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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION — RIVERSIDE**

JOHN TRUE and Gonzalo M. Delgado,)
individually and on behalf of all others) Case No. EDCV 07-287-VAP-OPx
similarly situated,)
) DECLARATION OF CLARENCE
Plaintiffs,) M. DITLOW
)
v.)
)
AMERICAN HONDA MOTOR CO., INC.,)
)
Defendant.)
_____)

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DECLARATION OF CLARENCE M. DITLOW

I, Clarence M. Ditlow, declare as follows:

1. I am the Executive Director of the Center for Auto Safety, a non-profit public interest organization that consumer advocate Ralph Nader and the Consumers Union founded in 1970. I have served in that capacity since 1976.
2. Neither I nor the Center has a financial stake in this litigation, and I am not being compensated for my testimony. To the contrary, I am submitting this declaration in support of the objections of class members Joseph K. Goldberg, Valerie M. Nannery, and Katherine A. Burghardt to the proposed settlement of this lawsuit because the Center shares their concerns about the extraordinarily unfair and inadequate results that the settlement has yielded for members of the settlement class.
3. I have a Bachelor of Science degree in Chemical Engineering from Lehigh University (1965), a J.D. degree from Georgetown University (1970), and an

1 L.L.M. degree from Harvard Law School (1971). I received the Consumer Lawyer
2 of the Year award from the District of Columbia Bar Association and the Salzburg
3 Medallion from Syracuse University in 1987. I have authored several books,
4 including *The Lemon Book: Auto Rights* (1990) with Ralph Nader and *Little*
5 *Secrets of the Auto Industry: Hidden Warranties Cost Billions of Dollars* (1994)
6 with Ray Gold. I am also the chief editor of *Automobile Design Liability*, a six
7 volume work published by West, and supplemented annually, on state and federal
8 regulation of the automobile.

9 4. The Center has approximately 15,000 members who reside in all 50 states
10 and the District of Columbia. The Center is a member of the Consumer Federation
11 of America, and is dedicated to, among other things, promoting motor vehicle
12 safety, ensuring that defective and unsafe vehicles and automotive equipment are
13 removed from the road, and ensuring that consumers' interests are protected in
14 matters relating to motor vehicles generally.

15 5. Since the 1970s, the Center has worked to ensure that consumers have
16 adequate safety information before they purchase automobiles, to remove defective
17 and unsafe automobiles from the road, and to improve the quality and reduce the
18 cost of automotive repairs. The Center advocates before Congress, administrative
19 agencies, and the courts on issues related to auto safety. Examples of the Center's
20 many accomplishments include the following:

- 21 • helping to secure lemon laws in every state;
- 22 • working for the recall of the infamous Ford Pinto for exploding gas tanks
23 and the Firestone 500 and Wilderness ATX tires for failures in use;
- 24 • exposing General Motors pickups with side-saddle gas tanks that resulted in
25 more than 1,500 people being burned to death;
- 26 • advocating for state laws to force manufacturers to disclose secret warranties
27 on cars, laws that will save consumers billions of dollars each year; and

- advocating for auto safety and highway standards that helped lower the death rate on America's roads from 5.2 per 100 million miles traveled in 1969 to 1.5 in 2007.

6. The Center and I have worked to improve motor-vehicle fuel economy since the early 1970's. We have appeared before the Federal Trade Commission on fuel economy advertising, the Environmental Protection Agency on fuel economy ratings and labeling, and the National Highway Traffic Safety Administration (NHTSA) on fuel economy standards. I represented the Center on President Clinton's Policy Dialogue Advisory Committee to Assist in the Development of Measures to Significantly Reduce Greenhouse Gas Emissions from Personal Motor Vehicles. This advisory committee sought to determine how the fuel-economy performance of future U.S. vehicles might be significantly improved. I have also testified before Congress on numerous occasions on vehicle fuel economy issues. Overall, I have also testified about motor-vehicle-related issues before congressional committees on more than 50 occasions. The Center has participated in NHTSA and EPA rulemakings on fuel economy since the first fuel-economy standards were set under the 1975 Energy Policy and Conservation Act.

7. The Center has also played an active role in class-action litigation — opposing as well as supporting class-action settlements, and providing expert testimony for both plaintiffs and defendants in that context, depending on the value to class members. The Center has participated in class actions as an objector and as legal counsel to objectors in a number of automotive class actions, including *Ford Explorer Cases*, JCCP Nos. 4266 & 4270, (California Superior Ct, Sacramento County 2008); *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768 (3d Cir. 1995), *cert. denied sub nom. GMC v. French*, 516 U.S. 824 (1995); *Bloyed v. General Motors Corp.*, 881 S.W.2d 422 (Tex. App. 1994), *aff'd* 916 S.W.2d 949 (Tex. 1996); *White v. General Motors Corp.*, 835 So. 2d

892, 897 (La.App. 1 Cir. 2002); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998); *West v. Carfax, Inc.*, Case No. 04-CV-1898 (Ohio Ct. Comm. Pl., Trumble County 2004); and *Perona v Volkswagen of America, Inc*, 292 Ill.App.3d 59, 684 N.E.2d 859, (1997). I have appeared as an expert witness (at trial and in connection with various law-and-motion proceedings) on behalf of class-action plaintiffs in a number of cases, including *Howard v. Ford Motor Co.*, Case No. 763785-2 (Alameda Super. Ct. 2000); *Anelli v. Ford Motor Co.*, 2007 WL 3087960 (Conn. Super. Ct. 2007); *Trew v. Volvo Cars of No. Am. LLC*, 2007 WL 22339210 (E.D., Cal. 2007); and *Anderson v. General Motors Corp.*, Case No. JCCP 4396 (Los Angeles Super Ct. 2007); and on behalf of class-action defendants in such cases as *Avery v. State Farm Mut. Automobile Ins. Co.*, 216 Ill.2d 100 (Ill. 2005), *cert. denied*, 547 U.S. 1003 (2006), and a related case entitled *Smith v. Allstate Insurance Co.*, Case No. 03-L-125 (Ill. Cir. Ct. 2003), among others.

8. Some of the class actions referenced above involved offering coupons for up to \$5,000 toward or contingent upon purchase of another vehicle. In the GM Pickup settlement involving 5.8 million members, less than 100,000 coupons (or less than 1.7% of the coupons) were redeemed even though the coupon was worth \$1,000 toward purchase of almost any GM vehicle by the class member and could be transferred to anyone else with a value of \$500. One fundamental problem with coupon settlements in automotive class actions is that the price of a new vehicle is so much higher than the value of the coupon that the consumer doesn't use it. Excluding transportation tax and title, the price of a 2010 Honda Civic is \$16,000 to \$22,000, the Accord is \$21,000 to \$31,000, and the cheapest Acura is the TSX at \$29,000 to \$38,000. The problem is compounded in this settlement by excluding the lowest price Honda, the Fit at \$15,000 to \$19,000, from eligible vehicles. (Source: 2010 Car Book.)

1 9. *Ford Explorer Cases*, id. ¶ 7, is the only known automotive coupon
2 settlement where class counsel filed a report on the actual redemption of coupons.
3 The class consisted of approximately one million Ford Explorer purchasers who
4 got the right to obtain a coupon worth \$500 toward purchase of another Explorer or
5 \$300 toward purchase of any other Ford, Mercury or Lincoln. As in Option B in
6 the Honda Civic Hybrid settlement, the coupon could be transferred to family
7 members. To obtain the coupon, *Explorer* class members had to file an application
8 with the settlement administrator. Out of one million class members, only 2,267
9 members filed for a coupon, 1,674 coupons were issued, and **only 75 coupons**
10 **were redeemed** after 6 months into a 12 month redemption period. *See* Class
11 counsel filing with Sacramento County Superior Ct., June 26, 2009, a copy of
12 which is provided as Attachment A. The number of coupons issued is the
13 maximum that can ever be redeemed, which is no more than 0.2%. The rate of
14 actual redemption is a minuscule **0.0075%**.

15 10. The settlement agreement in the Honda Civic Hybrid case requires class
16 members to go through similar unnecessary procedural hurdles to obtain the
17 \$1,000 or \$500 derived from buying a new Honda vehicle: Class members have to
18 access the website, find and put in their VIN, watch the video, download a claim
19 form, buy a car, and finally submit a claim form with proper documentation.

20 11. The settlement agreement requires the class member to purchase a new
21 Honda or Acura vehicle but excludes the Fit, Insight, Honda Civic Hybrid or CRZ
22 (a new Hybrid model that comes out in 2011). The Civic Hybrid has a combined
23 city and highway EPA fuel economy rating from 40 to 42 MPG over model years
24 2003-10. The 2010 Insight and Fit are the next most economical Honda models,
25 with fuel economy ratings of 41 and 31, respectively, compared to 42 mpg for the
26 Civic Hybrid, as shown in the table below. No 2010 Acura model has a combined
27 city and highway fuel economy rating higher than 25 MPG. The Civic, with an
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EPA combined rating of 29 MPG, is the highest eligible vehicle but the Civic Hybrid has a fuel economy rating 49% higher. As the class action complaint itself recognizes, the Civic Hybrid owner wants high fuel economy—but that’s the one thing the settlement doesn’t provide.

MY 2010 Honda/Acura Fuel Economy

Model	Combined MPG	Model	Combined MPG
Civic Hybrid	42	TSX	25
Insight	41	RDX	21
Fit	31	TL	21
Civic	29	MDX	18
Accord	25		
CR-V	24		
Element	22		
Odyssey	20		
Pilot	19		
Ridgeline	17		

**Civic Hybrid
Combined MPG**

Year	Combined MPG
2003	41
2004	40
2005	40
2006	42
2007	42
2008	42
2009	42
2010	42

Source: www.fueleconomy.gov

11. I have examined the declaration of Xavier Dreze (Dreze Declaration) in support of the Civic Hybrid settlement. The declaration does not reveal its methodology or show how the calculations are made. Instead, it presents a number of factors considered, a numerical value for the factors, and the results of the calculations using those factors. I was able to determine how the Option A value (the \$1,000 coupon) was calculated but not the Option B value (the \$500 coupon). The starting point in the Dreze Declaration is determining how many Civic Hybrids will be sold or traded in from 2004 to 2017 using a trade-in cycle of 4.72 years. The Dreze Declaration then multiplies the number of Civic Hybrids

1 projected to be traded-in or sold in 2010 and 2011 by 64.7%, which is the
2 percentage of Honda owners who buy another Honda, according to J.D. Power and
3 Associates. The Dreze Declaration then subtracts 18% from that number to adjust
4 for owners buying another Civic Hybrid, which is an ineligible vehicle. Next, the
5 Dreze Declaration multiplies that number by 40% to take into account the
6 percentage of class members obtaining and using the \$1,000 coupon.

7 12. The declaration contains numerous errors affecting both options A and B
8 that make it unreliable and a gross overestimation of the value to the class. The
9 errors include:

10 (A) *The Dreze Declaration uses the wrong number of vehicles.* The
11 declaration does not take into account how many Civic Hybrids were destroyed in
12 crashes or scrapped prior to the Option Period A, during which time the class
13 member must sell or trade in his or her Civic Hybrid. The Dreze Declaration starts
14 with 158,639 Civic Hybrid purchasers and subtracts out trade-ins from 2003 to
15 2009, but not Civic Hybrids totaled in crashes or otherwise scrapped.

16 (B) *The Dreze Declaration uses the wrong redemption period.* Dreze uses a
17 two year window to participate in the coupon redemption program (from mid-2009
18 to June 30, 2011, corresponding roughly to model years 2010 and 2011). Because
19 the redemption program cannot begin until the fuel economy video is posted on the
20 website, which is 90 days after the settlement is approved, the likely starting date is
21 April 1, 2010. Even adding in the extended time period until October 31, 2011, the
22 time available for redemption is only 19 months, not the 24 months assumed by the
23 Dreze Declaration.

24 (C) *The Dreze Declaration fails to account for ineligible vehicles.* The
25 declaration uses an 18% adjustment factor to account for the Civic Hybrid owners
26 who buy another Civic Hybrid, which is an ineligible vehicle. This adjustment
27 factor omits consideration of the other ineligible models, the Fit, the Insight, and
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1 the CRZ in 2011. Because Civic Hybrid purchasers are interested in high fuel
2 economy, these other models are very attractive to the 64.7% of class members
3 buying another Honda. In 2009 to date, the Fit has 62,745 in sales, the Insight has
4 18,933, and the Civic Hybrid has 14,405. (Source: Automotive News Data Center
5 Dec. 10, 2009).

6 (D) *The Dreze Declaration cites no source for its wildly optimistic*
7 *redemption rates, which are incompatible with rates in similar cases.* Dreze
8 assumes a coupon-redemption rate of 40% for the \$1,000 coupon and 20% for the
9 \$500 coupon. The Declaration states: “Redemption rates in class actions have
10 varied widely, ranging from less than one percent to over 90 percent. As a result,
11 estimates of cash back redemption rates were not derived from one source, rather,
12 were based on a review of publically available evidence and scholarly writing on
13 settlements.” Dreze Decl. at 3:19-22. The Declaration, however, fails to cite a
14 single source to support the wildly optimistic 20% and 40% redemption rates.
15 Based on my experience with coupon settlements in automotive class action where
16 the value of the coupon is a small fraction of cost of the new vehicle to be
17 purchased, the redemption rate used in the calculations in the Dreze Declaration
18 should have been no higher than 2% to 4%.

19 I declare under penalty of perjury under the laws of the United States that
20 the foregoing is true and correct, and that this declaration was executed at
21 Washington DC on December 11, 2009.

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23 Clarence M. Ditlow
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