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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA -- WESTERN DIVISION

11
12 PHYLLIS GRODZITSKY and
13 JEREMY BORDELON, on behalf of
14 themselves and all others similarly
situated,

15 Plaintiffs,

16 v.

17 AMERICAN HONDA MOTOR
18 CO., INC.,

19 Defendant.

Case No. 2:12-cv-01142-SVW-PLA

**NOTICE OF MOTION AND MOTION
FOR LEAVE TO AMEND PURSUANT
TO FED. R. CIV. P. 15**

Hon. Judge Stephen V. Wilson
Hon. Mag. Judge Paul L. Adams

Date: July 9, 2012
Time: 1:30 p.m.
Place: Courtroom 6

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NOTICE OF MOTION AND MOTION

Please take notice that on July 9, 2012 at 1:30 p.m. or as soon thereafter as the matter may be heard in Courtroom 6 of the U.S. District Court, Central District of California, Western Division, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs will move the Court for leave to file their Master Complaint (First Amended Complaint) pursuant to Fed. R. Civ. P. 15.

In support of this Motion, Plaintiffs rely on the Notice of Motion and Motion, the Memorandum of Points and Authorities set forth below, the entire record in this cause, and other evidence and argument as may be presented at the time of the hearing.

This motion is made following the conference of counsel pursuant to L.R. 7-3. A discussion regarding Plaintiffs' filing an amended complaint was held prior to May 14, 2012, and additional communications between counsel took place on May 23 and 24, 2012.

Dated: May 24, 2012 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /S/ Jonathan D. Selbin
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Eminence Capital, LLC v. Aspeon, Inc.,
316 F.3d 1048 (9th Cir. Cal. 2003).....2, 3

Foman v. Davis,
371 U.S. 178 (U.S. 1962)2

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs hereby move the Court for leave to file the Master Complaint (First
3 Amended Complaint), attached hereto as Exhibit A.

4 **I. BACKGROUND**

5 Plaintiffs filed their original Complaint in this case on February 9, 2012 (doc.
6 no. 1.), seeking certification of a national class of purchasers and lessees of certain
7 Honda vehicles with defective Window Regulators and, in the alternative,
8 certification of state classes for several states. Defendant has not yet filed an
9 Answer to the original Complaint. On April 12, 2012, Defendant filed a motion to
10 dismiss the Complaint (doc. no. 15) and a motion to strike certain allegations in the
11 Complaint (doc no. 14). The current deadline for Plaintiffs to file a response to
12 Defendant's motions is May 25, 2012, and the motions are presently set for hearing
13 July 9, 2012. No discovery has taken place yet.

14 On April 10, 2012, a separate plaintiff, Mark David Olson, represented by
15 separate lawyers, filed a class action Complaint, styled *Mark David Olson v.*
16 *American Honda Motor Co., Inc.*, Case No. cv-12-03120 SVW (PLAx). The *Olson*
17 Complaint also seeks certification of a nationwide class of owners and lessees of
18 certain Honda vehicles and, in the alternative, certification of state classes. The
19 proposed class in *Olson* covers the same vehicle models and model years as the
20 proposed class in the instant case and involves the same alleged Window Regulator
21 defect. The sole defendant is the same in both cases. *Olson* was deemed a Related
22 Case to the instant action and transferred to this Court pursuant to General
23 Order 08-05 on April 24, 2012 (*Olson*, doc. no. 6).

24 In view of the filing and subsequent transfer to this Court *Olson*, Plaintiffs
25 from both the *Olson* case and the instant case have agreed jointly to file a Master
26 Complaint encompassing claims from both cases. The Master Complaint, attached
27 hereto as Exhibit A, also includes claims by two additional Plaintiffs, as well as
28 additional and modified allegations intended to address arguments raised in

1 Defendant's motion to dismiss and motion to strike. The filing of a Master
2 Complaint will streamline this litigation and will avoid having two overlapping
3 class actions related to the same products, proceeding concurrently, but on different
4 schedules. Moreover, the Master Complaint addresses and makes moots a number
5 of the arguments raised by Defendant in its motions to dismiss and to strike, which
6 will further conserve judicial and party resources.

7 Defendant has not consented to the filing of this Master Complaint pursuant
8 to Rule 15(a)(2).

9 **II. ARGUMENT**

10 **A. Legal Standard**

11 Rule 15(s) provides that leave to amend "shall be freely given when justice
12 so requires." The United States Supreme Court stated "this mandate is to be
13 heeded." *Foman v. Davis*, 371 U.S. 178, 182 (U.S. 1962). The Court further
14 observed:

15 If the underlying facts or circumstances relied upon by a plaintiff may
16 be a proper subject of relief, he ought to be afforded an opportunity to
17 test his claim on the merits. In the absence of any apparent or declared
18 reason -- such as undue delay, bad faith or dilatory motive on the part
19 of the movant, repeated failure to cure deficiencies by amendments
20 previously allowed, undue prejudice to the opposing party by virtue of
21 allowance of the amendment, futility of amendment, etc. -- the leave
22 sought should, as the rules require, be "freely given."

23 *Id.* at 182.

24 The Ninth Circuit stated Rule 15 is "to be applied with extreme liberality."
25 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. Cal.
26 2003)(citations omitted). The Ninth Circuit has also made clear that not all of the
27 *Foman* factors should be weighted equally. Instead, the consideration of prejudice
28 to the opposing party carries the greatest weight. *Id.* at 1052 (citations omitted).

1 “Absent prejudice, or a strong showing of any of the remaining *Foman* factors,
2 there exists a presumption under Rule 15(a) in favor of granting leave to amend.”
3 *Id.* at 1052.

4 **B. Leave to Amend Should be Granted**

5 In this case, Defendant has not yet filed an answer to the Complaint. No
6 discovery has been taken. No trial date has been set. There has not yet been a
7 scheduling order entered and the Rule 16 conference has not yet occurred. The
8 complaint has not been previously amended. Granting leave to file the Master
9 Complaint will not cause any delay. In fact, the filing of the Master Complaint will
10 advance and streamline the litigation. It would allow the Court and the parties from
11 two separate cases to litigate their claims in a single action, using one operative
12 complaint. The filing of the Master Complaint would avoid Defendant filing
13 separate motions in each case challenging the sufficiency of the complaints and
14 would allow the Court to make one set of rulings on Defendant’s motions.
15 Litigating the claims in one case rather than two, through a Master Complaint, will
16 also allow the Court to enter a single scheduling order, adjudicate a single set of
17 any discovery disputes and other motions, including class certification, and conduct
18 a single trial.

19 Moreover, filing the Master Complaint will not cause any prejudice to
20 Defendant. This litigation is in its early stages. No discovery has been taken.
21 Defendant has not yet filed an Answer to the complaint in either *Olson* or this case.
22 Defendant would not be unfairly prejudiced in any way by the filing of the Master
23 Complaint.

24 Additionally, the filing of the Master Complaint will moot many, if not all, of
25 the arguments raised in Defendant’s motion to dismiss and motion to strike. To the
26 extent that Defendant believes that it continues to have meritorious challenges to
27 the allegations in the Master Complaint, it can file streamlined motions that can be
28 heard near the time their prior motions were set for hearing.

1 Accordingly, the parties respectfully request that the Court grant Plaintiffs
2 leave to file the attached Master Complaint (First Amended Complaint) and enter
3 the Proposed Order, filed contemporaneously herewith.

4
5 Dated: May 24, 2012 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

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