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 AMERICAN HONDA MOTOR CO.,
 9 INC. and HONDA NORTH AMERICA

10
 11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 DENNIS MACDOUGALL, RAY SEOW,
 PRABHANJAN KAVURI, RICHARD
 14 FRICK, JOSEPH RYAN PARKER, and
 15 BRYAN LENTZ, individually and on
 behalf of all others similarly situated,

16 Plaintiffs,

17 vs.

18 AMERICAN HONDA MOTOR CO.,
 19 INC., and HONDA NORTH AMERICA,
 20 INC.,

21 Defendants.

Case No. 17-cv-1079

**DEFENDANT AMERICAN HONDA
 MOTOR CO., INC.'S ANSWER AND
 AFFIRMATIVE DEFENSES TO
 CLASS ACTION COMPLAINT**

COMPLAINT FILED: JUNE 21, 2017

PRELIMINARY STATEMENT

1
2 By order dated December 4, 2017, the Court dismissed Plaintiffs' Magnuson-
3 Moss Warranty Act claim, as well as the misrepresentation theories Plaintiffs pled under
4 consumer protection laws of Pennsylvania, California, New Jersey and Florida. (E.C.F.
5 53 at 13). Rather than amend the pleading to remove from it the allegations and claims
6 that the Court dismissed, and remove Mr. Frick from the pleading (Mr. Frick having
7 unfortunately passed away), Plaintiffs instead have elected to stand on the complaint as
8 pled. As a result, AHM has attempted to note in its answer where appropriate when
9 allegations and claims are no longer relevant/viable, but observes the inefficiencies
10 Plaintiffs and their counsel have caused by failing to "clean up" their pleading.

11 AHM further notes that Plaintiffs' refusal to amend their dismissed claims serves
12 as grounds for dismissal of those claims and allegations with prejudice as to them. *See,*
13 *e.g., Yourish v. California Amplifier*, 191 F.3d 983, 986 (9th Cir. 1999); *Patnaik v.*
14 *Hearst Corp.*, No. CV 14-05158 BRO (EX), 2015 WL 12513579, at *2 (C.D. Cal. June
15 22, 2015); *Campbell v. Breen*, No. 14-CV-02169-JST, 2015 WL 295021, at *1 (N.D.
16 Cal. Jan. 21, 2015). They thus cannot assert those claims on behalf of themselves or
17 anyone else. *See Zhiqiang Cao v. U.S. Bancorp, N.A.*, No. 5:10-03027 EJD PSG, 2011
18 WL 3794949, at *2 (N.D. Cal. Aug. 26, 2011) (a dismissal following a plaintiff's failure
19 to amend "operates as an adjudication on the merits."). Unless Plaintiffs take action,
20 AHM will shortly file a motion asking this court to enter an order dismissing with
21 prejudice Plaintiffs' Magnuson-Moss Warranty Act claim, as well as the
22 misrepresentation theories Plaintiffs pled under consumer protection laws of
23 Pennsylvania, California, New Jersey and Florida. *See* Fed. R. Civ. P. 41(b); E.C.F. 53.
24 AHM will also ask the Court to formally dismiss the now deceased Mr. Frick from the
25 lawsuit to avoid confusion down the road.

26 Moreover, Honda North America, Inc. (HNA) is not a proper party to this lawsuit.
27 HNA does not manufacture, distribute, or administer the warranties of any Honda
28 vehicles and lacks connection to the subject matter of the complaint. While AHM and

1 Plaintiffs continue discussing the means by which HNA will be dismissed from this
2 action, AHM responds to the pleading on behalf of itself and HNA.

3 **ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT**

4 Defendant American Honda Motor Co., Inc. (“AHM”) hereby responds to the
5 Complaint filed by Plaintiffs Dennis MacDougall, Ray Seow, Prabhanjan Kavuri,
6 Richard Frick, Joseph Ryan Parker, and Bryan Lentz (collectively, “Plaintiffs”),
7 individually and on behalf of all others similarly situated, as follows:

8 **NATURE OF THE CASE**

9 1. AHM admits that Plaintiffs Dennis MacDougall, Ray Seow, Prabhanjan
10 Kavuri, Joseph Ryan Parker, and Bryan Lentz (collectively, “Plaintiffs”) purport to
11 bring claims against Defendants under the consumer protection laws of California,
12 Pennsylvania, New Jersey, and Florida, and state warranty laws.¹ AHM further states
13 that the Court dismissed Plaintiffs’ claim under the Magnuson-Moss Warranty Act, 15
14 U.S.C. §§ 2301, *et seq.* Remainder denied.

15 2. Denied.

16 3. AHM admits that brand-new 2011 through 2016 model year Honda
17 Odyssey vehicles come with new vehicle limited, written warranties (NVLW) which
18 includes a powertrain limited written warranty, all of which speak for themselves.
19 Remainder denied.

20 4. AHM admits that each brand-new 2011 - 2016 Honda Odyssey vehicle
21 comes with a NVLW, which speaks for itself. Remainder denied.

22 5. Denied.

23 6. Denied.

24 7. Denied.

25 8. Denied.

26 9. Denied.

27
28 ¹ Mr. Frick passed away and Plaintiffs have told the Court and AHM they intend to dismiss him from the case. Accordingly, AHM does not respond as to Mr. Frick.

1 10. Denied.

2 11. AHM admits only that Plaintiffs purport to bring this action on behalf of
3 themselves and certain proposed classes. AHM expressly denies Plaintiffs' claims have
4 merit or are amenable to class treatment. Remainder denied.

5 **JURISDICTION AND VENUE**

6 12. AHM admits Plaintiffs plead the existence of CAFA jurisdiction.
7 Remainder denied.

8 13. AHM admits it is a proper party and the exercise of personal jurisdiction
9 over itself is proper. Remainder denied.

10 14. Denied.

11 15. AHM admits venue is proper. Remainder denied.

12 **PARTIES**

13 16. AHM lacks knowledge or information sufficient to form a belief as to the
14 truth or falsity of the allegations in paragraph 16; therefore, denied.

15 17. AHM lacks knowledge or information sufficient to form a belief as to the
16 truth or falsity of the allegations in paragraph 17; therefore, denied.

17 18. AHM lacks knowledge or information sufficient to form a belief as to the
18 truth or falsity of the allegations in paragraph 18; therefore, denied.

19 19. Mr. Frick is deceased and Plaintiffs are going to dismiss him; therefore,
20 denied as moot.

21 20. AHM lacks knowledge or information sufficient to form a belief as to the
22 truth or falsity of the allegations in paragraph 20; therefore, denied.

23 21. AHM lacks knowledge or information sufficient to form a belief as to the
24 truth or falsity of the allegations in paragraph 21; therefore, denied.

25 22. AHM admits it distributes Honda vehicles in the United States through a
26 network of authorized independent automobile dealers who have entered into dealership
27 agreements with AHM. AHM further admits it administers the NVLW for Honda
28 vehicles. AHM expressly denies that Honda North America, Inc. is a proper party to

1 this action. Remainder denied.

2 23. AHM admits that it is a corporation organized under the laws of California
3 and has a place of business in Torrance, California. Remainder denied.

4 24. Denied.

5 **GENERAL ALLEGATIONS**

6 **A. Honda Knowingly Sold Dangerously Defective Vehicles to Consumers.**

7 25. Denied.

8 26. Denied.

9 27. Denied.

10 28. Denied.

11 29. Denied.

12 30. AHM admits that on or around September 27, 2012, it issued Technical
13 Service Bulletin (“TSB”) 12-064, which document speaks for itself. Remainder denied.

14 31. Denied.

15 32. AHM admits that on or around March 6, 2015, it issued TSB 15-014,
16 which document speaks for itself. Remainder denied.

17 33. Denied.

18 34. AHM admits that on or around August 3, 2016, it issued TSB 16-060,
19 which document speaks for itself. Remainder denied.

20 35. AHM states TSB 16-060 speaks for itself. Remainder denied.

21 36. Denied.

22 37. Denied.

23 38. Denied.

24 **B. Consumers Have Extensively Reported the Safety Defect to Honda.**

25 39. Denied.

26 40. Denied.

27 41. Denied.

28 42. Denied.

1 43. Denied.

2 44. AHM admits Plaintiffs purport to quote an anonymous “consumer
3 complaint” on the NHTSA website. Remainder denied.

4 45. AHM admits Plaintiffs purport to quote an anonymous “consumer
5 complaint” on the NHTSA website. Remainder denied.

6 46. AHM admits Plaintiffs purport to quote an anonymous “consumer
7 complaint” from the NHTSA website. Remainder denied.

8 47. AHM admits Plaintiffs purport to quote an anonymous “consumer
9 complaint” from the NHTSA website. Remainder denied.

10 48. AHM admits Plaintiffs purport to quote an anonymous “consumer
11 complaint” from the NHTSA website. Remainder denied.

12 49. AHM admits Plaintiffs purport to quote an anonymous “consumer
13 complaint” from the NHTSA website. Remainder denied.

14 **C. Honda Did Not Disclose the Safety Defect to Plaintiffs, the Class, or Subclass**
15 **Members.**

16 50. Denied.

17 51. AHM admits it publishes TSBs to authorized, independent dealerships and
18 repair shops who perform warranty and repair work on Honda vehicles. Remainder
19 denied.

20 52. Denied.

21 **D. Honda’s Express and Implied Warranties Cover Repairs and Replacements**
22 **Associated with the Transmission Defect, But Honda has been Unable to**
23 **Repair the Defect.**

24 53. AHM admits that brand-new 2011 - 2016 Honda Odyssey vehicles come
25 with NVLW, which speaks for itself. Remainder denied.

26 54. AHM admits that all brand-new Honda vehicles come with a NVLW that
27 includes a powertrain limited, written warranty, all of which speak for themselves.
28 Remainder denied.

1 55. AHM admits that all brand-new Honda vehicles come with NVLW, which
2 speaks for itself. Remainder denied.

3 56. Denied.

4 57. Denied.

5 **PLAINTIFFS' INDIVIDUAL ALLEGATIONS**

6 58. AHM lacks knowledge or information sufficient to form a belief as to the
7 reason(s) Plaintiffs "purchase[d] their respective" vehicles and/or whether the vehicles
8 were still under the NVLW when purchased; therefore, denied. Remainder denied.

9 59. Denied.

10 60. Denied.

11 61. Denied.

12 62. AHM lacks knowledge or information sufficient to form a belief as to the
13 truth or falsity of the allegations in paragraph 62; therefore, denied.

14 **A. Plaintiff Dennis MacDougall Purchased a 2014 Honda Odyssey with the**
15 **Undisclosed Safety Defect.**

16 63. AHM lacks knowledge or information sufficient to form a belief as to the
17 truth or falsity of the allegations in paragraph 63; therefore, denied.

18 64. AHM lacks knowledge or information sufficient to form a belief as to the
19 truth or falsity of the allegations in paragraph 64; therefore, denied.

20 65. AHM lacks knowledge or information sufficient to form a belief as to the
21 truth or falsity of the allegations in paragraph 65; therefore denied. AHM affirmatively
22 states in or around September 27, 2017 it inspected Plaintiff's vehicle and found the
23 vehicle's transmission to operate as designed.

24 66. AHM lacks knowledge or information sufficient to form a belief as to the
25 truth of the allegations in paragraph 66; therefore denied. AHM affirmatively states in
26 or around September 27, 2017 it inspected Plaintiff's vehicle and found the vehicle's
27 transmission to operate as designed.

28 67. AHM lacks knowledge or information sufficient to form a belief as to the

1 truth or falsity of the allegations in paragraph 67; therefore, denied. AHM affirmatively
2 states in or around September 27, 2017 it inspected Plaintiff's vehicle and found the
3 vehicle's transmission to operate as designed.

4 68. AHM lacks knowledge or information sufficient to form a belief as to the
5 truth or falsity of the allegations in paragraph 68; therefore, denied. AHM affirmatively
6 states in or around September 27, 2017 it inspected Plaintiff's vehicle and found the
7 vehicle to operate as designed.

8 69. AHM lacks knowledge or information sufficient to form a belief as to the
9 truth or falsity of the allegations in paragraph 69; therefore, denied. AHM affirmatively
10 states in or around September 27, 2017 it inspected Plaintiff's vehicle and found the
11 vehicle's transmission to operate as designed.

12 70. Denied.

13 **B. Plaintiff Ray Seow Purchased a 2014 Honda Odyssey with the Undisclosed**
14 **Safety Defect.**

15 71. AHM lacks knowledge or information sufficient to form a belief as to the
16 truth or falsity of the allegations in paragraph 71; therefore, denied.

17 72. AHM lacks knowledge or information sufficient to form a belief as to the
18 truth or falsity of the allegations in paragraph 72; therefore, denied. AHM affirmatively
19 states in or around August 11, 2017 it inspected Plaintiff's vehicle and found the
20 vehicle's transmission to operate as designed.

21 73. Denied.

22 74. Denied.

23 **C. Plaintiff Prabhanjan Kavuri Purchased a 2014 Honda Odyssey with the**
24 **Undisclosed Safety Defect.**

25 75. AHM lacks knowledge or information sufficient to form a belief as to the
26 truth or falsity of the allegations in paragraph 75; therefore, denied.

27 76. AHM lacks knowledge or information sufficient to form a belief as to the
28 truth or falsity of the allegations in paragraph 76; therefore, denied. AHM affirmatively

1 states in or around September 26, 2017 it inspected Plaintiff's vehicle and found the
2 vehicle's transmission to operate as designed.

3 77. AHM lacks knowledge or information sufficient to form a belief as to the
4 truth or falsity of the allegations in paragraph 77; therefore, denied. AHM affirmatively
5 states in or around September 26, 2017 it inspected Plaintiff's vehicle and found the
6 vehicle to operate as designed.

7 78. Denied.

8 **D. Plaintiff Richard Frick Purchased a 2015 Honda Odyssey with the**
9 **Undisclosed Safety Defect.**

10 [AHM does not answer the allegations in paragraphs 79-83 pertaining to Mr.
11 Frick, because Mr. Frick is deceased and Plaintiffs represented to the Court and
12 to AHM that they would shortly be dismissing him from the action.]

13 **E. Plaintiff Joseph Ryan Parker Purchased a 2014 Honda Odyssey with the**
14 **Undisclosed Safety Defect.**

15 84. AHM lacks knowledge or information sufficient to form a belief as to the
16 truth of the allegations in paragraph 84; therefore, denied.

17 85. AHM lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations in paragraph 85; therefore, denied.

19 86. AHM lacks knowledge or information sufficient to form a belief as to the
20 truth of the allegations in paragraph 86 therefore, denied. AHM affirmatively states in
21 or around September 28, 2017 it inspected Plaintiff's vehicle and found the vehicle's
22 transmission to operate as designed.

23 87. AHM lacks knowledge or information sufficient to form a belief as to the
24 truth or falsity of the allegations in paragraph 86; therefore denied. AHM affirmatively
25 states in or around September 28, 2017 it inspected Plaintiff's vehicle and found the
26 vehicle's transmission to operate as designed.

27 88. Denied.

1 **F. Plaintiff Bryan Lentz Purchased a 2014 Honda Odyssey with the**
2 **Undisclosed Safety Defect.**

3 89. AHM lacks knowledge or information sufficient to form a belief as to the
4 truth or falsity of the allegations in paragraph 89; therefore, denied.

5 90. AHM lacks knowledge or information sufficient to form a belief as to the
6 truth or falsity of the allegations in paragraph 90; therefore denied. AHM affirmatively
7 states in or around August 11, 2017, it inspected Plaintiff's vehicle and found the
8 vehicle's transmission to operate as designed.

9 91. AHM lacks knowledge or information sufficient to form a belief as to the
10 truth or falsity of the allegations in paragraph 91; therefore, denied. AHM affirmatively
11 states in or around August 11, 2017, it inspected Plaintiff's vehicle and found the
12 vehicle's transmission to operate as designed.

13 92. AHM lacks knowledge or information sufficient to form a belief as to the
14 truth or falsity of the allegations in paragraph 92; therefore, denied. AHM affirmatively
15 states in or around August 11, 2017, it inspected Plaintiff's vehicle and found the
16 vehicle's transmission to operate as designed.

17 93. Denied.

18 **CLASS ACTION ALLEGATIONS**

19 94. Denied, and expressly denied that Plaintiffs' claims are or could ever be
20 amenable to class treatment.

21 95. Denied, and expressly denied that Plaintiffs' claims are or could ever be
22 amenable to class treatment, however defined.

23 96. Denied, and expressly denied that Plaintiffs' claims are or could ever be
24 amenable to class treatment.

25 97. Denied, and expressly denied that Plaintiffs' claims are or could ever be
26 amenable to class treatment.

27 98. Denied, and expressly denied that Plaintiffs' claims are or could ever be
28 amenable to class treatment.

1 99. Denied, and expressly denied that Plaintiffs' claims are or could ever be
2 amenable to class treatment.

3 100. AHM lacks knowledge or information sufficient to form a belief as to the
4 truth or falsity of the allegations in paragraph 100 regarding Plaintiffs or their counsel;
5 therefore, denied, and expressly denied that Plaintiffs' claims are or could ever be
6 amenable to class treatment.

7 101. Denied, and expressly denied that Plaintiffs' claims are or could ever be
8 amenable to class treatment

9 102. Denied, and expressly denied that Plaintiffs' claims are or could ever be
10 amenable to class treatment.

11 103. Denied, and expressly denied that Plaintiffs' claims are or could ever be
12 amenable to class treatment.

13 104. Denied, and expressly denied that Plaintiffs' claims are or could ever be
14 amenable to class treatment.

15 **TOLLING OF STATUTES OF LIMITATIONS**

16 105. Denied.

17 106. Denied.

18 107. Denied. By way of further response, the Court dismissed Plaintiffs'
19 misrepresentation theory on December 4, 2017 (E.C.F. 53).

20 108. Denied. By way of further response, the Court dismissed Plaintiffs'
21 misrepresentation theory on December 4, 2017 (E.C.F. 53).

22 **FIRST CLAIM FOR RELIEF**

23 (Breach of Express Warranty)

24 On behalf of the Class, or in the alternative, the Pennsylvania, California, New Jersey,
25 and Florida Subclasses

26 109. AHM realleges and incorporates by reference its response to each and
27 every allegation as though fully set forth herein.

28 110. AHM admits that brand-new Honda vehicles come with a NVLW, which

1 speaks for itself. Remainder denied.

2 111. AHM admits that brand-new Honda vehicles come with a NVLW, which
3 speaks for itself. Remainder denied.

4 112. Denied.

5 113. Denied.

6 114. Denied.

7 115. Denied.

8 116. Denied.

9 117. Denied that anyone is entitled to any relief whatsoever (including without
10 limitation the relief requested in paragraph 117), and expressly denied that Plaintiffs'
11 claims are or could ever be amenable to class treatment. By way of further response,
12 Mr. Frick is no longer a plaintiff in this action.

13 **SECOND CLAIM FOR RELIEF**

14 (Breach of Implied Warranty of Merchantability)

15 On behalf of the Class or, in the alternative, the Pennsylvania, California, New Jersey,
16 and Florida Subclasses

17 118. AHM realleges and incorporates by reference its answer to each and every
18 allegation as though fully set forth herein.

19 119. Denied.

20 120. Denied.

21 121. Denied.

22 122. Denied that anyone is entitled to any relief whatsoever (including without
23 limitation the relief requested in paragraph 122), and expressly denied that Plaintiffs'
24 claims are or could ever be amenable to class treatment. By way of further response,
25 Mr. Frick is no longer a plaintiff in this action.

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THIRD CLAIM FOR RELIEF

(Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*)
On behalf of the Class or, in the alternative, the Pennsylvania, California, New Jersey,
and Florida Subclasses

[AHM states that on December 4, 2017 the Court dismissed Plaintiffs' claims
under the Magnuson-Moss Warranty Act due to lack of 100 named plaintiffs, and
therefore no response to the Third Claim for Relief is required from AHM.]

FOURTH CLAIM FOR RELIEF

(Breach of Implied Warranty Pursuant to Song-Beverly Consumer Warranty Act,
California Civil Code §§ 1792 and 1791.1, *et seq.*)

On behalf of the California Subclass

132. AHM realleges and incorporates by reference its answer to each and every
allegation as though fully set forth herein.

133. Denied. By way of further response, Mr. Frick is no longer a plaintiff in
this action.

134. Denied. By way of further response, Mr. Frick is no longer a plaintiff in
this action.

135. Denied. By way of further response, Mr. Frick is no longer a plaintiff in
this action.

136. AHM states the NVLW and Cal. Civ. Code § 1792 speak for themselves.
By way of further response, Mr. Frick is no longer a plaintiff in this action. Remainder
denied.

137. Denied.

138. Denied. By way of further response, Mr. Frick is no longer a plaintiff in
this action.

139. Denied. AHM affirmatively states implied warranties arise by operation
of law. By way of further response, Mr. Frick is no longer a plaintiff in this action.

140. Denied. By way of further response, Mr. Frick is no longer a plaintiff in

1 this action.

2 141. Denied.

3 142. Denied.

4 143. Denied that anyone is entitled to any relief whatsoever (including without
5 limitation the relief requested in paragraph 143), and expressly denied that Plaintiffs'
6 claims are or could ever be amenable to class treatment. By way of further response,
7 Mr. Frick is no longer a plaintiff in this action.

8 **FIFTH CLAIM FOR RELIEF**

9 (Violations of Pennsylvania Unfair Trade Practices and Consumer Protection Law,
10 73 P.S. § 201-1, *et seq.*)

11 On behalf of the Pennsylvania Subclass

12 144. AHM realleges and incorporates by reference its answer to each and every
13 allegation as though fully set forth herein.

14 145. AHM lacks knowledge or information sufficient to form a belief as to the
15 purposes for which Plaintiffs and any potential members of Plaintiffs' proposed Class
16 or Subclasses purchased or leased their vehicles; therefore, denied.

17 146. Denied.

18 147. Denied.

19 148. Denied. By way of further response, the Court dismissed Plaintiffs'
20 misrepresentation theory on December 4, 2017 (E.C.F. 53).

21 149. Denied. By way of further response, the Court dismissed Plaintiffs'
22 misrepresentation theory on December 4, 2017 (E.C.F. 53).

23 150. Denied.

24 151. Denied. By way of further response, the Court dismissed Plaintiffs'
25 misrepresentation theory on December 4, 2017 (E.C.F. 53).

26 152. Denied. By way of further response, the Court dismissed Plaintiffs'
27 misrepresentation theory on December 4, 2017 (E.C.F. 53).

28 153. Denied that AHM violated the Pennsylvania Unfair Trade Practices and

1 Consumer Protection Law, 73 P.S. §201-2 or any other law. By way of further response,
2 the Court dismissed Plaintiffs’ misrepresentation theory on December 4, 2017 (E.C.F.
3 53).

4 154. Denied. By way of further response, the Court dismissed Plaintiffs’
5 misrepresentation theory on December 4, 2017 (E.C.F. 53).

6 155. Denied. By way of further response, the Court dismissed Plaintiffs’
7 misrepresentation theory on December 4, 2017 (E.C.F. 53).

8 156. Denied. By way of further response, the Court dismissed Plaintiffs’
9 misrepresentation theory on December 4, 2017 (E.C.F. 53).

10 157. Denied. By way of further response, the Court dismissed Plaintiffs’
11 misrepresentation theory on December 4, 2017 (E.C.F. 53).

12 158. Denied that anyone is entitled to any relief whatsoever (including without
13 limitation the relief requested in paragraph 158), and expressly denied that Plaintiffs’
14 claims are or could ever be amenable to class treatment.

15 159. Denied that anyone is entitled to any relief whatsoever (including without
16 limitation the relief requested in paragraph 159), and expressly denied that Plaintiffs’
17 claims are or could ever be amenable to class treatment.

18 **SIXTH CLAIM FOR RELIEF**

19 (Violation of California’s Consumer Legal Remedies Act,
20 California Civil Code §§ 1750, *et seq.* (“CLRA”))

21 On behalf of the California Subclass

22 160. AHM realleges and incorporates by reference its answers to each and every
23 allegation as though fully set forth herein.

24 161. AHM states Cal. Civ. Code § 1761(c) speaks for itself. Remainder denied.
25 By way of further response, AHM states Mr. Frick is no longer a plaintiff in this action.

26 162. AHM states Cal. Civ. Code § 1761(c) speaks for itself. By way of further
27 response, AHM states HNA is not a proper party to and Mr. Frick is no longer a plaintiff
28 in this action. Remainder denied.

1 163. AHM lacks knowledge or information sufficient to form a belief as to the
2 truth or falsity of the allegations as to Plaintiffs; therefore, denied. By way of further
3 response, AHM states that Mr. Frick is no longer a plaintiff in this action. Remainder
4 denied.

5 164. Denied. By way of further response, the Court dismissed Plaintiffs'
6 misrepresentation theory on December 4, 2017 (E.C.F. 53) and Mr. Frick is no longer
7 a plaintiff to this action.

8 165. Denied. By way of further response, the Court dismissed Plaintiffs'
9 misrepresentation theory on December 4, 2017 (E.C.F. 53) and Mr. Frick is no longer
10 a plaintiff to this action.

11 166. Denied.

12 167. Denied. By way of further response, the Court dismissed Plaintiffs'
13 misrepresentation theory on December 4, 2017 (E.C.F. 53) and Mr. Frick is no longer
14 a plaintiff to this action.

15 168. Denied. By way of further response, the Court dismissed Plaintiffs'
16 misrepresentation theory on December 4, 2017 (E.C.F. 53) and Mr. Frick is no longer
17 a plaintiff to this action.

18 169. Denied.

19 170. Denied. By way of further response, the Court dismissed Plaintiffs'
20 misrepresentation theory on December 4, 2017 (E.C.F. 53) and Mr. Frick is no longer
21 a plaintiff to this action.

22 171. AHM lacks knowledge or information sufficient to form a belief as to the
23 "reasonableness" of Plaintiffs; therefore denied. By way of further response, Mr. Frick
24 is no longer a plaintiff to this action. Remainder denied.

25 172. Denied that anyone is entitled to any relief whatsoever (including without
26 limitation the relief requested in paragraph 172), and expressly denied that Plaintiffs'
27 claims are or could ever be amenable to class treatment. By way of further response,
28 Mr. Frick is no longer a plaintiff to this action.

1 173. Denied that anyone is entitled to any relief whatsoever (including without
2 limitation the relief requested in paragraph 172), and expressly denied that Plaintiffs'
3 claims are or could ever be amenable to class treatment. By way of further response,
4 Mr. Frick is no longer a plaintiff to this action.

5 174. Denied that anyone is entitled to any relief whatsoever (including without
6 limitation the relief requested in paragraph 174), and expressly denied that Plaintiffs'
7 claims are or could ever be amenable to class treatment. By way of further response,
8 Mr. Frick is no longer a plaintiff to this action.

9 175. Admitted that Plaintiffs allege they provided "notice"; denied that anyone
10 is entitled to any relief whatsoever (including without limitation the relief requested in
11 paragraph 175), and expressly denied that Plaintiffs' claims are or could ever be
12 amenable to class treatment. By way of further response, Mr. Frick is no longer a
13 plaintiff to this action.

14 **SEVENTH CLAIM FOR RELIEF**

15 (Violation of Cal. Bus. & Prof. Code § 17000, *et seq.*)

16 On behalf of the California Subclass

17 176. AHM realleges and incorporates by reference its answers to each and every
18 allegation as though fully set forth herein.

19 177. AHM states Cal. Civ. Code § 17200 speaks for itself. Remainder denied.
20 By way of further response, AHM states Mr. Frick is no longer a plaintiff in this action.

21 178. AHM lacks knowledge or information sufficient to form a belief as to the
22 "reasonableness" of Plaintiffs; therefore denied. By way of further response, Mr. Frick
23 is no longer a plaintiff to this action. Remainder denied.

24 179. Denied.

25 180. Denied. By way of further response, the Court dismissed Plaintiffs'
26 misrepresentation theory on December 4, 2017 (E.C.F. 53).

27 181. Denied. By way of further response, the Court dismissed Plaintiffs'
28 misrepresentation theory on December 4, 2017 (E.C.F. 53).

1 182. Denied. By way of further response, the Court dismissed Plaintiffs'
2 misrepresentation theory on December 4, 2017 (E.C.F. 53) and Mr. Frick is no longer
3 a plaintiff to this action.

4 183. Denied. By way of further response, the Court dismissed Plaintiffs'
5 misrepresentation theory on December 4, 2017 (E.C.F. 53) and Mr. Frick is no longer
6 a plaintiff to this action.

7 184. Denied. By way of further response, the Court dismissed Plaintiffs'
8 misrepresentation theory on December 4, 2017 (E.C.F. 53) and Mr. Frick is no longer
9 a plaintiff to this action.

10 185. Denied.

11 186. Denied.

12 187. Denied that anyone is entitled to any relief whatsoever (including without
13 limitation the relief requested in paragraph 187), and expressly denied that Plaintiffs'
14 claims are or could ever be amenable to class treatment. By way of further response,
15 Mr. Frick is no longer a plaintiff to this action.

16 188. Denied that anyone is entitled to any relief whatsoever (including without
17 limitation the relief requested in paragraph 188), and expressly denied that Plaintiffs'
18 claims are or could ever be amenable to class treatment. By way of further response,
19 Mr. Frick is no longer a plaintiff to this action.

20 189. Denied that anyone is entitled to any relief whatsoever (including without
21 limitation the relief requested in paragraph 189), and expressly denied that Plaintiffs'
22 claims are or could ever be amenable to class treatment. By way of further response,
23 Mr. Frick is no longer a plaintiff to this action.

24 190. Denied that anyone is entitled to any relief whatsoever (including without
25 limitation the relief requested in paragraph 190), and expressly denied that Plaintiffs'
26 claims are or could ever be amenable to class treatment. By way of further response,
27 Mr. Frick is no longer a plaintiff to this action.

28

EIGHTH CLAIM FOR RELIEF

(New Jersey Consumer Fraud Act,

N.J. Stat. § 56:8-2, *et seq.*)

On behalf of the New Jersey Subclass

191. AHM realleges and incorporates by reference its answers to each and every allegation as though fully set forth herein.

192. AHM states N.J. Stat. §56:8-1 speaks for itself. Remainder denied.

193. Denied.

194. Denied. By way of further response, the Court dismissed Plaintiffs' misrepresentation theory on December 4, 2017 (E.C.F. 53).

195. Denied. By way of further response, the Court dismissed Plaintiffs' misrepresentation theory on December 4, 2017 (E.C.F. 53).

196. Denied. By way of further response, the Court dismissed Plaintiffs' misrepresentation theory on December 4, 2017 (E.C.F. 53).

197. AHM admits it publishes TSBs to authorized dealerships who perform warranty and repair work on Honda vehicles. Remainder denied.

198. Denied.

199. Denied. By way of further response, the Court dismissed Plaintiffs' misrepresentation theory on December 4, 2017 (E.C.F. 53).

200. Denied. By way of further response, the Court dismissed Plaintiffs' misrepresentation theory on December 4, 2017 (E.C.F. 53).

201. Denied. By way of further response, the Court dismissed Plaintiffs' misrepresentation theory on December 4, 2017 (E.C.F. 53).

202. Denied. By way of further response, the Court dismissed Plaintiffs' misrepresentation theory on December 4, 2017 (E.C.F. 53).

203. Denied that anyone is entitled to any relief whatsoever (including without limitation the relief requested in paragraph 203), and expressly denied that Plaintiffs' claims are or could ever be amenable to class treatment.

1 216. Denied.

2 217. AHM lacks knowledge or information sufficient to form a belief as to the
3 “reasonableness” of Plaintiffs; therefore denied. Remainder denied.

4 218. Denied that anyone is entitled to any relief whatsoever (including without
5 limitation the relief requested in paragraph 218), and expressly denied that Plaintiffs’
6 claims are or could ever be amenable to class treatment.

7 219. Denied that anyone is entitled to any relief whatsoever (including without
8 limitation the relief requested in paragraph 219), and expressly denied that Plaintiffs’
9 claims are or could ever be amenable to class treatment.

10 220. Denied that anyone is entitled to any relief whatsoever (including without
11 limitation the relief requested in paragraph 220), and expressly denied that Plaintiffs’
12 claims are or could ever be amenable to class treatment.

13 **TENTH CLAIM FOR RELIEF**

14 (Equitable Injunctive and Declaratory Relief)

15 On behalf of the Class or, in the alternative, the Pennsylvania, California, New Jersey,
16 and Florida Subclasses

17 221. AHM realleges and incorporates by reference its answer to each and every
18 allegation as though fully set forth herein.

19 222. Denied.

20 223. Denied. By way of further response, the Court dismissed Plaintiffs’
21 misrepresentation theory on December 4, 2017 (E.C.F. 53), and Mr. Frick is no longer
22 a plaintiff to this action.

23 224. Denied that anyone is entitled to any relief whatsoever (including without
24 limitation the relief requested in paragraph 224), and expressly denied that Plaintiffs’
25 claims are or could ever be amenable to class treatment. By way of further response,
26 Mr. Frick is no longer a plaintiff to this action.

27 225. Denied that anyone is entitled to any relief whatsoever (including without
28 limitation the relief requested in paragraph 225), and expressly denied that Plaintiffs’

1 claims are or could ever be amenable to class treatment. By way of further response,
2 Mr. Frick is no longer a plaintiff to this action.

3 226. Denied that anyone is entitled to any relief whatsoever (including without
4 limitation the relief requested in paragraph 226), and expressly denied that Plaintiffs'
5 claims are or could ever be amenable to class treatment. By way of further response,
6 Mr. Frick is no longer a plaintiff to this action.

7 **ELEVENTH CLAIM FOR RELIEF**

8 (Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* and Fed. R. Civ. P. 57)

9 On behalf of the Class or, in the alternative, the Pennsylvania, California, New Jersey,
10 and Florida Subclasses

11 227. AHM realleges and incorporates by reference its answers to each and every
12 allegation as though fully set forth herein.

13 228. AHM states 10B Charles Alan Wright, Arthur R. Miller & Mary Kay
14 Kane, Federal Practice and Procedure § 2751 (3d ed. 1998) speaks for itself. Remainder
15 denied.

16 229. AHM states 28 U.S.C. § 2201 speaks for itself. Remainder denied.

17 230. Denied. By way of further response, Mr. Frick is no longer a plaintiff to
18 this action.

19 231. Denied that anyone is entitled to any relief whatsoever (including without
20 limitation the relief requested in paragraph 231), and expressly denied that Plaintiffs'
21 claims are or could ever be amenable to class treatment. By way of further response,
22 Mr. Frick is no longer a plaintiff to this action.

23 232. Denied that anyone is entitled to any relief whatsoever (including without
24 limitation the relief requested in paragraph 232), and expressly denied that Plaintiffs'
25 claims are or could ever be amenable to class treatment. By way of further response,
26 Mr. Frick is no longer a plaintiff to this action.

1 **TWELFTH CLAIM FOR RELIEF**

2 (Unjust Enrichment)

3 On behalf of the Class or, in the alternative, the Pennsylvania, California, New Jersey,
4 and Florida Subclasses

5 233. AHM realleges and incorporates by reference its answers to each and every
6 allegation as though fully set forth herein.

7 234. Denied. By way of further response, Mr. Frick is no longer a plaintiff to
8 this action.

9 235. Denied. By way of further response, Mr. Frick is no longer a plaintiff to
10 this action.

11 236. Denied.

12 237. Denied that anyone is entitled to any relief whatsoever (including without
13 limitation the relief requested in paragraph 237), and expressly denied that Plaintiffs'
14 claims are or could ever be amenable to class treatment. By way of further response,
15 Mr. Frick is no longer a plaintiff to this action.

16 **PRAYER FOR RELIEF**

17 Denied that anyone is entitled to any relief whatsoever, including without
18 limitation the relief requested in the "Prayer for Relief." By way of further response,
19 Mr. Frick is no longer a plaintiff to this action.

20 **GENERAL DENIAL**

21 Denied as to each and every allegation not specifically admitted herein, and
22 expressly denied that Plaintiffs' claims are or ever could be amenable to class treatment.

23 **AFFIRMATIVE DEFENSES**

24 AHM's affirmative defenses to Plaintiffs' Complaint are set forth below. By
25 setting forth the following allegations and defenses, however, AHM does not assume
26 the burden of proof on matters and issues other than those on which AHM has the
27 burden of proof as a matter of law.

1 **FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION**

2 Plaintiffs' Complaint fails to state any claim upon which relief can be granted.

3 **FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION**

4 Plaintiffs cannot properly maintain their claims as a class action, because the
5 requirements under federal law for class certification are not and cannot be met and
6 because certification of the proposed class would result in a denial of due process to
7 AHM as well as to the proposed class and subclasses.

8 **FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION**

9 The asserted claims are barred, in whole or in part, to the extent that there is no
10 legal injury, including no injury to persons who purchased or leased the vehicles in
11 question and experienced no problems.

12 **FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION**

13 The claims of Plaintiffs and/or some or all of the members of the proposed class
14 and/or subclasses are barred by the economic loss doctrine.

15 **FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION**

16 Any claims for damages or other monetary recovery by Plaintiffs or on behalf
17 of persons claimed to be members of the proposed class or subclasses must be offset
18 or reduced by the value received from the vehicles purchased or leased.

19 **FOR A SIXTH DEFENSE TO ALL CAUSES OF ACTION**

20 On information and belief, the sales contracts pursuant to which Plaintiffs
21 and/or some or all members of the proposed class or subclasses purchased or leased
22 their Honda vehicles contain arbitration clauses that require some or all of the claims
23 asserted herein to be resolved through arbitration.

24 **FOR A SEVENTH DEFENSE TO ALL CAUSES OF ACTION**

25 Plaintiffs' claims for damages individually or through a class action are barred
26 in whole or in part by Civ. Code § 1782 (b) & (c).

1 **FOR AN EIGHTH DEFENSE TO ALL CAUSES OF ACTION**

2 The claims of Plaintiffs and/or members of the proposed class or subclasses are
3 time-barred, in whole or in part, under the applicable statute of limitations, statute of
4 repose and/or by the doctrines of waiver, estoppel and/or laches.

5 **FOR A NINTH DEFENSE TO ALL CAUSES OF ACTION**

6 Plaintiffs and/or members of the proposed class or subclasses may be barred
7 from recovery, in whole or in part, because they have made statements or taken
8 actions that estop them from asserting their claims.

9 **FOR A TENTH DEFENSE TO ALL CAUSES OF ACTION**

10 The claims in Plaintiffs' Complaint are barred, in whole or in part, because
11 Plaintiffs and members of the proposed class or subclasses cannot meet their burden
12 of showing that any acts, conduct, statements or omissions on the part of AHM were
13 likely to mislead, including consistent with the Court's December 4, 2017 Order
14 dismissing the misrepresentation allegations (E.C.F. 53).

15 **FOR AN ELEVENTH DEFENSE TO ALL CAUSES OF ACTION**

16 The claims in Plaintiffs' Complaint are barred, in whole or in part, because
17 Plaintiffs and members of the proposed class or subclasses were not actually deceived
18 by and/or did not rely on any statements or omissions on the part of AHM when
19 deciding whether to purchase or lease their vehicles. *See, e.g.*, Dec. 4, 2017 Order
20 (E.C.F. 53) *at passim*.

21 **FOR A TWELFTH DEFENSE TO ALL CAUSES OF ACTION**

22 Plaintiffs and/or members of the proposed class or subclasses are barred from
23 recovery, in whole or in part, due to the intervening cause of another party.

24 **FOR A THIRTEENTH DEFENSE TO ALL CAUSES OF ACTION**

25 The claims in Plaintiffs' Complaint are barred, in whole or in part, to the extent
26 any injury sustained by Plaintiffs or members of the proposed class or subclasses was
27 caused by their own conduct, whether negligent or otherwise, including without
28

1 limitation driving habits, driving speed, the use of aftermarket accessories in the
2 vehicle, usage of the vehicle and numerous other factors within the control of
3 Plaintiffs and/or members of the proposed class or subclasses. Further, Plaintiffs and
4 members of the proposed class or subclasses who misused and/or abused the vehicle
5 are barred, in whole or in part, from recovery.

6 **FOR A FOURTEENTH DEFENSE TO ALL CAUSES OF ACTION**

7 This action is not appropriate for class treatment because Plaintiffs' claims
8 necessarily revolve around a myriad of factors, parties and circumstances outside the
9 control of AHM and which greatly vary.

10 **FOR A FIFTEENTH DEFENSE TO ALL CAUSES OF ACTION**

11 Plaintiffs and/or members of the proposed class or subclasses who have altered,
12 modified or changed their vehicles subsequent to their original purchase or lease are
13 barred, in whole or in part, from recovery.

14 **FOR A SIXTEENTH DEFENSE TO ALL CAUSES OF ACTION**

15 Plaintiffs and/or members of the proposed class or subclasses who have sold,
16 destroyed, damaged, altered or otherwise disposed of their vehicles are barred, in
17 whole or in part, from recovery.

18 **FOR A SEVENTEENTH DEFENSE TO ALL CAUSES OF ACTION**

19 Plaintiffs and/or members of the proposed class or subclasses may be barred
20 from recovery, in whole or in part, if in this or other tribunals they have brought
21 actions and have received judgments or awards on some or all of the claims asserted
22 herein.

23 **FOR AN EIGHTEENTH DEFENSE TO ALL CAUSES OF ACTION**

24 Plaintiffs and members of the proposed class or subclasses may not seek
25 equitable relief because they have an adequate remedy at law.
26
27
28

1 **FOR A NINETEENTH DEFENSE TO ALL CAUSES OF ACTION**

2 The claims of Plaintiffs and members of the proposed class or subclasses are
3 barred, in whole or in part, to the extent they have failed to mitigate damages and/or
4 have cause some or all of the alleged damage of which they now complain.

5 **FOR A TWENTIETH DEFENSE TO ALL CAUSES OF ACTION**

6 Plaintiffs' claims are barred, in whole or in part, by the Supremacy Clause of
7 the United States Constitution and by the doctrine of preemption.

8 **FOR A TWENTY FIRST DEFENSE TO ALL CAUSES OF ACTION**

9 The claims in Plaintiffs' Complaint are barred, in whole or in part, because one
10 or more federal agencies have primary jurisdiction over the matter which in the
11 subject hereof.

12 **FOR A TWENTY SECOND DEFENSE TO ALL CAUSES OF ACTION**

13 If any persons or entities claiming to be members of the proposed class have
14 released claims, they may be barred from recovery, in whole or in part, by such
15 releases.

16 **FOR A TWENTY THIRD DEFENSE TO ALL CAUSES OF ACTION**

17 If any persons claiming to be members of the proposed class or subclasses have
18 resolved similar or the same claims as those alleged in Plaintiffs' Complaint, they may
19 be barred from recovery, in whole or in part, on the grounds that they are subject to
20 the defense of accord and satisfaction.

21 **FOR A TWENTY FOURTH DEFENSE TO ALL CAUSES OF ACTION**

22 Plaintiffs and their counsel have failed to join as parties to this action all
23 persons and entities who would be necessary parties for adjudication of the claims of
24 Plaintiffs and/or members of the proposed class or subclasses.

25 **FOR A TWENTY FIFTH DEFENSE TO ALL CAUSES OF ACTION**

26 The relief sought by Plaintiffs is tantamount to a request for punitive damages
27 and is barred by the Commerce Clause of the United States Constitution, Article I, §
28 8, cl. 3, among other provisions.

1 **FOR A TWENTY SIXTH DEFENSE TO ALL CAUSES OF ACTION**

2 Some or all of the claims asserted in Plaintiffs’ Complaint, including claims
3 purportedly made on behalf of the proposed class or subclasses, are barred because
4 named Plaintiffs and/or members of the proposed class or subclasses lack standing to
5 assert those claims.

6 **FOR A TWENTY SEVENTH DEFENSE TO ALL CAUSES OF ACTION**

7 The claims of Plaintiffs and/or members of the proposed class or subclasses are
8 barred, in whole or in part, to the extent they engaged in unlawful, inequitable, or
9 improper conduct.

10 **FOR A TWENTY EIGHTH DEFENSE TO ALL CAUSES OF ACTION**

11 Plaintiffs’ claims for equitable remedies are barred because (a) Plaintiffs and
12 the members of the proposed class or subclasses have an adequate remedy at law; (b)
13 AHM does not sell vehicles directly to the public; and/or (c) the doctrine of primary
14 jurisdiction.

15 **FOR A TWENTY NINTH DEFENSE TO ALL CAUSES OF ACTION**

16 Plaintiffs’ claims brought under theories and laws dismissed by the Court in its
17 December 4, 2017 order (E.C.F. 53) are now *res judicata* as to Plaintiffs specifically
18 because they elected to not amend or replead those claims and are, therefore, now
19 barred from doing so. *See, e.g., Yourish v. California Amplifier*, 191 F.3d 983, 986
20 (9th Cir. 1999).

21 **RESERVATION AS TO ANY ADDITIONAL AFFIRMATIVE DEFENSES**

22 AHM has insufficient knowledge or information upon which to form a belief as
23 to whether it may have additional affirmative defenses that govern the claims asserted
24 by Plaintiffs and on behalf of persons claimed to be members of the proposed class or
25 subclasses. AHM, therefore, reserves the right to raise additional defenses as
26 appropriate.

1 **WHEREFORE**, having fully answered Plaintiffs' Complaint, AHM prays the
2 Plaintiffs' Complaint be dismissed, with prejudice, and for such other relief as the
3 Court may deem just and proper.

4
5 DATED: December 26, 2017

SIDLEY AUSTIN LLP

7 By: /s/ Michael Shortnacy
8 Attorney for Defendants
9 AMERICAN HONDA MOTOR CO., INC. and
10 HONDA NORTH AMERICA, INC.