having already had a smoke test performed and recognizing that the
5 smoke test did not relate to the defect, Plaintiff did not have a second smoke test
6 performed at that time.

7 15. In December 2009, Plaintiff attended a motorcycle industry trade
8 show in Long Beach, California. At the trade show, he visited Honda's display
9 and spoke with a Senior District Service Manager in the motorcycle division
10 ("District Manager"). Plaintiff explained in detail the nature of the defect and his
11 frustration regarding the same. The District Manager indicated that it was an easy
12 fix and gave Plaintiff his business card. Plaintiff subsequently telephoned the
13 District Manager on two occasions, but never heard back directly from him.
14 Instead, Plaintiff received a call from the initial case manager, to whom he had
15 spoken when he first contacted Honda about the defect. The case manager told
16 him to take his Motorcycle to an authorized dealership to have another smoke test
17 performed.

18 16. On or about January 12, 2010, Plaintiff visited Honda Kawasaki
19 KTM of Santa Monica ("Honda of Santa Monica"), where a second smoke test
20 was conducted on his Motorcycle. Honda of Santa Monica forwarded the test
21 results to Honda. On February 5, 2010, the Honda case manager contacted
22 Plaintiff and told him that based upon Honda's review of the test results conducted
23 by Honda of Santa Monica, the Motorcycle was not burning oil and, as such,
24 Honda refused to repair the defect under warranty. At that time, Plaintiff
25 requested to speak with a superior. A short time later, Plaintiff received a
26 telephone call from a Honda service technician who informed him that Honda did
27 not believe that there was anything wrong with his Motorcycle.

1 17. Plaintiff subsequently telephoned the District Manager yet again, but
2 was unable to reach him. Thereafter, another Honda case manager telephoned
3 Plaintiff and said that Honda could not and would not do anything further to
4 address the defect.

5 18. Currently, Plaintiff has approximately 4,500 miles on his Motorcycle,
6 which continues to burn oil at an excessive and dangerous rate.

7 19. At all pertinent times, Plaintiff has maintained the Motorcycle as
8 recommended by Honda, including performing regular maintenance and oil
9 changes.

10 20. Plaintiff's experiences mirror those of the thousands of other owners
11 of the Motorcycles. The Internet is replete with references to the common and
12 profound problems that consumers have experienced with the Motorcycles as a
13 result of the oil consumption defect, including, but not limited to, the following
14 sample of representative complaints appearing in one on-line forum:

15 **Honda - Engine Failure**

16 **(2/14/2009):**

17 During these trips, I checked the oil level (like I did for every bike
18 I've had). I noticed on the dip-stick the oil level was going down
19 with each 100km.

20
21 My Kawasaki has about 72.000 km and oil consumption is about
22 250ml / 1000km; which I consider normal for its age.

23
24 After the first 1000km service, I noted how much oil I completed and
25 the mileage. The surprise was to find out the oil consumption for a
26 BRAND NEW CBR1000RR: 1000ml/1000km (1 liter / 1000km).
27 That is HUGE.
28

1
2 (http://baiazid-cbr1000rr.blogspot.com/2009/02/few-trips.html)

3
4 **Raleigh, NC (3/23/2008):**

5 2008 CBR1000RR is burning oil like mad - options?
6

7 -----
8
9 My bike has been burning oil since I got it. Just on yesterday's ride
10 alone, at 384 miles, it lost ~2/3 quart. With 2464 (slightly optimistic
11 as I put some miles on before installing my Speedo-Healer), it has
12 now lost 3 quarts of synthetic 10w-30 & 10w-40). No leaks of any
13 kind/ no oil in airbox/coolant. But the can tip is black & other riders
14 commented on smelling burnt oil when I get on the gas & seeing
15 smoke.
16

17 I called Honda & complained & they basically said some BS about 1
18 quart per thousand miles is within tolerance, but agreed that should
19 not be happening. Bottom line, take it to the dealer.
20

21 I spoke to the head mechanic at Powersports where I bought it, and he
22 agreed something is wrong. I will take the bike in this week.
23

24 I don't want my bike torn apart & fixed though if they find a problem
25 (I'm betting a leakdown will reveal problems in one or more
26 cylinders). Once the cases get opened, the bike will never be the
27 same (speaking from experience). What are my options? Has anyone
28

1 dealt with this before. Someone on one of the CBR forums got the
2 dealer to take their bike back after he had a myriad of problems (they
3 sold him another make).

4
5 As far as power, I've got it geared -1F +3R & the bike won't power
6 wheelie in 2nd unless the tank is near empty (was trying to get a dyno
7 pull before going into the shop). It basically feels slower than my 96
8 GSX-R750 racebike. I'm pretty bummed.

9
10 ([http://www.fireblades.org/forums/honda-fireblade/66599-2008-cbr1](http://www.fireblades.org/forums/honda-fireblade/66599-2008-cbr1000rr-burning-oil-like-mad-options.html)
11 [000rr-burning-oil-like-mad-options.html](http://www.fireblades.org/forums/honda-fireblade/66599-2008-cbr1000rr-burning-oil-like-mad-options.html))

12
13 **Turkey (8/16/2008):**

- 14 1. vin# JH2SC59A98M010420 motor no: SC59E-2008945
- 15 2. burned 600grams of oil at 700km (three times)
- 16 3. Check the oil with stick then have it emptied, weighed and
17 registered at Honda dealer.
- 18 4. Arrow slipon, flapper mod.
- 19 5. Dealer says: They are aware of the problem, I've got a call from
20 local Honda factory telling me to wait untill they come out with a
21 solution.(1.5months ago). And they keep changing my oil for free.

22
23 6. Location : Turkey

24 (<http://www.1000rr.net/forums/showthread.php?t=52418>)

25 **(8/16/2008):**

26 #002125

27 I have noticed an oil burning smell kinda like when you do an oil
28

1 change and oil gets on the headers.. well this has been ongoing. I
2 checked the oil level before going on VACA...it was full ...did an oil
3 change. before that the dipstick was dry.. im hoping that its not doing
4 this but, the smell tells me otherwise.. its been like that since the
5 beginning. my friend said that at one time he saw a puff of smoke
6 coming from the rear(during break in).. that got me worried especially
7 after reading that sportriders mag test stated the same thing. rode
8 about 700 miles after oil change...will check and post later..until
9 then...

10 (<http://www.1000rr.net/forums/showthread.php?t=52418>)

11
12 **(12/14/2008):**

13 As many of you already know: my brand new CBR1000RR is eating
14 1 liter of oil for 1000km. I consider this 10 times more than normal.

15
16 The engine was braked-in by the book. Was ridden nice (no
17 wheelies, stopies... etc).

18
19 Honda asked me to perform a test: 1000km with their oil and filter
20 oil. I told them that Honda is not making oil. They continued to argue
21 with me until they recognized that oil is made by Caltex and
22 rebranded as Honda genuine Oil. As I told them, I trust only Motul or
23 Castrol.

24
25 Anyway after 1000km, 1 liter of oil was missing from the engine.
26 They offered me to change the piston rings (for free) with new ones
27 (new version actually, different from the ones I have).

1 Big dilemma:

2 1. how I can be sure that that 1 liter missing didn't contribute to
3 lifetime of this engine?

4 I had to run their test, otherwise I would complete the oil each 2
5 weeks like before. To be sure oil is at specified level all the time.

6 2. This is a brand new engine. Once is dismantled by the workshop
7 guys and assemblyed back... It will never be the same!!! Is like a
8 patient after a transplant.

9 What can I do? I really don't want to touch the engine. I want a new
10 bike or a new engine.

11 ([http://www.nswriters.org/tech-questions-servicing-and-custom-work](http://www.nswriters.org/tech-questions-servicing-and-custom-work-f9/oil-dilemma-t269.htm)
12 [-f9/oil-dilemma-t269.htm](http://www.nswriters.org/tech-questions-servicing-and-custom-work-f9/oil-dilemma-t269.htm))
13

14 21. At all pertinent times, Honda has actively concealed its knowledge
15 that the Motorcycles were and are defective. Honda had exclusive knowledge
16 regarding the nature and scope of the defect.

17 22. Upon information and belief, Honda was well aware of the defect
18 prior to marketing and selling the Motorcycles in the United States. Specifically,
19 Honda knew from, *inter alia*, sales of the Motorcycles in Europe, which pre-dated
20 the sale of the Motorcycles in the United States, that the piston rings were
21 defective and that the Motorcycles were consuming unacceptably high levels of
22 oil. Notwithstanding Honda's knowledge of the defect, Honda failed to disclose
23 this material fact to consumers, including Plaintiff and members of the Class.

24 23. Had Plaintiff and members of the Class been made aware that the
25 Motorcycles were defective, they would not have purchased the Motorcycles, or
26 would have paid substantially less for them.
27
28

1 24. Under all of the circumstances, Honda had an affirmative duty to
2 disclose the defect to Plaintiff and members of the Class, but, knowingly and
3 intentionally, failed to abide by this duty.

4 25. Honda provided Plaintiff and each owner and lessee with a 1-year
5 warranty, pursuant to which it was obligated to repair and/or replace defective
6 parts at no charge (inclusive of labor). During that warranty period and under the
7 terms of Defendant's express warranty, given the fact that the Motorcycles were
8 failing prematurely as a result of a defect in the Engines, Honda was obligated to
9 replace the Engines each time Engine failure occurred on the Motorcycles. Honda
10 also was obligated to repair the defect in the Motorcycles that was causing the
11 problem with the Motorcycles (and causing the Engine failure) under the terms of
12 the express warranty, but has failed to do so.

13 26. As a result of Honda's conduct, Plaintiff and members of the Class
14 have suffered injury in fact and otherwise suffered damages and been harmed.

15 27. As a result of the defect, the Motorcycles' value has been
16 substantially and permanently diminished.

17 28. By this action, Plaintiff seeks relief pursuant to the UCL, CLRA, and
18 Song Beverly Act, as well as relief for breaches of express warranty and unjust
19 enrichment.

20 29. Plaintiff seeks injunctive relief, actual damages, disgorgement of
21 profits, statutory damages, attorneys' fees, costs, and all other relief available to
22 the Classes as defined herein.

23 **CLASS ACTION ALLEGATIONS**

24 30. Plaintiff requests that this Court certify the following Classes
25 pursuant to Rule 23 of the Federal Rules of Civil Procedure:

1 **Class**

2 All current and former consumer owners and lessees of
3 model years 2008 and 2009 Honda CBR 1000RR
4 Motorcycles originally equipped with a 999cc DOHC
5 liquid-cooled inline four-cylinder engine purchased or
6 leased in the United States of America.

7 **Sub-Class**

8 All current and former consumer owners and lessees of
9 model years 2008 and 2009 Honda CBR 1000RR
10 Motorcycles originally equipped with a 999cc DOHC
11 liquid-cooled inline four-cylinder engine purchased or
12 leased in the State of California.

13 Excluded from the Class are officers and employees of Honda, and any of their
14 dealers, any Class members asserting personal injury claims, as well as the Judge
15 to whom this case is assigned.

16 31. This action is brought and may properly be maintained as a class
17 action pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action
18 satisfies the numerosity, typicality, adequacy, predominance and/or superiority
19 requirements of those provisions.

20 32. Numerosity. On information and belief, the members of the Classes
21 number in at least the thousands. As a result, the Classes are so numerous that
22 joinder of all members in a single action is impracticable. The members of the
23 Classes should be readily identifiable from information and records in Defendant's
24 possession, custody or control. The disposition of these claims will provide
25 substantial benefits to the Classes.

26 33. Commonality/Predominance. There is a well-defined community of
27 interest and common questions of law and fact which predominate over any
28

1 questions affecting only individual members of the Classes. These common legal
2 and factual questions, which do not vary from members of the Classes, and which
3 may be determined without reference to the individual circumstances of members
4 of the Classes, include, but are not limited to the following:

- 5 a. Whether the Motorcycles are defective;
- 6 b. Whether Honda's conduct violated the UCL;
- 7 c. Whether Honda's conduct violated the CLRA;
- 8 d. Whether Honda's conduct violated the Song Beverly Act;
- 9 e. Whether Honda's conduct constituted a breach of express
10 warranty;
- 11 f. Whether Honda concealed the nature of the defect in the
12 Motorcycles from Plaintiff and the members of the Classes; and
- 13 g. Whether, as a result of Honda's misconduct, Plaintiff and the
14 members of the Classes are entitled to damages, restitution,
15 equitable relief and/or other damages and relief, and, if so, the
16 amount and nature of such relief.

17 34. Typicality. The representative Plaintiff's claims are typical of the
18 claims of the Classes because Plaintiff and all members of the Classes were
19 injured by the same wrongful practices in which Defendant has engaged and are
20 based on the same legal theories. The only difference may be the amount of
21 damages sustained by each member of the Class, which can be determined readily,
22 and does not bar class certification.

23 35. Adequacy of Representation. Plaintiff will fairly and adequately
24 protect and pursue the interests of the members of the Classes. Plaintiff
25 understands the nature of the claims herein, his role in these proceedings, and has
26 and will vigorously represent the interests of the Classes. Plaintiff has retained
27 class counsel who are experienced and qualified in prosecuting class actions and
28

1 other forms of complex litigation. Neither Plaintiff nor his attorneys have interests
2 which are contrary to or conflict with those of the Classes.

3 36. Superiority/Manageability. A class action is superior to other
4 available methods for the fair and efficient adjudication of this lawsuit, because
5 individual litigation of the claims of members of the Classes is economically
6 unfeasible and procedurally impracticable. While the aggregate damages
7 sustained by the Classes are likely in the millions of dollars, the individual
8 damages incurred by each member resulting from Defendant's wrongful conduct
9 are too small to warrant the expense of individual suits. The likelihood of
10 individual members of the Classes prosecuting separate claims is remote and, even
11 if every person could afford individual litigation, the court system would be
12 unduly burdened by individual litigation of such cases. Individual members of the
13 Classes do not have significant interest in individually controlling the prosecution
14 of separate actions, and individualized litigation would also present the potential
15 for varying, inconsistent, or contradictory judgments and would magnify the delay
16 and expense to all parties and to the court system resulting from multiple trials of
17 the same factual issues. Plaintiff knows of no difficulty to be encountered in the
18 management of this action that would preclude its maintenance as a class action.
19 Relief concerning Plaintiff's rights under the laws herein alleged and with respect
20 to the Classes would be proper.

21 37. Certification of the case as a class action under the laws of California
22 is appropriate because:

23 (a) Honda is a corporation conducting substantial business in and
24 from California;

25 (b) Honda's principal and executive offices, as well as its
26 corporate headquarters, are located in California;

1 (c) Decisions regarding Honda's failure to disclose the defect and
2 attendant safety risks were made in California;

3 (d) Honda's marketing, promotional activities and literature, as
4 well as its warranties, are coordinated at, emanate from, and/or are developed at its
5 California headquarters;

6 (e) The UCL and other claims asserted in this Complaint on behalf
7 of the Class may be appropriately brought on behalf of California and out-of-state
8 Class members, while the Sub-Class has been appropriately crafted to assert
9 claims on behalf of Class members with standing to assert certain additional
10 claims; and

11 (f) A significant number of members of the Class reside in the
12 State of California.

13 FIRST CAUSE OF ACTION

14 (Violations of Unfair Competition Law, Bus. & Prof. Code § 17200, et seq.)

15 38. Plaintiff realleges and incorporates the above allegations by reference
16 as if set forth fully herein.

17 39. Plaintiff brings this cause of action on behalf of himself and on behalf
18 of the Class and Sub-Class.

19 40. Defendant has engaged in unfair, unlawful, and fraudulent business
20 practices as set forth above.

21 41. By engaging in the above-described acts and practices, Defendant has
22 committed one or more acts of unfair competition within the meaning of the UCL.

23 42. Defendant's acts and practices have deceived and/or are likely to
24 deceive members of the consuming public by failing to disclose the defect in the
25 Motorcycles when Defendant had an affirmative duty to disclose the defect.

26 43. Honda knowingly sold Plaintiff and other consumers Motorcycles
27 with a design defect that poses a safety risk to Plaintiff, Class members and others.

1 As a result of the Engines burning high amounts of oil, the Motorcycles present a
2 safety issue for Plaintiff and the Class members, who run the risk of on-the-road
3 Engine failure as a result of the defect.

4 44. The injury to consumers by this conduct greatly outweighs any
5 alleged countervailing benefit to consumers or competition under all of the
6 circumstances.

7 45. Defendant's acts and practices are unlawful because they violate Civil
8 Code §§ 1572, 1688, 1709, 1710, 1770(a)(5), 1770(a)(7), 1770(a)(9), 1770(a)(19),
9 1790 and California Commercial Code § 2313. Defendant's acts and practices are
10 also unlawful because they violate Business and Professional Code § 17500, *et*
11 *seq.* Specifically, Defendant marketed and sold the Motorcycles in a defective
12 condition and deceptively and intentionally failed to disclose the defect when
13 Defendant was under a duty to do so. Honda's marketing, sales and
14 representations, as well as its concomitant omissions, were material.

15 46. Plaintiff, on behalf of himself and on behalf of the Class and Sub-
16 Class, seeks an order of this Court awarding restitution, disgorgement, injunctive
17 relief and all other relief allowed under Section 17200, *et seq.*, plus interest,
18 attorneys' fees and costs pursuant to, *inter alia*, Cal. Code of Civ. Proc. § 1021.5.

19 SECOND CAUSE OF ACTION

20 (Consumers Legal Remedies Act, Violation of Civil Code §§ 1750, *et seq.*)

21 47. Plaintiff realleges and incorporates the above allegations by reference
22 as if set forth fully herein.

23 48. Plaintiff brings this claim on behalf of himself and the Class and Sub-
24 Class.

25 49. This claim arises under the Consumer Legal Remedies Act, Civil
26 Code §§ 1750, *et seq.*

1 50. At all times relevant hereto, Plaintiff was a “consumer” as that term is
2 defined in Civ. Code § 1761(d).

3 51. At all times relevant hereto, Honda’s Motorcycles constituted
4 “goods” as that term is defined in Civ. Code §1761(a).

5 52. At all times relevant hereto, Defendant constituted a “person” as that
6 term is defined in Civ. Code § 1761(c).

7 53. At all times relevant hereto, Plaintiff’s purchase of the Motorcycle
8 constituted a “transaction” as that term is defined in Civ. Code §1761(e).

9 54. At all times relevant hereto, Defendant provided “services” to
10 Plaintiff and the Class and Sub-Class within the meaning of Civil Code § 1761(b).

11 55. The CLRA provides in relevant part that “[t]he following unfair
12 methods of competition and unfair or deceptive acts or practices undertaken by
13 any person in a transaction intended to result or which results in the sale or lease
14 of goods or services to any consumer are unlawful: (5) Representing that goods . .
15 . have . . . approval, characteristics, uses, benefits . . . which they do not have; ...
16 (7) Representing that goods . . . are of a particular standard, quality or grade . . . if
17 they are of another ...; (9) Advertising goods . . . with intent not to sell them as
18 advertised; and (19) Inserting an unconscionable provision in the contract.” Civil
19 Code §§ 1770 (a)(5), (7), (9) and (19).

20 56. Honda, despite its knowledge of the defect, failed to disclose the
21 defect to consumers, including Plaintiff and members of the Class. The omission
22 was and is material and Plaintiff and members of the Class would not have
23 purchased the Motorcycles had they known of the defect, or would have paid
24 substantially less for them.

25 57. The undisclosed defect poses a threat to the safety of Plaintiff and
26 Class members, as well as the safety of others on roadways throughout the United
27 States.

1 58. The potential failure of the Motorcycles would be material to the
2 reasonable consumer, as traveling on a roadway in a Motorcycle equipped with a
3 faulty Engine presents an unsafe driving condition, which could lead to roadway
4 accidents. In addition, the high oil consumption results in the need to frequently
5 purchase and add oil to the Motorcycles, at significant additional expense to
6 Plaintiff and members of the Class. Furthermore, owning a Motorcycle with the
7 oil consumption defect materially changes the manner in which the Motorcycle
8 can be used and enjoyed, resulting in Plaintiff and Class members being unable to
9 use the Motorcycles in a manner consistent with their intended and regular
10 purpose and usage.

11 59. Plaintiff is a consumer under Civil Code § 1761(d). Civil Code §
12 1780(a)(2) permits any court of competent jurisdiction to enjoin practices that
13 violate Civil Code § 1770.

14 60. Plaintiff also is entitled to recover actual or statutory
15 compensatory/monetary damages as authorized by Civil Code § 1780(a)(1) and
16 Civil Code § 1781(a)(1), restitution as applicable and authorized under Civil Code
17 § 1780(a)(3) and punitive damages as authorized by Civil Code § 1780(a)(4),
18 which are appropriate in this case in light of Defendant's knowing, intentional,
19 malicious, fraudulent and unconscionable conduct, Defendant's reckless disregard
20 of its legal obligations to Plaintiff and the members of Class, and/or as otherwise
21 recoverable under Civil Code § 1780(a)(4).

22 61. Plaintiff and the members of Class also are entitled to recover
23 attorneys' fees and costs pursuant to Civil Code §§ 1780 and 1781.

24 62. Under Civil Code § 1782(a), Plaintiff provided the required 30-day
25 notice before filing the Complaint pursuant to Civil Code § 1782(d).

1 **THIRD CAUSE OF ACTION**

2 **(Song-Beverly Act)**

3 63. Plaintiff realleges and incorporates by reference the preceding
4 paragraphs as if set forth herein at length.

5 64. Plaintiff brings this claim on behalf of himself and the Sub-Class.

6 65. Plaintiff's Motorcycle and the Motorcycles are, and, at all pertinent
7 times were, new motor vehicles within the meaning of Civ.Code § 1793.22(e)(2).

8 66. Plaintiff's Motorcycle and the Motorcycles all suffered from a
9 nonconformity within the meaning of Civ. Code § 1793.22(e)(1), since the
10 condition of and problems with the Motorcycles described herein resulted in the
11 impairment of the use, value and/or safety of the Motorcycles to buyers and
12 lessees of the Motorcycles.

13 67. As an express warrantor and manufacturer, Honda had certain
14 obligations under the Song Beverly Act, and, in particular, Civil Code § 1793.2(b)
15 and (d), to conform the Motorcycles to the written warranty that accompanied
16 them.

17 68. Defendant and its agent dealers have refused to conform Plaintiff's
18 Motorcycle and the Motorcycles to the written warranty. Honda is, therefore,
19 required to either pay damages or reimburse Plaintiff and the Sub-Class members
20 the purchase or lease price and incidental damages pursuant to Civil Code §§
21 1793.2(d) and 1794, in return for clear title to the Motorcycles.

22 69. At all pertinent times, Defendant also was a merchant in the sale of
23 the Motorcycles to Plaintiff and the Sub-Class members and, by operation of law
24 (Civil Code § 1791.1), Defendant provided Plaintiff and the Sub-Class members
25 an implied warranty of merchantability in the sale and lease of the Motorcycles.

26 70. The Motorcycles are not fit for ordinary purposes for which such
27 motor vehicles are used because the piston rings on the Motorcycles are defective,
28

1 resulting in the Motorcycles burning an unacceptably high (and undisclosed)
2 amount of oil. As a result, the Motorcycles are substantially likely to fail during
3 their useful life. As a result of the defect, the Motorcycles do not meet with the
4 expectations of Plaintiff or any other reasonable Motorcycle owners and lessees as
5 to the manner in which the Motorcycles should perform when used for ordinary
6 purposes, because the manner in which the Motorcycles perform is so deficient
7 and below a minimum level of quality so as to render them unfit for their ordinary
8 use and purpose. Moreover, as a result of the defect, the Motorcycles are not
9 capable of providing safe and reliable transportation. Finally, by marketing and
10 selling the Motorcycles with the defect described in this Complaint, as well as by
11 failing to repair the Motorcycles, Defendant breached the implied warranty of
12 merchantability.

13 71. Plaintiff and the Sub-Class members have been damaged as a result of
14 Honda's breach of the implied warranty.

15 72. Plaintiff is entitled to the remedies provided by Civil Code § 1794.

16 **FOURTH CAUSE OF ACTION**

17 **(Breach of Express Warranty)**

18 73. Plaintiff realleges and incorporates the above allegations by
19 reference.

20 74. Plaintiff brings this claim on behalf of himself and the Class.

21 75. As set forth herein, Defendant's express warranties covered the
22 Motorcycles and, under the circumstances described herein, the Engines.

23 76. The express warranty was provided to Plaintiff and members of the
24 Classes by Honda and specifically extends to original purchasers and subsequent
25 owners for the period of warranty coverage.

1 77. By the conduct described herein, Defendant has failed and refused to
2 conform the Motorcycles to the express warranties and its conduct has voided any
3 attempt on its part to disclaim liability for its actions.

4 78. Plaintiff has performed each and every duty required of him under the
5 terms of the warranties, except as may have been excused or prevented by the
6 conduct of Defendant or by operation of law in light of Defendant's
7 unconscionable conduct.

8 79. In addition, Defendant has received, on information and belief,
9 thousands of complaints and other notices from its consumers advising it of the
10 defects associated with the Motorcycles.

11 80. As a result of Defendant's breach of express warranties, Plaintiff and
12 other members of the Classes have suffered damages.

13 **FIFTH CAUSE OF ACTION**

14 **(Unjust Enrichment)**

15 81. Plaintiff realleges and incorporates the above allegations by
16 reference.

17 82. Plaintiff brings this claim on behalf and the Class.

18 83. As a direct and proximate result of Defendant's misconduct as set
19 forth above, Defendant has been unjustly enriched.

20 84. Specifically, by its misconduct described herein, Honda has accepted
21 a benefit (monies paid by Plaintiff and members of the Classes).

22 85. As a result of Defendant's misconduct described here, the retention of
23 that benefit (the monies) by Honda would be inequitable.
24
25
26
27
28

PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiff and members of the Classes request that the Court
3 enter an order or judgment against Defendant as follows:

4 A. Certifying this case as a class action and appointing Plaintiff
5 and his counsel to represent the Classes;

6 B. Awarding Plaintiff and other members of the Classes damages
7 and all other relief available under the claims alleged;

8 C. Awarding Plaintiff and other members of the Classes
9 pre-judgment and post-judgment interest as a result of the wrongs complained of
10 herein;

11 D. Awarding Plaintiff and other members of the Classes their
12 costs and expenses in this litigation, including reasonable attorneys' fees and other
13 costs of litigation;

14 E. Requiring Defendant to disgorge the revenue earned through
15 the sale of the Motorcycles;

16 F. Enjoining Defendant from engaging in the conduct described
17 herein;

18 G. Awarding Plaintiff and other members of the Classes
19 restitution; and

20 H. Awarding such other and further relief the Court deems just
21 and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: May 13, 2010

By:


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Attorneys for Plaintiff and the Proposed Class

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

3 PAUL H. SCHUMER, On
4 Behalf of Himself and All
5 Others Similarly Situated,

6 Plaintiff,

7 v.

8 AMERICAN HONDA MOTOR
9 COMPANY,

10 Defendant.

CIVIL ACTION NO.

CLASS ACTION

JURY TRIAL DEMANDED

11 **DECLARATION OF PAUL H. SCHUMER**

12 I, Paul H. Schumer, declare under penalty of perjury as follows:

13 1. I make this declaration based upon my personal knowledge except as
14 to those matters stated herein that are based upon information or belief, which I
15 believe to be true.

16 2. I am an adult citizen of the State of California. I reside in Los
17 Angeles, Los Angeles County, California, and I am a named Plaintiff in this
18 litigation.

19 3. I purchased a new 2008 Honda CBR 1000RR Motorcycle equipped
20 with a 999cc DOHC liquid-cooled inline four-cylinder engine on or about July 27,
21 2009 from a franchised Honda dealer in Hollywood, California.

22 4. To the best of my knowledge, information and belief, Defendant,
23 American Honda Motor Company, Inc., is a California corporation with its
24 principal place of business and executive offices located in Torrance, Los Angeles
25 County, California.

26 I declare under penalty of perjury under the laws of the State of California
27 that the foregoing is true and correct. Executed this 29 day of April, 2010 at Los
28 Angeles, California.



PAUL H. SCHUMER

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

ORIGINAL

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Paul H. Schumer	DEFENDANTS American Honda Motor Company, Inc.
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Gretchen M. Nelson (112566) - Telephone: 213-622-6469 KREINDLER & KREINDLER LLP 707 Wilshire Blvd., Suite 4100, Los Angeles, CA 90017	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input checked="" type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Jurisdiction is based on 28 U.S.C. section 1332(d)(2), matter in controversy is in excess of \$5 million and members of the class and Defendant are citizens of different states

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vetcrans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV10-3639

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date 5/13/2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))