

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MISSOURI
WESTERN DIVISION**

| | | |
|---|---|-------------------------------|
| AMY BERTRAM |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. |
| v. |) | |
| |) | Division |
| AMERICAN HONDA MOTOR CO., INC. |) | |
| SERVE: The Corporation Company |) | Class Action Complaint |
| 120 South Central Avenue |) | |
| Clayton, Missouri 63105 |) | Jury Demand |
| |) | |
| Defendant. |) | |

CLASS ACTION COMPLAINT

COMES NOW, Plaintiff Amy Bertram, individually and on behalf of all others similarly situated, by and through her counsel A. Scott Waddell of Waddell Law Firm LLC, Bryce B. Bell and Mark W. Schmitz of Bell Law, LLC, Tom Mendel of Mendel Law Firm, LLC, and for her Complaint against Defendant American Honda Motor Co., Inc., and states and alleges as follows:

PARTIES

1. Plaintiff Amy Bertram (“Plaintiff” or “Amy”) is and was at all relevant times an individual Missouri consumer.
2. Defendant American Honda Motor Co., Inc. (“Defendant” or “Honda”) is a California corporation which maintains its corporate headquarters and principal place of business in Torrance, California. Defendant may be served by serving its registered agent, The Corporation Company, at 120 South Central Avenue, Clayton, Missouri 63105.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. 1332(d)(2). On information and belief, the amount the amount in controversy greatly exceeds \$5,000,000.00. Additionally, Amy is domiciled in the State of Missouri, and the members of the proposed class are domiciled in Missouri and/or transacted business in Missouri. As such, all members of the proposed class have a citizenship that is diverse from Defendant.

4. This Court has personal jurisdiction over Defendant American Honda Motor Co., Inc. in that Defendant is registered to conduct business in the State of Missouri. Moreover, this Court has personal jurisdiction over Defendant in that it transacted business in the State, sold defective products complained of in this State, made contacts substantially connected to this State and purposefully availed themselves of the markets of this state through advertising, promotional marketing, sales and other business dealings within Missouri. As such, the exercise of personal jurisdiction over this Defendant does not offend traditional notions of fair play and substantial justice.

5. Venue is proper in this jurisdiction pursuant to 28 U.S.C. 1391(b)(2) because a substantial part of the events and/or omissions giving rise to the claims occurred in this judicial district.

PLAINTIFF AMY BERTRAM

6. On or about July 7, 2015, Plaintiff Amy Bertram purchased from Honda of Tiffany Springs a 2015 Honda CR-V (VIN: 5J6RM4H32FL091808).

7. Honda of Tiffany Springs (“HTS”) bears no relation to Defendant Honda other than the word “Honda.”

8. Specifically, HTS is not an agent or employee of Defendant Honda. Moreover, HTS has expressly disclaimed that it has or had any actual or apparent authority to act on behalf of Defendant Honda.

9. Plaintiff's 2015 Honda CR-V was new at the time of her purchase, and had approximately 45 miles.

10. Concurrently with her purchase, Plaintiff was provided with a written warranty by Defendant Honda.

11. In or around February 2016, Plaintiff began to notice that her CR-V was vibrating when idling and/or at low speeds.

12. She took her CR-V in to HTS for an oil change, where the vibration issue was confirmed. She then made an appointment to get the vibration problem fixed.

13. Shortly thereafter, Plaintiff returned to HTS to attempt to get the vibration problem fixed.

14. Because HTS needed to order some parts, those repairs were not completed until March 2016. HTS also needed time to line up a loaner car for Plaintiff to use while her CR-V was in the shop.

15. After the repairs were made, the vibration problem decreased, but did not go away completely.

16. Because the problem was not fixed completely, Plaintiff made an appointment for a second fix. She again had to wait for HTS to order some parts and line up a loaner car.

17. On or about April 4, 2016, Plaintiff took her CR-V in to HTS, for this second attempted fix.

18. This second attempt also failed to fix the vibration problem, so a third appointment was scheduled.

19. Plaintiff again was forced to wait several weeks for parts and a loaner.

20. On or about April 29, 2016, HTS made a third attempt to fix the vibration problem with Plaintiff's CR-V.

21. Unfortunately, this third attempt also failed.

22. To date, Plaintiff's CR-V remains covered by Defendant's 3-year, 36,000-mile written warranty.

23. To date, Defendant Honda is unable to provide a solution to the vibration issues to Missouri consumers.

FACTS COMMON TO ALL COUNTS

24. Honda is in the business of designing, manufacturing, marketing, distributing, selling, and/or warranting vehicles which it mass-produces.

25. Included among those vehicles is the 2015 Honda CR-V.

THE 2015 HONDA VIBRATING CR-V

26. The 2015 model year CR-V included substantial redesigns, with the hope of increasing its fuel economy. Among these redesigns was the equipment of a four-cylinder "Earth Dreams" engine, which had previously been used with the Honda Accord. Additionally, Honda added a continuously variable transmission ("CVT"), which is an automatic transmission without fixed gear ratios that has been used in other vehicles for over a decade.

27. Honda extensively marketed the 2015 CR-V, touting its "best-in-class fuel economy."

28. According to Honda, the “Earth Dreams” engine improves the fuel economy by maintaining its maximum horsepower and torque at lower engine revolutions per minute (“RPM”).

29. However, it has been well-known in the automotive industry for decades that running a vehicle at low RPM at idle and low speeds can pose severe drawbacks, often in the form of noise, vibration, and harshness.

30. Honda’s Earth Dreams engine is an inline four-cylinder engine. This engine design is known to be more prone to vibration, as these engines fire one cylinder every 180 degrees of rotation, making its power impulses more prominent at lower speeds. Additionally, there are no overlapping power impulses such as those provided by the 6- or 8-cylinder engines.

31. This problem is exacerbated by the fact that there are always two pistons in the same position and moving in the same direction, with the other two pistons doing the exact opposite, 180 degrees away. However, the speed of the pistons on up stroke is different from the speed on down stroke, which can create secondary imbalance, and lead to additional vibrations.

32. Honda’s Earth Dreams engine offsets the cylinders from the crankshaft by approximately 8 millimeters. This further increases the secondary vibrations, making controlling the overall vibrations more difficult.

33. These vibration problems are magnified by the light weight of the Earth Dreams engine. The Earth Dreams engine uses an aluminum engine block, as opposed to the more commonly used iron alloys, which can reduce vibrations simply through their weight.

34. The CVT used by Honda has been used for years, and for years it has been well known that CVTs increase vibration.

35. All of this vibration could be mitigated by changing the shape, material, and tuning of traditional component mounts. Additionally, vibration can be reduced by adding vibration absorbers, using hydraulic mounts, or using active mounts.

36. Despite the abundance of vibration mitigation techniques, the 2015 CR-V is notable for its relative lack of vibration mitigation.

37. The primary mechanism in the 2015 CR-V for mitigating the severe and turbulent vibration is the engine mount. While the 2015 Honda Accord—which also has the Earth Dreams engine—has hydraulic mounts, the 2015 CR-V does not.

38. Therefore, Honda failed to design, assemble, and/or manufacture the 2015 CR-V in such a way that the vehicle would comport with acceptable levels of noise and vibration.

39. As a result of Honda's design failures, the 2015 CR-V is prone to moderate to severe vibrations at idle and low speeds.

HONDA'S RESPONSE TO THE VIBRATING CR-V'S

40. On information and belief, Honda has known about the 2015 CR-V's extreme vibration problems for a long time. First, the noise and vibration principles discussed at length above have been common knowledge in the automotive industry for a long time. Second, because of how quickly the vibrations manifest themselves, it is extremely unlikely that Honda did not detect the problem through its extensive pre-release testing. Third, Honda, like other automobile manufacturers, monitors complaints filed with the National Highway Traffic Safety Administration ("NHTSA") and other forums in the ordinary course of its business.

41. The 2015 Honda CR-V was rolled out as early as October 2014, and drivers almost immediately began complaining about the vibration problems.

42. Despite *extensive* notice, both actual and constructive, of the vibration problem, Honda made the *conscious* decision to continue selling the 2015 CR-V without modification and without disclosure of the problems.

43. Instead of disclosing the problem, Honda actively concealed it. For example, press bulletins from Honda refer to the “CR-Vs quiet and vibration free operation,” the CR-Vs “smoother idle,” and “balancing system [that] helps quell the inherent ... vibrations that normally impact inline 4-cylinder engines [like the Earth Dreams].” By actively concealing the vibration problem from Missouri customers, Honda was able to sell and lease more CR-Vs at a higher price.

44. It was not until April 2015 that Honda began to *quietly* acknowledge that there was a problem, and even then only to people who had already purchased or leased a CR-V. Honda’s acknowledgments informed existing customers that there was no available remedy.

45. Honda later acknowledged the problem to dealerships that sold the 2015 CR-V by way of a tech line service article published in April 2015. This article acknowledged that the 2015 CR-V model has the tendency to vibrate and/or shudder at idle, during light acceleration, at low speeds, and at engine speeds from 1,100 to 1,500 RPM and 1,600 to 2,200 RPM. This article reiterated that there was no available remedy.

46. In November 2015, Honda issued a service bulletin addressing the vibration problems in the 2015 CR-V. This service bulletin outlined three “modes” in which the vibrations were typically experienced. Mode 1 is when the vehicle is stopped and in gear. Mode 2 is while the vehicle is between 1,000 and 1,200 RPM at takeoff. Mode 3 is while driving the vehicle at 1,800 to 2,200 RPM and 40-50 miles per hour.

47. This service bulletin outlined proposed repairs which varied depending on which mode(s) the vibrations were felt in. For Mode 1, the proposed remedy was to install new radiator lower cushions, a new transmission mount, and front head restraints. For Mode 2, the proposed remedy was to update the powertrain control module (“PCM”) software and install a tailgate damper kit. For Mode 3, the proposed repair was simply an update to the PCM software. Mode 2 repairs were only to be made if the customer completed a “Customer Information Statement,” requiring the customer to acknowledge and accept that the fuel economy would be decreased by almost 1 mile per gallon.

48. While Honda did issue the article and service bulletin in 2015, neither of these documents was made available to the general public.

HONDA’S WARRANTY

49. Honda provided each purchaser and lessee of a new 2015 CR-V with a written warranty in the form of its New Vehicle Limited Warranty (“the Warranty”).

50. The duration of these Warranties is 3-years or 36,000 miles, whichever occurs first. Additionally, these Warranties are transferrable to any subsequent owner or lessee.

51. Under the terms of the Warranty, Honda is obligated to provide satisfactory repairs to the 2015 CR-V at no cost to the consumers. This is in addition to the various warranties and obligations implied by law.

52. On information and belief, the vast majority of the members of the proposed Class that have presented their CR-Vs to Defendant Honda with vibration complaints were subsequently denied warranty repairs. Honda has frequently told drivers that nothing is actually wrong, that the vibration is normal, and that Honda’s warranty does not cover vibrations.

53. However, Honda's November 2015 service bulletin expressly stated that Honda's "warranty applies" to the vibration problems.

54. Therefore, either Honda's Warranty was always going to cover the vibration problems, or Honda modified it in November 2015 to provide coverage.

55. In either event, Honda has been actively telling its customers that the vibration problems are *not* covered by the warranty, and has steadfastly refused to provide the necessary repairs at no cost to the consumers.

CLASS ACTION ALLEGATIONS

56. Plaintiff proposes to represent a Class consisting of:

All persons who purchased or leased a 2015 Honda CR-V in the state of Missouri.

57. Plaintiff proposes that the following persons shall be excluded from the Class: (1) Defendant and their subsidiaries and affiliates; (2) governmental entities; (3) the judge(s) to whom this case is assigned and any immediate family members thereof; (4) Plaintiff's counsel; and, (5) all persons who previously settled these claims against Defendant.

58. **Numerosity**. Honda sold well over one hundred thousand of its 2015 CR-V model. On information and belief, several thousand of those sales were in the state of Missouri. Therefore, the members of the proposed Class are too numerous to practically join in a single action.

59. **Commonality**. There are common questions of law and/or fact in this case, including, but not limited to, the following:

- a. Whether the 2015 Honda CR-V is prone to vibration at levels that a reasonable consumer would consider important;
- b. Whether the 2015 Honda CR-V is prone to vibration at levels that a reasonable consumer would find excessive;

- c. Whether Honda knew or should have known that the 2015 CR-V was prone to vibration;
- d. When Honda discovered, or should have discovered, that the 2015 CR-V was prone to vibration;
- e. Whether Honda failed to disclose the CR-V's propensity to vibrate from potential consumers;
- f. Whether Honda concealed the CR-V's propensity to vibrate from potential consumers;
- g. Whether Honda breached its express warranty obligations;
- h. Whether Honda's conduct violated the Missouri Merchandising Practices Act ("MMPA"); and,
- i. Whether Honda's concealment and/or failure to disclose the CR-V's propensity to vibrate was willful, wanton, and/or reckless.

60. **Typicality**. Plaintiff's claims are typical of the claims of the proposed Class. Plaintiff and the members of the proposed Class all purchased or leased 2015 Honda CR-Vs in the state of Missouri, giving rise to substantially the same claims.

61. **Adequacy**. Plaintiff is an adequate representative of the proposed Class because her interests do not conflict with the interests of the members of the proposed Class. Additionally, Plaintiff has retained counsel competent and experienced in complex class action litigation, and who specialize in Missouri, and federal, consumer protection statutes.

62. This action may properly be maintained as a class action because the prosecution of separate actions by or against individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for the party opposing the Class.

63. This action may properly be maintained as a class action because any adjudication with respect to individual Class members would, as a practical matter, be dispositive of the

interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

64. This action may properly be maintained as a class action because a class action is superior to all other available means for the fair and efficient adjudication of this controversy and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by the individual Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for the members of the Class to individually seek redress for Defendant's wrongful conduct. Even if the members of the Class could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent and/or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, a class action presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

COUNT ONE:
VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
Plaintiff, individually and on behalf of the proposed Class

65. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

66. Plaintiff and all the other members of the proposed Class are "consumers" within the meaning of 15 U.S.C. § 2301(3).

67. Honda is a "supplier" and a "warrantor" as defined by 15 U.S.C. §§ 2301(4) and (5).

68. The 2015 Honda CR-V vibrating vehicles are “consumer products” within the meaning of 15 U.S.C. § 2301(1).

69. Honda’s New Vehicle Limited Warranty is a “written warranty,” as defined by 15 U.S.C. § 2301(6).

70. Honda provided this written warranty to Plaintiff and all members of the proposed Class. The duration of this written warranty was three (3) years or thirty-six thousand (36,000) miles, whichever occurs first.

71. Under the terms of its written warranty, Honda is required to repair and/or replace any 2015 CR-V that suffers from vibration during the warranty period, at no charge to the consumer.

72. Plaintiff and the members of the proposed Class own and/or lease 2015 CR-V vehicles that experienced vibration during the period of warranty coverage.

73. Honda has refused and/or failed to adequately repair and/or replace the 2015 CR-V vehicles that experienced vibration. This refusal and/or failure constitutes a breach of Honda’s written warranty.

74. Honda’s breach of warranty has deprived Plaintiff and the members of the proposed Class of the benefit of their bargain.

75. Honda has been afforded reasonable opportunities to cure its breach of written warranty and has failed to do so.

76. While Honda’s written warranty provides an informal dispute resolution procedure, Honda has shown, by its express and implied conduct, that such a procedure would merely be a waste of time. Not only has Honda failed to disclose and/or concealed the vibration problem, but it has refused and/or failed to make adequate repairs. This shows that Honda has

no desire to participate in such a process. Any requirement under the Magnuson-Moss Warranty Act, or any other statute, that Plaintiff and the proposed Class resort to an informal dispute resolution is excused and/or satisfied.

77. As a direct and proximate result of Honda's breach of warranty, Plaintiff and the members of the proposed Class have sustained actual damages.

WHEREFORE, Plaintiff, individually and on behalf of the proposed Class, prays for judgment against Defendant in such amount as is allowable by law and to be determined at trial, for her actual damages, pre- and post-judgment interest at the greatest rate allowed by statute, for reasonable attorneys' fees, and for such other and further relief as may be just and proper under the circumstances.

COUNT TWO:
VIOLATIONS OF THE MISSOURI MERCHANDISING PRACTICES ACT

Plaintiff, individually and on behalf of the proposed Class

78. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

79. Plaintiff asserts this cause of action pursuant to the Missouri Merchandising Practices Act ("MMPA"), § 407.010 RSMo.

80. The MMPA prohibits the use of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression, and/or omission of any material fact in connection with the sale and/or advertisement of merchandise in trade or commerce within Missouri.

81. Honda, as alleged in this Complaint, engaged in conduct that was deceptive, fraudulent, a false pretense, a false promise, a misrepresentation, an unfair practice, and the concealment, suppression, and/or omission of material fact(s) (herein, the "Unlawful Conduct").

82. Honda's Unlawful Conduct was in the "sale" and/or "advertisement" of "merchandise," as defined by the MMPA, specifically §§ 407.010.1, 407.010.4, and 407.010.6 RSMo.

83. Honda's sale and/or advertisement of merchandise occurred within the state of Missouri.

84. Honda's Unlawful Conduct occurred in the course of commerce within Missouri.

85. Honda's Unlawful Conduct was committed in connection with the sale and/or advertisement of the 2015 model year CR-V to Plaintiff and the members of the proposed Class.

86. Honda's violations of the MMPA include, but are not limited to, the following:

- a. Manufacturing and/or selling a 2015 model year CR-V with the Vibration Issue to consumers;
- b. Concealing the Vibration Issue on the 2015 model year CR-V from potential consumers; and,
- c. Refusing to honor the Warranty Honda issued to consumers who purchased and/or leased a 2015 model year CR-V.

87. Additionally, each violation of the Magnuson-Moss Warranty Act is also a violation of the MMPA. 15 C.S.R. §§ 60-8.020 and 60-8.090.

88. Honda intended for Plaintiff and the members of the proposed Class to rely on the Unlawful Conduct described above.

89. Honda's Unlawful Conduct was in violation of a statute that has a public interest impact and has potential for repetition by Honda.

90. Honda's actions were willful, wanton, reckless, knowing, and intentional in that Honda knew about the CR-V's vibration problems but actively concealed the same from the members of the proposed Class.

91. The value of the 2015 CR-Vs as received by Plaintiff and the members of the proposed Class was not equal to the value that was promised.

92. As a direct and proximate result of Honda's Unlawful Conduct identified herein, Plaintiff and the members of the proposed Class have suffered ascertainable monetary losses and have endured considerable distress, inconvenience, and disruption of their personal business.

93. Plaintiff, along with the members of the proposed Class, is authorized to recover her actual damages, punitive damages, and reasonable attorneys' fees by § 407.025 RSMo.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for judgment against Defendant(s) in such amount as is allowable by law and to be determined at trial, for actual damages, punitive damages, pre- and post-judgment interest at the greatest rate allowed by statute, for reasonable attorneys' fees, and for such other and further relief as may be just and proper under the circumstances.

JURY DEMAND

Plaintiff, on behalf of themselves and all others similarly situated, demand a jury trial on all counts so triable.

Respectfully Submitted,

/s/ Bryce B. Bell
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JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI****CIVIL COVER SHEET**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):**First Listed Plaintiff:**

Amy Bertram ;

1 Citizen of This State;

County of Residence: Clay County**Defendant(s):****First Listed Defendant:**

American Honda Motor Co., Inc. ;

5 Incorporated and Principal Place of Business in Another State;

County of Residence: Outside This District**County Where Claim For Relief Arose:** Platte County**Plaintiff's Attorney(s):**

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Phone: 816-781-4111**Fax:** 816-817-6162**Email:** Tom@Mendellawfirmllc.com**Basis of Jurisdiction:** 4. Diversity of Citizenship**Citizenship of Principal Parties (Diversity Cases Only)****Plaintiff:** 1 Citizen of This State**Defendant:** 5 Incorporated and Principal Place of Business in Another State

Origin: 1. Original Proceeding

Nature of Suit: 385 Personal Property Damage Product Liability

Cause of Action: Honda's violations of the Missouri Merchandising Practices Act include manufacturing and/or selling a 2015 model year CR-V with the Vibration Issue to consumers; concealing the Vibration Issue on the 2015 model year CR-V from potential consumers; and refusing to honor the Warranty Honda issued to consumers who purchased and/or leased a 2015 model year CR-V. Each violation of the Magnuson-Moss Warranty Act is also a violation of the MMPA. 15 C.S.R. §§ 60-8.020 and 60-8.090. In addition Honda violated Magnison-Moss Warranty Act by refusal and/or failure to adequately repair and/or replace the 2015 CR-V vehicles that experienced vibration. This refusal and/or failure constitute a breach of Honda's written warranty. This Court has subject matter jurisdiction over this matte pursuant 28 U.S.C. § 1332(d)(2).

Requested in Complaint

Class Action: Class Action Under FRCP23

Monetary Demand (in Thousands):

Jury Demand: Yes

Related Cases: Is NOT a refiling of a previously dismissed action

Signature: /s/ Bryce B. Bell

Date: 10/19/2016

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Honda Facing Class Action Over CR-V Vibration Defect](#)
