UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:19-cv-05984-RGK-AS	Date	April 9, 2021
Title	***Jimmy Banh et al v. American Honda Motor Company, Inc.***		

Present: The Honorable	R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE	
Sharon L. Williams (Not Present)	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:	
Not Present	Not Present	

Proceedings: **(IN CHAMBERS) Order Re: Plaintiffs' Motion for Preliminary Approval of Class Settlement and Direction of Notice Under Federal Rule of Civil Procedure 23(e) [DE 189]**

I. INTRODUCTION

Plaintiffs filed this putative class action against Defendant American Honda Motor Co., Inc. ("Defendant"). The named Plaintiffs are individuals who purchased or leased a 2019 or 2020 Acura RDX vehicle ("Vehicle") manufactured by Defendant.

In their Second Amended Complaint ("SAC"), Plaintiffs alleged numerous claims that spanned twenty states. These claims could generally be grouped into four categories: (1) breach of express warranty; (2) breach of implied warranty of merchantability; (3) violation of state consumer protection laws; and (4) fraudulent concealment. Since then, some Plaintiffs have been dismissed, others compelled to arbitration, and a few non-California Plaintiffs' claims were severed and transferred to their respective home states' district courts. (*See* Orders Granting Stipulation to Dismiss, ECF. Nos. 103, 127; Order Granting J. Pursuant to D.'s Accepted Rule 68 Offers, ECF No. 182; Mot. to Compel Arbitration Order at 12, ECF No. 153; Mot. to Certify Class Order at 30–31, ECF No. 154). But some other non-California Plaintiffs' claims were not transferred pending mediation. (*See* Ps.' Brief, ECF No. 163).

Presently before the Court is Plaintiffs' Motion for Preliminary Approval of Class Settlement and Direction of Notice Under Federal Rule of Civil Procedure 23(e). For the following reasons, the Court **DENIES without prejudice** Plaintiffs' Motion.

II. FACTUAL BACKGROUND

Plaintiffs allege as follows:

Honda manufactures the Vehicle. The named Plaintiffs purchased or leased the Vehicles.

A. The Infotainment System Defect

The Vehicle contains a defect associated with the infotainment system—*e.g.*, the navigation system, audio system, backup camera, Bluetooth, Apple CarPlay—that causes it to malfunction. This defect poses a safety risk because when the infotainment system malfunctions, the driver becomes distracted. The defect can also cause safety-related systems such as the backup camera to fail.

Defendant knew or should have known about this defect based on (1) pre-release design, manufacturing, and testing data; (2) warranty claims data; (3) consumer complaints made directly to Defendant and/or posted on public forums online; (4) testing done in response to those complaints; (5) aggregate data and complaints from authorized dealers; and (6) other sources. Yet Defendant failed to disclose and actively concealed the infotainment system defect from the public and continues to manufacture, distribute, and sell the Vehicles without disclosing the defect.

Honda administers a New Vehicle Limited Warranty ("NVLM") for the Vehicles. Under the NVLM, Honda must repair or replace any part that is defective in material or in workmanship under normal use. Although the infotainment system's defect is covered under the NVLM, Honda has not repaired or replaced the infotainment system. "Instead, Honda tells Vehicle owners to wait for a forthcoming 'software update' to fix the infotainment problems, or alternatively simply replaces defective parts with equally defective parts, thereby leaving consumers caught in a cycle of use, malfunction, and replacement. In fact, Honda's authorized dealerships are routinely discouraging Vehicle owners from bringing their Vehicles to the dealership because there is nothing the dealership can do to repair the defect." (SAC ¶ 9, ECF No. 66-1).

B. The Android Auto Feature

The Vehicle was originally scheduled to launch with both Android Auto and Apple CarPlay connectivity. Honda distributed promotional materials to dealers touting the Vehicles' Android auto compatibility. The distributors then shared this information with consumers. But when the Vehicles went on sale, they came equipped with Apple CarPlay only. "Defendant both directly and indirectly through its authorized dealers promised prospective buyers that Android Auto would be made available to all Vehicle owners through a software update 'soon.'" (*Id.* ¶ 10). However, the feature has still not been implemented.

C. The Settlement Agreement

Since February 2020, the parties have conducted several formal private mediation sessions with the Honorable Dickran M. Tevrizian and reached a class-wide settlement of this dispute. The key settlement terms are as follows:

The settlement class will include all current owners and lessees of the 2019–2020 Acura RDX, "who reside in, and who purchased or leased their vehicles (other than for purposes of resale or

distribution) in the United States, Puerto Rico, and all United States territories, as well as former owners and lessees" who submit a claim. (Matt Decl. Ex. 1 ("Settlement Agreement") ¶ 2.1, ECF No. 189-2). In exchange for releasing their claims, the members of the class will receive the following benefits: (1) independent review of the measures Honda takes to address the infotainment system defects; (2) extended warranty of additional two years or 24,000 miles to cover qualified repairs of the infotainment system; (3) ongoing software updates; (4) dealership assistance and assessment program requiring dealerships and their technicians to undergo additional training to better address the infotainment system issues; (5) an infotainment system online resource that will, among other things, allow a class member to report an issue and view possible solutions; (6) two years of free AcuraLink Security Service to the class members who made multiple visits to an authorized Acura dealership due to the infotainment system issues and were not effectively repaired during the initial visit and to the class members who made multiple service visits for a single infotainment system issue that was not resolved during the initial visit; and (7) compensation of certain costs related to delayed warranty claims, such as transportation and battery recharging costs.

Honda will pay Class Counsel's reasonable attorneys' fees and costs and reasonable service awards to the named Plaintiffs. Although the parties have not yet agreed on the appropriate amounts for the attorneys' fee, costs, and service awards, these sums will be paid separate and apart from any relief provided to the settlement class.

Notice will be provided to the class members via First Class U.S. Mail or electronic mail where possible.

III. JUDICIAL STANDARD

Federal Rule of Civil Procedure ("Rule") 23 requires that class action settlements satisfy two primary prerequisites before a court may grant preliminary approval: (1) that the settlement class meets the requirements for class certification if it has not yet been certified; and (2) that the proposed settlement is "fair, adequate, and reasonable." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020, 1026 (9th Cir. 1988), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *see* Fed. R. Civ. P. 23(a), (e)(2).

Under Rule 23(e), the Court must ensure that the proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Ninth Circuit has provided a non-exhaustive list of fairness factors. *See Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). Courts evaluate the settlement as a whole, rather than its individual parts, to determine its overall fairness. *Id.* This analysis includes evaluating the scope of the release of claims. *See, e.g.*, *Carlin v. DairyAmerica, Inc.*, 328 F.R.D. 393, 406 (E.D. Cal. 2018).

IV. DISCUSSION

Plaintiffs seek preliminary approval of the class action settlement agreement. Plaintiffs request the Court to provisionally certify the class under Rule 23(a) and (b). Plaintiffs also contend that the proposed settlement is "fair" and reasonable and that the proposed notice is adequate under Rule 23(e). The Court, however, declines to provisionally certify the class action settlement since the scope of the release in the settlement agreement is overly broad. As a result, the Court need not address the other Rule 23(e) factors and Rule 23(a) and (b) requirements, and instead denies without prejudice Plaintiffs' Motion.

A settlement agreement may preclude a member from bringing a related claim in the future "'"even though the claim was not presented and might not have been presentable in the action,' but only where the released claim is 'based on the *identical factual predicate* as that underlying the claims in the settled class action.'" *Hesse v. Spring Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) (emphasis added) (citations omitted). "Put another way, a release of claims that 'go beyond the scope of the allegations in the operative complaint' is impermissible." *Lovig v. Sears, Roebuck & Co.*, No. EDCV 11-00756-CJC (RNBx), 2014 WL 8252583, at *2 (C.D. Cal. Dec. 9, 2014) (citation omitted) (declining to approve a class action settlement because of an overly broad release that sought to release claims based on "facts pled in *any* of the complaints filed in the Action" and "facts [Class Member may discover hereafter] in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Class Released Claims"); *accord. Chalian v. CVS Pharmacy, Inc.*, No. CV 16-08979 AB (AGRx), 2021 U.S. Dist. LEXIS 32791, at *6 (C.D. Cal. Feb. 18, 2021) (declining to approve class action settlement agreement because it purported to release claims based on "facts and/or legal theories alleged or which could have been alleged in the operative complaint").

Here, the release provides:

> Named Plaintiffs acknowledge that they, Class Counsel, and Settlement Class Members may *hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this Litigation and the Released Claims, but it is their intention to*, and they do upon the Effective Date of this Settlement Agreement, *fully, finally, and forever settle and release all such claims, without regard to the subsequent discovery or existence of different additional facts.*

(Settlement Agreement ¶ 6.5) (emphasis added).

Paragraph 1.26 further defines the "Released Claims" as any claims the class members had or could have had with respect to "any conduct, act, omissions, facts . . . relating to or arising out of the Infotainment Systems[,] . . . as asserted or could have been asserted." (*Id.* ¶ 1.26).

The language in the "Released Claims" definition is overly broad insofar as it impermissibly releases claims beyond the factual predicate of the operative complaint. Other courts have declined to provisionally certify class action settlement agreements that contained similarly broad releases. *See Lovig*, 2014 WL 8252583, at *2; *Chalian*, 2021 U.S. Dist. LEXIS 32791, at *6. Thus, the Court cannot approve the settlement until the scope of the release is narrowed to only apply to claims based on the same factual predicate asserted in the operative complaint to comply with *Hesse*.

V. CONCLUSION

For the foregoing reasons, the Court **DENIES without prejudice** Plaintiffs' Motion. Additionally, the Court notes that in their Proposed Order, Plaintiffs asked the Court to appoint Bilbrey (Arizona), M. Klein (Oregon), and Gonzales (Utah) as class representatives, among others. The Court, however, has already transferred these Plaintiffs' claims. (*See* Mot. to Certify Class Order at 30–31). It is thus unclear whether the Court has jurisdiction to appoint them as class representatives. So, in any renewed motion for preliminary settlement approval, Plaintiffs must address that issue and clarify which named Plaintiffs they hope the Court appoints as class representatives. Finally, Plaintiffs must file any renewed motion for preliminary settlement approval within **14 days** of this Order's issuance.

IT IS SO ORDERED.

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Initials of Preparer _____