

PE05-047

HONDA

11/14/2005

**ATTACHMENT Q4
& Q6 PART 4 OF 5
(Q5 START ON
THE LAST 3
PAGES)**

Attachment Q4

Lawsuits

Service of Process Transmittal Form
Los Angeles, California

12/13/2004

Via Federal Express (Overnight)

TO: Denise Hill
Honda North America, Inc.
700 Van Ness Avenue
Torrance, CA 90501

RECEIVED
DEC 14 2004

RE: PROCESS SERVED IN CALIFORNIA

FOR American Honda Motor Co., Inc. Domestic State: Ca

HONDANORTHAMERICA
LAW DEPARTMENT

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

1. TITLE OF ACTION: [REDACTED] vs American Honda Motor Co., Inc.
2. DOCUMENT(S) SERVED: Summons, Complaint, Notice of Case Management Conference, Case Management Statement, Stipulation and Order
3. COURT: Superior Court of California, County of San Mateo
Case Number CIV443416
4. NATURE OF ACTION: Complaint for alleged breach of warranties.
5. ON WHOM PROCESS WAS SERVED: CT Corporation System, Los Angeles, California
6. DATE AND HOUR OF SERVICE: By Process server on 12/10/2004 at 14:50
7. APPEARANCE OR ANSWER DUE: Within 30 days
8. ATTORNEY(S): Todd Friedman
Krohn & Moss
(312) 578-9428
120 West Madison
10th Floor
Chicago, IL 60602

9. REMARKS:

SIGNED CT Corporation System
PER Jere J. Keprios /GA
ADDRESS 818 West Seventh Street
Los Angeles, CA 90017
SOP WS 0006838815

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

AMERICAN HONDA MOTOR COMPANY, INC.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

DEC 10 2004

2:50
6J

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of San Mateo
400 County Center
Redwood City, CA 94063

CASE NUMBER
(Número del caso) **CIV 4 4 3 4 1 6**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Todd Friedman - Krohn & Moss

120 West Madison, 10th Floor, Chicago, IL 60602 (312) 578-9428

PEGGY THOMPSON

N. DELGADO

DATE:

(Fecha)

NOV 30 2004

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **American Honda Motor Company, Inc.**

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.80 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☒ by personal delivery on (date):

NOTICE OF CASE MANAGEMENT CONFERENCE

vs.

American Honda Motor Co.

ENDORSED FILED
SAN MATEO COUNTY

NOV 30 2004

Clerk of the Superior Court
By N. Delgado
DEPUTY CLERK

Case No. **CIV 4 4 8 4 1 6**

Date: **APR 05 2005**

Time: 9:00 a.m.

Dept. 6 - on Tuesday & Thursday
Dept. 21 - on Wednesday & Friday

You are hereby given notice of your Case Management Conference. The date, time and department have been written above.

1. In accordance with applicable California Rules of Court and Local Rules 2.3(d)1-4 and 2.3(m), you are hereby ordered to:

- Serve all named defendants and file proofs of service on those defendants with the court within 60 days of filing the complaint (CRC 201.7).
- Serve a copy of this notice, Case Management Statement and ADR Information Sheet on all named parties in this action.
- File and serve a completed Case Management Statement at least 15 days before the Case Management Conference [CRC 212(g)]. Failure to do so may result in monetary sanctions.
- Meet and confer, in person or by telephone, to consider each of the issues identified in CRC 212(f) no later than 30 days before the date set for the Case Management Conference.

2. If you fail to follow the orders above, you are ordered to show cause why you should not be sanctioned. The Order To Show Cause hearing will be at the same time as the Case Management Conference hearing. Sanctions may include monetary, evidentiary or issue sanctions as well as striking pleadings and/or dismissal.

3. Continuances of case management conferences are highly disfavored unless good cause is shown.

4. Parties may proceed to an appropriate dispute resolution process ("ADR") by filing a Stipulation To ADR and Proposed Order (see attached form.). If plaintiff files a Stipulation To ADR and Proposed Order electing to proceed to judicial arbitration, the Case Management Conference will be taken off the court calendar and the case will be referred to the Arbitration Administrator. If plaintiffs and defendants file a completed stipulation to another ADR process (e.g., mediation) 10 days prior to the first scheduled case management conference, the case management conference will be continued for 90 days to allow parties time to complete their ADR session. The court will notify parties of their new case management conference date.

5. If you have filed a default or a judgment has been entered, your case is not automatically taken off the Case Management Conference Calendar. If "Does", "Roes", etc. are named in your complaint, they must be dismissed in order to close the case. If any party is in bankruptcy, the case is stayed only as to that named party.

6. You are further ordered to appear in person* (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.

7. The Case Management judge will issue orders at the conclusion of the conference that may include:

- Referring parties to voluntary ADR and setting an ADR completion date;
- Dismissing or severing claims or parties;
- Setting a trial date.

8. The Case Management judge may be the trial judge in this case.

For further information regarding case management policies and procedures, see the court website at www.sanmateocourt.org.

* Telephonic appearances at case management conferences are available by contacting CourtCall, LLC, an independent vendor, at least 5 business days prior to the scheduled conference (see attached CourtCall information).

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):		FOR COURT USE ONLY
TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: 400 County Center MAILING ADDRESS: _____ CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME: _____		
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____		
(Check one): ☐ CASE MANAGEMENT STATEMENT ☐ UNLIMITED CASE ☐ LIMITED CASE (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less)		CASE NUMBER: _____

A CASE MANAGEMENT CONFERENCE is scheduled as follows:

Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____
 Address of court (if different from the address above): _____

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. ☐ This statement is submitted by party (name):
 - b. ☐ This statement is submitted jointly by parties (names):
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date):
 - b. ☐ The cross-complaint, if any, was filed on (date):
3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
4. **Description of case**
 - a. Type of case in ☐ complaint ☐ cross-complaint (describe, including causes of action):

PLAINTIFF/PETITIONER:

CASE NUMBER:

DEFENDANT/RESPONDENT:

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date (indicate source and amount), estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☐ a nonjury trial (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

a. ☐ The trial has been set for (date):

b. ☐ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

a. ☐ days (specify number):

b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

e. Fax number:

f. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

a. Counsel ☐ has ☐ has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.

b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date):

c. ☐ The case has gone to an ADR process (indicate status):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in (check all that apply) :

- (1) ☐ Mediation
- (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
- (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
- (4) ☐ Binding judicial arbitration
- (5) ☐ Binding private arbitration
- (6) ☐ Neutral case evaluation
- (7) ☐ Other (specify) :

e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. ☐ This case is exempt from judicial arbitration under rule 1600.5 of the California Rules of Court (specify exemption) :

11. Settlement conference

☐ The party or parties are willing to participate in an early settlement conference (specify when) :

12. Insurance

a. ☐ Insurance carrier, if any, for party filing this statement (name) :

b. Reservation of rights: ☐ Yes ☐ No

c. ☐ Coverage issues will significantly affect resolution of this case (explain) :

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

a. ☐ There are companion, underlying, or related cases.

(1) Name of case:

(2) Name of court:

(3) Case number:

(4) Status:

☐ Additional cases are described in Attachment 14a.

b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party) :

15. Bifurcation

☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons) :

16. Other motions

☐ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues) :

PLAINTIFF/PETITIONER:

CASE NUMBER:

DEFENDANT/RESPONDENT:

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☐ The following discovery will be completed by the date specified (describe all anticipated discovery):
- | Party | Description | Date |
|-------|-------------|------|
| | | |
| | | |
| | | |
- c. ☐ The following discovery issues are anticipated (specify):

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

19. Other Issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

20. Meet and confer

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following (specify):

21. Case management orders

Previous case management orders in this case are (check one): ☐ none ☐ attached as Attachment 21.

22. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

ADR Stipulation and Evaluation Instructions

In accordance with *Local Rule 2.3(i)(3)*, all parties going to ADR must complete a Stipulation and Order to ADR and file it with the Clerk of the Superior Court. The Office of the Clerk is located at:

Clerk of the Superior Court, Civil Division
Attention: Case Management Conference Clerk
Superior Court of California, County of San Mateo
400 County Center
Redwood City, CA 94063-1655

There is no filing fee for filing the stipulation. An incomplete stipulation will be returned to the parties by the Clerk's Office. All stipulations must include the following:

- ☐ Original signatures for all attorneys (and/or parties in pro per);
- ☐ The name of the neutral;
- ☐ Date of the ADR session; and
- ☐ Service List (Counsel need not serve the stipulation on parties).

Parties mutually agree on a neutral and schedule ADR sessions directly with the neutral. If parties would like a copy of the San Mateo County Superior Court's ADR Panelist List and information sheets on individual panelists, they may contact the ADR Coordinator at (650) 363-1962 or (650) 599-1070.

If Filing the Stipulation Prior to an Initial Case Management Conference

To stipulate to ADR prior to the initial case management conference, parties must file a completed stipulation at least 10 days before the scheduled case management conference. The clerk will send notice of a new case management conference date approximately 90 days from the current date to allow time for the ADR process to be completed.

If Filing Stipulation Following a Case Management Conference

When parties come to an agreement at a case management conference to utilize ADR, they have 21 days from the date of the case management conference to file a Stipulation and Order to ADR with the court [*Local Rule 2.3(i)(3)*].

Post-ADR Session Evaluations

Local Rule 2.3(i)(5) requires submission of post-ADR session evaluations within 10 days of completion of the ADR process. Evaluations are to be filled out by both attorneys and clients. A copy of the Evaluation By Attorneys and Client Evaluation are attached to the ADR Panelist List or can be found on the court's web site.

Non-Binding Judicial Arbitration

Names and dates are not needed for stipulations to judicial arbitration. The Judicial Arbitration Administrator will send a list of names to parties once a stipulation has been submitted. The Judicial Arbitration Administrator can be contacted at (650) 363-4896.

For further information regarding San Mateo Superior Court's ADR program, contact the ADR offices at (650) 599-1070 or the court's ADR web site at <http://www.co.sanmateo.ca.us/sanmateocourts/adr.htm>.

**APPROPRIATE DISPUTE RESOLUTION INFORMATION SHEET
FOR THE
SUPERIOR COURT OF CALIFORNIA, SAN MATEO COUNTY**

In addition to the court provided voluntary and mandatory settlement conferences, this court has established, in partnership with the community and Bar Association, the Multi-Option ADR Project. Recognizing that many civil disputes can be resolved without the time and expense of traditional civil litigation, the San Mateo County Superior Court encourages the parties in civil cases to explore and pursue the use of Appropriate Dispute Resolution

WHAT IS APPROPRIATE DISPUTE RESOLUTION?

Appropriate Dispute Resolution (ADR) is the general term applied to a wide variety of dispute resolution processes which are alternatives to lawsuits. Types of ADR processes include arbitration, mediation, neutral evaluation, mini-trials, settlement conferences, private judging, negotiation, and hybrids of these processes. All ADR processes offer a partial or complete alternative to traditional court litigation for resolving disputes.

WHAT ARE THE ADVANTAGES OF USING ADR?

ADR can have a number of advantages over traditional court litigation.

- **ADR can save time.** Even in a complex case, a dispute can be resolved through ADR in a matter of months or weeks, while a lawsuit can take years.
- **ADR can save money.** By producing earlier settlements, ADR can save parties and courts money that might otherwise be spent on litigation costs (attorney's fees and court expenses).
- **ADR provides more participation.** Parties have more opportunity with ADR to express their own interests and concerns, while litigation focuses exclusively on the parties' legal rights and responsibilities.
- **ADR provides more control and flexibility.** Parties can choose the ADR process most appropriate for their particular situation and that will best serve their particular needs.
- **ADR can reduce stress and provide greater satisfaction.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere found in litigation. Surveys of disputants who have gone through ADR have found that satisfaction with ADR is generally high, especially among those with extensive ADR experience.

Arbitration, Mediation, and Neutral Evaluation

Although there are many different types of ADR processes, the forms most commonly used to resolve disputes in California State courts are Arbitration, Mediation and Neutral Evaluation. The Multi-Option ADR Project a partnership of the Court, Bar and Community offers pre-screened panelists with specialized experience and training in each of these areas.

Arbitration: An arbitrator hears evidence presented by the parties, makes legal rulings, determines facts and makes an arbitration award. Arbitration awards may be entered as

judgments in accordance with the agreement of the parties or, where there is no agreement, in accordance with California statutes. Arbitrations can be binding or non-binding, as agreed by the parties in writing.

Mediation: Mediation is a voluntary, informal, confidential process in which the mediator, a neutral third party, facilitates settlement negotiations. The mediator improves communication by and among the parties, helps parties clarify facts, identify legal issues, explore options and arrive at a mutually acceptable resolution of the dispute.

Neutral Evaluation: Involves presentations to a neutral third party with subject matter expertise who may render an opinion about the case the strengths and weaknesses of the positions, the potential verdict regarding liability, and a possible range for damages.

ADR PROCEDURES FOR THE SAN MATEO COUNTY SUPERIOR COURT

- Upon filing a Complaint, the Plaintiff will receive this **information sheet** from the Superior Court Clerk. Plaintiff is expected to include this information sheet when he or she **serves the Complaint** on the Defendant.
- All parties to the dispute may voluntarily agree to take the matter to an ADR process. A stipulation is provided here. Parties chose and contact their own ADR provider. A Panelist List is available on-line.
- If the parties have not agreed to use an ADR process, an initial Case Management Conference ("CMC") will be scheduled within 120 days of the filing of the Complaint. An **original and copy of the Case Management Conference Statement must be completed and provided to the court clerk no later than 15 days prior to the scheduled conference.** The San Mateo County Superior Court Case Management Judges will strongly encourage all parties and their counsel to consider and utilize ADR procedures and/or to meet with the ADR director and staff where appropriate.
- If the parties voluntarily agree to ADR, the parties will be required to sign and file a **Stipulation and Order to ADR.**
- A timely filing of a stipulation (at least 10 days prior to the CMC) will cause a notice to vacate the CMC. ADR stipulated cases (other than judicial arbitration) will be continued for further ADR/Case Management status review in 90 days. If the case is resolved through ADR, the status review date may be vacated if the court receives a dismissal or judgment. The court may upon review of case information suggest to parties an ADR referral to discuss matters related to case management, discovery and ADR.
- Any ADR Services shall be paid for by the parties pursuant to a separate ADR fee agreement. The ADR Director may screen appropriate cases for financial aid where a party is indigent.
- Local Court Rules require your cooperation in evaluating the ADR Project and will expect a brief evaluation form to be completed and submitted **within 10 days of completion of the process.**

Information: For ADR forms go to the local forms section of the court's website: www.co.sanmateo.ca.us/sanmateocourts/adr.htm. For more information contact the Multi-Option ADR Project, 400 County Center, Redwood City, CA 94063, (650) 363-1962 or (650) 599-1070; fax 650/599-1754

Attorney or Party without Attorney (Name, Address, Telephone, Fax, State Bar membership number):	Court Use Only
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO Hall of Justice and Records 400 County Center Redwood City, CA 94063-1655 (650) 363-4711	
Plaintiff(s):	Case number:
Defendant(s):	Current CMC Date:

STIPULATION AND ORDER TO APPROPRIATE DISPUTE RESOLUTION

Plaintiff will file this stipulation with the Clerk's Office 10 days prior to or 3 weeks following the first Case Management Conference unless directed otherwise by the Court and ADR Director [Local Rule 2.3(i)(3)]. Please attach a Service List.

The parties hereby stipulate that all claims in this action shall be submitted to (select one):

- ☐ Voluntary Mediation
 ☐ Binding Arbitration (private)
 ☐ Neutral Evaluation
 ☐ Settlement Conference (private)
 ☐ Non-Binding Judicial Arbitration CCP 1141.12
 ☐ Summary Jury Trial
 ☐ Other: _____

Case Type: _____

Neutral's name and telephone number: _____ Date of session: _____

(Required for continuance of CMC except for non-binding judicial arbitration)

Identify by name the parties to attend ADR session: _____

Original Signatures

Type or print name of ☐ Party without attorney ☐ Attorney for
☐ Plaintiff/Petitioner ☐ Defendant/Respondent/Contestant

(Signature)
Attorney or Party without attorney

Type or print name of ☐ Party without attorney ☐ Attorney for
☐ Plaintiff/Petitioner ☐ Defendant/Respondent/Contestant

(Signature)
Attorney or Party without attorney

Type or print name of ☐ Party without attorney ☐ Attorney for
☐ Plaintiff/Petitioner ☐ Defendant/Respondent/Contestant

(Signature)
Attorney or Party without attorney

Type or print name of ☐ Party without attorney ☐ Attorney for
☐ Plaintiff/Petitioner ☐ Defendant/Respondent/Contestant

(Signature)
Attorney or Party without attorney

IT IS SO ORDERED:

Date:

Judge of the Superior Court of San Mateo County

**CALIFORNIA RULES OF COURT AS SUPPLEMENTED HEREIN,
GOVERN ALL LOCAL PROCEDURES**

**DIVISION II
COURT MANAGEMENT - SUPERIOR COURT**

CHAPTER 1. FORM AND SERVICE OF PAPERS

Rule 2.0 Transfer of Court-Related Functions of the County Clerk to the Superior Court

Pursuant to the authority contained in Government Code section 69898, the court hereby transfers from the County Clerk to the Superior Court Executive Officer, under the direction of the Presiding Judge, all of the powers, duties, and responsibilities required or permitted to be executed or performed by the County Clerk in connection with judicial actions proceedings, and records.

(Adopted, effective July 1, 1996.)

Rule 2.1 Form of Papers Presented for Filing

Reference, CRC, rule 201.

(Adopted, effective July 1, 1996) (Amended effective January 1, 2000.)

Rule 2.1.1 Citations to Non-California Authorities.

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 2.1.2 Requests for Judicial Notice

(Adopted, effective July 1, 1996)(Repealed, effective January 1, 1999)

Rule 2.1.3 California Environmental Quality Act (CEQA)

If a petition for writ of mandate includes claims under CEQA (Public Resources Code section 21000 et. seq.), the case will be assigned to a judge designated to hear CEQA actions pursuant to Public Resources Code section 21167.1. Plaintiff shall identify the petition as being filed pursuant to "CEQA" on the face of the petition.

(Adopted, effective January 1, 1999)(renumbered from 2.1.4 effective January 1,2000)

Rule 2.1.4 Documents Produced Through a Nonparty

If a party proposes to obtain documents in the custody of a nonparty, as by a subpoena duces tecum, and such documents may be produced by certification or otherwise in lieu of personal appearance by a witness custodian, the request for such documents should specify that they be delivered not later than the first day for which the trial is calendared.

(Adopted, effective January 1, 2000)

CHAPTER 2. CIVIL TRIAL COURT MANAGEMENT RULES
PART 1. MANAGEMENT DUTIES

Rule 2.2 Trial Court Management

Reference CRC, rules 204-208

(Adopted, effective January 1, 2000)

PART 2. CASEFLOW MANAGEMENT

Rule 2.3 New Case Management

This rule applies to all civil cases with the exception of the following: (1) juvenile court matters; (2) probate matters; (3) family law matters; and (4) civil cases which, based on subject matter, have been assigned to a judge, or to more than one judge, for all purposes. For rules applicable to these exceptions, see CRC 201-209, and 210-298.

(a) Purposes and Goals

The purposes and goals of the San Mateo Superior Court Civil Case Management System effective January 1, 1992 are:

- (1) To manage fairly and efficiently, from commencement to disposition, the processing of civil litigation.
- (2) To prepare the bench and bar for full implementation of the Trial Court Delay Reduction Act (A.B. 3820) on July 1, 1992; and
- (3) To encourage parties to agree to informal discovery early in the life of the case, to use standard form interrogatories and to promote alternative dispute resolution. Nothing in these rules is intended to prevent the parties from stipulating to an earlier intervention by the court by way of a case management conference, settlement conference or any other intervention that seems appropriate.
- (4) In accordance with Sections 205 through 210 of the California Rules of Court, Local Rule 2.3 is adopted to advance the goals of Section 68603 of the Government Code and Section 2 of the Standards of Judicial Administration recommended by the Judicial Council.

(b) Team concept

Beginning January 1, 1994 civil litigation will be managed primarily by a team of two program judges.

The clerk will assign the case to a program judge at the time the complaint is filed. The case shall be managed by the assigned program judge until disposition or until the case is assigned to a trial department.

(c) Cases filed after July 1, 1992

Upon the filing of a complaint after July 1, 1992, the case shall be subject to all of the civil case management system rules set forth below. Cases filed before July 1, 1992 shall also be subject to these rules except for subsection (d) (Filing and service of pleadings; exceptions).

CHAPTER 2. CIVIL TRIAL COURT MANAGEMENT RULES
PART 1. MANAGEMENT DUTIES

Rule 2.2 Trial Court Management

Reference CRC, rules 204-208

(Adopted, effective January 1, 2000)

PART 2. CASEFLOW MANAGEMENT

Rule 2.3 New Case Management

This rule applies to all civil cases with the exception of the following: (1) juvenile court matters; (2) probate matters; (3) family law matters; and (4) civil cases which, based on subject matter, have been assigned to a judge, or to more than one judge, for all purposes. For rules applicable to these exceptions, see CRC 201-209, and 210-298.

(a) Purposes and Goals

The purposes and goals of the San Mateo Superior Court Civil Case Management System effective January 1, 1992 are:

- (1) To manage fairly and efficiently, from commencement to disposition, the processing of civil litigation.
- (2) To prepare the bench and bar for full implementation of the Trial Court Delay Reduction Act (A.B. 3820) on July 1, 1992; and
- (3) To encourage parties to agree to informal discovery early in the life of the case, to use standard form interrogatories and to promote alternative dispute resolution. Nothing in these rules is intended to prevent the parties from stipulating to an earlier intervention by the court by way of a case management conference, settlement conference or any other intervention that seems appropriate.
- (4) In accordance with Sections 205 through 210 of the California Rules of Court, Local Rule 2.3 is adopted to advance the goals of Section 68603 of the Government Code and Section 2 of the Standards of Judicial Administration recommended by the Judicial Council.

(b) Team concept

Beginning January 1, 1994 civil litigation will be managed primarily by a team of two program judges.

The clerk will assign the case to a program judge at the time the complaint is filed. The case shall be managed by the assigned program judge until disposition or until the case is assigned to a trial department.

(c) Cases filed after July 1, 1992

Upon the filing of a complaint after July 1, 1992, the case shall be subject to all of the civil case management system rules set forth below. Cases filed before July 1, 1992 shall also be subject to these rules except for subsection (d) (Filing and service of pleadings; exceptions).

(d) Filing and service of pleadings; exceptions.

(1) Complaint: Except as provided in paragraph 5 below, plaintiff shall within 60 days after filing of the complaint serve the complaint on each defendant along with:

- (A) A blank copy of the Judicial Council Case Management Statement;
- (B) A copy of Local Rule 2.3;
- (C) The Notice of Case Management Conference.

If a matter has been submitted to arbitration pursuant to uninsured motorist insurance, the plaintiff shall file a notice to that effect with the court at the time of filing the complaint, or at the time the matter is submitted. The notice shall include the name, address and telephone number of the insurance company, along with the claim number or other designation under which the matter is being processed.

(2) Cross-complaint: Except as provided in paragraph 5 below, each defendant shall within 30 days after answering the complaint file any cross-complaint (within 50 days if compliance with a governmental claims statute is a prerequisite to the cross-complaint) not already served with the answer under Code of Civil Procedure section. 428.50 and serve with that cross-complaint:

- (A) A blank copy of the Judicial Council Case Management Statement;
- (B) A copy of Local Rule 2.3;
- (C) The Notice of Case Management Conference.

(3) Responsive pleadings: Except as provided in paragraph 5 below, each party served with a complaint or cross-complaint shall file and serve a response within 30 days after service. The parties may by written agreement stipulate to one 15-day extension to respond to a complaint or cross-complaint.

If the responsive pleading is a demurrer, motion to strike, motion to quash service of process, motion for a change of venue or a motion to stay or dismiss the case on forum non conveniens grounds, and the demurrer is overruled or the motion denied, a further responsive pleading shall be filed within 10 days following notice of the ruling unless otherwise ordered. If a demurrer is sustained or a motion to strike is granted with leave to amend, an amended complaint shall be filed within 10 days following notice of the ruling unless otherwise ordered. The court may fix a time for filing pleadings responsive to such amended complaint.

(4) Proofs of service: Proofs of service must be filed at least 10 calendar days before the case management conference.

(5) Exceptions for longer periods of time to serve or respond:

- (A) Time to serve may be extended for good cause: Upon ex parte application to the court, in compliance with California Rule of Court 379(g), within 60 days of the date the complaint was filed, plaintiff may obtain an extension of time to serve to a date on or before the case management conference, if good cause is shown by declaration of

counsel (or plaintiff filing in propria persona). An additional extension of the time to serve (an initial extension if the application is by a cross-complainant) may be obtained upon written application to the court upon good cause shown before the prior extension has expired. The filing of a timely application for an extension will automatically extend the time to serve by five days, whether or not the application is granted.

Good cause will be found if the declaration shows that the action is filed against a defendant who is an uninsured motorist, and the plaintiff's claim is subject to an arbitration provision in plaintiff's contract of insurance. In determining good cause in other cases, the court will give due consideration to any standards, procedures and policies which have been developed in consultation with the bar of the county through the bench-bar trial court delay committee.

(B) Additional extension of time if uninsured motorist arbitration is pending. In addition to any extension of time obtained pursuant to subsection (5)(A) above, if an uninsured motorist arbitration is still pending between plaintiff and plaintiff's insurance carrier 30 days prior to the expiration of the extension, plaintiff may obtain an additional extension of time by an ex parte application supported by a declaration showing the scheduled or anticipated date of the arbitration hearing and the diligence of plaintiff in pursuing arbitration.

(C) Time to respond may be extended for good cause: Before the time to respond has expired, any party served with a complaint or cross-complaint may, with notice to all other parties in the action, make ex parte application to the court upon good cause shown for an extension of time to respond. The filing of a timely application for an extension will automatically extend the time to respond by five days, whether or not the application is granted.

(c) Case management conference.

(1) Date of conference: Unless the parties stipulate in writing and the court orders that the case be earlier referred to arbitration, a case management conference will be set by the clerk at the time the complaint is filed. (Government Code 68616)

(2) Attendance at the case management conference is mandatory for all parties or their attorneys of record.

(3) Plaintiff must serve the Notice of Case Management on all parties no later than 30 calendar days before the conference, unless otherwise ordered by the Court.

(4) The Court will deem the case to be at-issue at the time of the conference (Reference: CRC 209(a)) absent a showing of extraordinary circumstances.

(5) The conference may be set at an earlier date by order of the Court or by written stipulation of the parties.

(6) Designation of trial counsel: Trial counsel and, except for good cause shown, back-up trial counsel, must be specified at the case management conference. If such counsel is not specified, relief from the scheduled trial date may not be obtained based upon the ground that counsel is engaged elsewhere.

(7) Conference orders: At the initial conference, the program judge will make appropriate pre-trial orders that may include the following:

- (A) An order referring the case to arbitration, mediation or other dispute resolution process;
- (B) An order transferring the case to the limited jurisdiction of the superior court;
- (C) An order assigning the case to a particular judge for all purposes;
- (D) An order assigning a trial date;
- (E) An order identifying the case as one which may be protracted and determining what special administrative and judicial attention may be appropriate, including special assignment;
- (F) An order identifying the case as one which may be amenable to early settlement or other alternative disposition technique;
- (G) An order of discovery; including but not limited to establishing a discovery schedule, assignment to a discovery referee, and/or establishing a discovery cut-off date;
- (H) An order scheduling the exchange of expert witness information;
- (I) An order assigning a mandatory settlement conference date pursuant to Local Rule 2.3(k) and 2.4; and
- (J) Other orders to achieve the interests of justice and the timely disposition of the case.

(8) CourtCall Telephonic Appearances

(A) Reference CRC, Rule 298

(B) Procedure. Telephonic appearances through the use of CourtCall, an independent vendor, are permitted at case management conference hearings. A party wishing to make a telephone appearance must serve and file a Request for Telephone Appearance Form with CourtCall not less than five court days prior to the case management conference hearing. Copies of the Request for CourtCall Appearance form and accompanying information sheet are available in the Clerk's office. There is a fee to parties for each CourtCall appearance and fees are paid directly to CourtCall. CourtCall will fax confirmation of the request to parties.

(C) On the day of the case management conference hearing, counsel and parties appearing by CourtCall must check-in five minutes prior to the hearing. Check-in is accomplished by dialing the courtroom's dedicated toll-free teleconference number and access code that will be provided by CourtCall in the confirmation. Any attorney or party calling after the check-in period shall be considered late for the hearing and shall be treated in the same manner as if the person had personally appeared late for the hearing.

(D) At a case management conference, parties may be referred to an appropriate dispute resolution ("ADR") process (e.g., mediation, binding arbitration or neutral evaluation). If parties are referred ADR, they must redial the dedicated toll-free teleconference number immediately following their case management conference appearance and use a second CourtCall access code to telephonically appear at the ADR referral meeting with ADR staff. If a case has been referred to ADR, a party's case management conference appearance is not complete until they have also telephonically appeared at the mandatory ADR referral. If parties are referred to judicial arbitration, they do not have to appear at the ADR referral.

(f) Case Management Statement

At least 15 calendar days before the scheduled case management conference, each party shall file with the court and serve on all other parties a completed Judicial Council Case Management Statement.

(g) Appropriate Dispute Resolution, ADR, Policy Statement

The Court finds it is in the best interests of parties to litigation to participate in appropriate dispute resolution procedures, including but not limited to mediation, neutral evaluation, private or judicial arbitration, voluntary settlement conferences, and the use of special masters and referees. Therefore, all parties shall stipulate to, or be referred to, an appropriate form of dispute resolution before being set for trial, unless there is good cause to dispense with this requirement. Parties are encouraged to stipulate to judicial arbitration or ADR prior to the case management conference.

(h) Stipulations to Arbitration

(1) If the case is at issue, and all counsel and each party appearing in propria persona stipulate in writing to judicial arbitration prior to the case management conference, discovery will remain open following judicial arbitration. A written stipulation to judicial arbitration must be filed with the clerk and a copy immediately sent to the Master Calendar Coordinator at least 10 calendar days before the case management conference in order to avoid the need to appear at that conference. A written stipulation to arbitrate will be deemed to be without a limit as to the amount of the award unless it expressly states otherwise.

(2) It is the policy of this court to make every effort to process cases in a timely manner. Parties who elect or are ordered by the court to judicial arbitration must complete the arbitration hearing within the time frame specified by the court.

Parties who wish to continue the arbitration hearing after the jurisdictional time frame must submit a court "Continuance Request Form" to the court judicial arbitration administrator stating the dates of any prior continuances the length of continuance requested and the reason for the request. Continuances without adequate grounds will not be considered. A case management judge will either grant or deny the request for continuance. If the request is denied, the case may be assigned a trial date. If the request is granted, the judge will impose a new deadline by which the arbitration must be completed.

(3) Parties who wish to change their election from judicial arbitration to another form of ADR must file a "Stipulation and [Proposed] Order to [Mediation, Neutral Evaluation, etc.] in Lieu of [Court-Ordered] Judicial Arbitration" with the Clerk of the Court. The Stipulation must state that parties have: (i) notified both the judicial arbitration and ADR coordinators; (ii)

cancelled the judicial arbitration hearing; (iii) scheduled the ADR session within five months of the previously scheduled judicial arbitration hearing; and (iv) stipulated to a trial date, which is not more than six months from the previously scheduled judicial arbitration hearing.

(i) Stipulations to Private ADR

(1) If a case is at issue and all counsel and each party appearing in propria persona stipulate in writing to ADR and file a completed Stipulation and Order to ADR with the clerk of the court at least ten (10) calendar days before the first scheduled case management conference, that conference shall be continued 90 days. The court shall notify all parties of the continued case management conference.

(2) If counsel and each party appearing in propria persona are unable to agree upon an appropriate ADR process, they shall appear at the case management conference.

(3) Following an appearance at a case management conference hearing, parties shall, within 21 calendar days, file a completed Stipulation to ADR and Proposed Order identifying the name of the ADR provider, date of ADR session and the names of those who will be in attendance at the ADR session. The completed Stipulation to ADR and Proposed Order shall be filed with the court by plaintiff's counsel. The parties, through counsel, if represented, shall confer with the court's Multi-Option ADR Project (M.A.P.) staff if they cannot agree on a provider. Plaintiff's counsel, shall additionally, send a copy of the completed Stipulation to the court's M.A.P. offices within the same 21-day period.

(4) All parties and counsel shall participate in the ADR process in good faith.

(5) To maintain the quality of ADR services the court requires cooperation from all parties, counsel and ADR providers in completing ADR evaluation forms, and returning these forms to the M.A.P. offices within 10 calendar days of the completion of the ADR process.

(6) In accordance with the Code of Civil Procedure, section 1033.5(c)(4), the court, in its discretion, may allow the prevailing party at trial the fees and expenses of the ADR provider, unless there is a contrary agreement by the parties.

(j) Setting Short Cause Matters

If the parties agree that the time estimated for trial is 5 hours or less prior to the conference, a written stipulation shall be filed at least 10 calendar days before the case management conference in order to avoid the need to appear at that conference and a copy immediately sent to the Master Calendar Coordinator. In the absence of a stipulation, either party may file a motion to have the matter designated a "short cause" and set the case accordingly. All such matters shall be presumed short cause unless the contrary is established at the hearing on the motion.

(k) Law and Motion

All law and motion matters shall be heard by the regularly assigned Law and Motion judge.

(l) Settlement Conferences

All cases not assigned to arbitration or some other dispute resolution mechanism will be assigned two settlement conference dates, the first of which will be at the earliest practicable date under the circumstances presented by the case, and the second within approximately two weeks prior to the assigned trial date.

Cases assigned to arbitration or other form of ADR may be subjected to a settlement conference prior to the arbitration or ADR process, but will be assigned to a pre-trial settlement conference only if the arbitration/ADR procedure fails to resolve the case.

All cases which fail to resolve by the trial date will be subject to an additional settlement conference on the trial date.

All settlement conferences shall be subject to the requirements specified in Local Rule 2.4.

(m) Sanctions

Sanctions pursuant to CRC 227 shall be imposed for any violation of the civil case management system rules. The minimum sanction imposed shall be \$150.00 payable to the court; sanction payable to the court may be larger where appropriate and will be in addition to appropriate attorney fees and calendar changes, including any appropriate change in calendar status of the action.

Sanctions mandated hereby may be waived by the judge conducting the conference only upon an application showing good cause why sanctions should not be imposed.

(Adopted, effective July 1, 1996)(Amended, effective January 1, 2000) (Amended, effective January 1, 2003)
(Amended effective July 1, 2003)

Rule 2.3.1 Orders to Show Cause re: Dismissals

(a) A hearing on an order to show cause why the case should not be dismissed for failure to prosecute the matter shall be set at the two year anniversary of the filing of the complaint and/or cross-complaint.

(b) An order to show cause hearing shall be set 45 days after court's receipt of notice of settlement.

(c) An order to show cause hearing regarding dismissals may be set by the court to achieve the interests of justice and the timely disposition of the case.

(d) An order to show cause hearing re: failure to complete judicial arbitration within the court-ordered time frame may be heard during the case management calendar. Sanctions may be imposed and a trial date may be assigned.

(Adopted, effective January 1, 2000) (Amended, effective January 1, 2003)

Rule 2.4 Settlement Conference

Reference: California Rule of Court, rule 222.

(a) At all settlement conferences, notwithstanding any other Rule:

(1) The attorney who will try the case or an informed associate with full authority to negotiate a settlement of the case shall personally attend.

(2) Any persons whose consent is required to authorize settlement shall personally attend; those parties which are corporations shall have in attendance an officer or other employee with authority to bind the corporation. Powers of attorney, oral or written, granting counsel settlement authority are unacceptable as a substitute for personal attendance at this conference. Defendant and cross-defendant shall personally attend if there is no insurance coverage, if there is an unsatisfied deductible, or if the insurance carrier is demanding that the insured contribute to settlement.

(3) With respect to any insured party, a representative of the insurance carrier with authority to settle which is meaningful considering the exposure to loss presented shall personally attend. If the claims representative in personal attendance has any limitation on his or her settlement authority, a representative of the carrier who has no such limitations shall be available to the court by telephone and shall remain available until released by the judge conducting the conference, regardless of the time of day at the location of that representative.

(4) Upon arrival at the department to which the conference has been assigned, counsel shall check in with the clerk and shall verify the attendance of those persons whose presence is required.

(5) Notwithstanding the provisions of CRC 222(c), no later than five days before the date set for the settlement conference each party shall lodge with the office of the court administrator and serve on all other parties a written statement setting forth the following:

(A) A statement of facts.

(B) The contentions of each party to the action regarding liability and damages.

(C) An itemized list of special damages.

(D) In any case in which personal injury is claimed:

(i) A description of the nature and extent of any injury claimed, including residuals.

(ii) A description of the basis for and method of calculation of any claimed wage loss.

(E) The most recent demand and offer or a description of any other proposed settlement between or among the parties.

(6) All parties shall be prepared to make a bona fide offer of settlement.

(b) The personal attendance of any person who is required by these rules to be present may be excused only by the presiding judge upon application made prior to the day on which the conference is scheduled. Any such person whose attendance is excused must remain available by telephone until he or she has been excused by the judge conducting the conference regardless of the time of day at the location of that person.

(c) No conference may be continued without the consent of the presiding judge or, if known, the judge to whom the case has been assigned for conference.

(d) At all such conferences, the judge of the department to which the conference has been assigned shall first attempt to settle the case. If settlement discussions are inconclusive, the judge may adjourn the conference to a later date for further settlement discussions.

(e) Sanctions pursuant to CRC 227 shall be imposed for any violation of this rule. The minimum sanction imposed shall be \$150.00 payable to the court; sanctions payable to the court may be larger where appropriate and will be in addition to appropriate attorney fees and calendar changes.

Sanctions mandated hereby may be waived by the judge conducting the conference only upon an application showing good cause why sanctions should not be imposed.

(Adopted, effective July 1, 1996) (Amended, effective January 1, 2003)

PART 3. CALENDAR MANAGEMENT

Rule 2.5 Trial Date Settlement Conference

A further settlement conference shall be held on the date the case is called for trial in accordance with the procedures outlined in and with the attendance of those persons designated in Local Rule 2.4.

(Adopted, effective July 1, 1996)

Rule 2.6 Refund of Jury Fees: Duty to Notify Court

(Adopted, effective July 1, 1996) (REPEALED and Renumbered as Rule 2.7.6)

CHAPTER 3. [RESERVED]

CHAPTER 4. JURY RULES

Rule 2.7 Length of Jury Service

In compliance with CRC 861, a person has fulfilled his or her jury service obligation when he or she has:

- (a) Served on one trial until discharged.
- (b) Been assigned on one day for jury selection until excused by the jury commissioner.
- (c) Attended court but was not assigned to a trial department for selection of a jury before the end of that day.
- (d) Been assigned to a trial department for selection of a jury and has been excused by the trial judge.

- (e) Served one day on call.
- (f) Served no more than 5 court days on telephone standby.

(Adopted, effective January 1, 2000)

Rule 2.7.1 Proposed Jury Instructions

(a) In all jury trials, insofar as practicable, the instructions in BAJI and CALJIC shall be used. Specially prepared instructions may be refused if the subject matter is satisfactorily covered by BAJI or CALJIC instructions. This rule does not limit the right of counsel to submit additional instructions properly numbered in consecutive order that are not covered by BAJI and CALJIC; nor does it relieve counsel of the responsibility of making any necessary substantial modifications to the BAJI or CALJIC instructions.

(b) The office of the court administrator will supply a numbered master list of all BAJI and CALJIC instructions maintained by the court. It is the responsibility of counsel in each case to submit a numbered list of proposed BAJI or CALJIC instructions as are needed at the commencement of trial. The office of the court administrator will then supply print-out copies of all BAJI or CALJIC instructions approved by the trial court.

(c) The Trial Department shall determine in its discretion the timing of submission of proposed jury instructions.

(Amended, effective January 1, 2002)

Rule 2.7.2 Duty Of Counsel with Respect to Jury Instructions

Before delivery of proposed BAJI or other instructions to the trial judge and opposing counsel, counsel shall fill in all blanks, make all strike-outs, insertions and modifications therein which are appropriate to the case. Counsel must give particular attention to the completion of all blank portions of BAJI 2.60 before submission to the trial judge. Submission of a form, which requires additions or modifications to constitute a complete and intelligible instruction, shall not be deemed a request for such instruction.

In addition to a hard copy of the proposed jury instructions, counsel shall provide the modified instructions on a computer diskette, and a clean copy of the instructions to be given to the jury.

(Adopted, effective January 1, 2000)

Rule 2.7.3 Form of Proposed Jury Instructions (CCP §§ 607a, 609, CRC 517)

All proposed jury instructions, excepting BAJI instructions, shall conform to the requirements of CRC, rule 229, and § 5 of the Standards of Judicial Administration, including placing thereon the citations of authorities, indication of the party requesting the instructions and respects in which related BAJI instructions have been modified. Any jury instructions requested after the conclusion of taking evidence shall be in writing. The court, in its discretion, may permit instructions to be sent into the jury room in "Booklet Form". In "Booklet Format" the text of the instruction is printed continuously on the page and may result in several instructions to the page. Such instructions may be accompanied by a table of contents.

(Adopted, effective January 1, 2000)

Rule 2.7.4 Changing Jury Instructions

If, after the jury instruction conference and at any time before giving the instructions and verdict and findings forms to the jurors, the trial judge determines to make any substantive change therein, all parties should be so advised on the record outside the hearing of jurors.

(Adopted, effective January 1, 2000)

Rule 2.7.5 Jury Instruction Conference

Before final argument and after submission to the trial judge of all proposed jury instructions, verdict and findings forms, a conference outside the presence of jurors will be held. Ordinarily, a reporter or recorder is not required at the commencement of such conference.

In the event the trial judge intends to give any instructions or use any form of verdict or findings on the court's own motion, such instructions, verdicts or findings should be delivered to counsel.

The trial judge will then discuss with counsel:

- (1) Whether any requested, proposed instructions, verdicts or findings are patently inappropriate and will be voluntarily withdrawn;
- (2) Whether there is any patent omission of instructions, verdicts or findings which are appropriate and that may be given without objection;
- (3) Whether there is any other modification, namely those to which the parties will stipulate.

Counsel shall meet prior to this conference to discuss each other's jury instructions and classify them into (1), (2) and (3) above.

The foregoing unreported conference will generally result in clarification of the matters, and creation of three categories of instructions, verdicts or findings that may be withdrawn, given or modified.

Thereafter, the conference should be reported and the trial judge should confirm for the record the matters agreed upon. The trial judge should also specify those instructions, verdicts and findings forms the court proposes to give, refuse or modify, whether at the request of a party or on the court's own motion. The court will hear any objections to the foregoing and rule thereon.

The trial judge should sign each requested instruction and indicate the disposition thereof, all of which shall be thereafter filed by the clerk. If a requested instruction is withdrawn, counsel shall so indicate by writing "withdrawn" and signing or initialing such instruction.

(Adopted, effective January 1, 2000)

Rule 2.7.6 Refund of Jury Fees: Duty to Notify Court

Jury fees shall be refunded pursuant to CCP Section 631.3 only if the party depositing the fees has given the master calendar coordinator written notice, at least two court days before the trial date, that the case settled, dropped or that the party's motion for continuance has been granted.

(Adopted, effective July 1, 2004 [former Rule 2.6])

CHAPTER 5. GENERAL RULES

Rule 2.8 Family Law Rules

The local rules of San Mateo Superior Court relating to Family Law are contained in Division V of these rules, infra.

(Adopted, effective July 1, 1996)

Rule 2.9 Required Action

Action shall be taken on all calendared cases and a future date for action shall always be set. No case shall go "off calendar" without a future action being set.

(Adopted, effective July 1, 1996.)

Rule 2.10 Interpreters and Translators

a) Notice. When a party desires an interpreter, it shall be the responsibility of that party to give notice to the Court and all other parties of record. That party shall make arrangements for the presence and the payment of the interpreter.

b) Qualifications. Unless the interpreter is an official court interpreter, the interpreter's name and qualifications shall be provided to the court and opposing counsel five (5) court days prior to the date of the interpreter's appearance. If the interpreter is an official court interpreter, no prior disclosure is required.

c) Relations or friends. Without the consent of all parties, a relation or a friend may not be used as an interpreter or translator in a contested proceeding.

(Adopted, effective January 1, 2000)

Rules 2.11 thru 2.19 (Reserved)

CHAPTER 6. CIVIL TRIAL RULES

Rule 2.20 Trial Motions, Briefs, Statements, and Witness Lists

Upon assignment to a trial department for trial by a jury, each party shall file with that department the following:

- (1) Any in limine motions and response thereto;
- (2) Any trial briefs;
- (3) A concise non-argumentative statement of the case to be read to the jury; and
- (4) A list of possible witness who may testify in the trial to be read to the jury panel by the court.

(Adopted, effective January 1, 2002)

SAN MATEO SUPERIOR COURT

COURTCALL TELEPHONIC APPEARANCES

JANUARY, 2004

Until further notice, voluntary telephonic appearances ("CourtCall Appearances") may continue to be made for Case Management Conferences in Departments 6 (Judge Kopp) and 21 (Judge Foiles), and for Civil Law and Motion matters in Department 1 (Judge Mittlesteadt) from 1/1/04 to 6/30/04 or Department 3 (Judge Freeman) from 7/1/04 to 12/31/04.

Counsel may make a CourtCall Appearance as follows:

1. **NOT LESS THAN FIVE (5) COURT DAYS BEFORE THE HEARING DATE IN DEPARTMENTS 6 AND 21 AND NOT LATER THAN 4:30 P.M. ON THE COURT DAY PRIOR TO HEARING IN DEPARTMENT 1 (1/1-6/30) or DEPARTMENT 3 (7/1-12/31) serve and file with CourtCall (not the Court!) a Request for CourtCall Telephonic Appearance (included in this package);**
2. **Pay a fee of \$55.00 to CourtCall, LLC.**

Required filing and payment procedures are detailed within the instruction sheet "How to Use CourtCall," (see reverse). A confirmation from CourtCall, LLC, will be faxed to your office upon the filing and payment outlined above.

A CourtCall Appearance is made as part of a participating Department's usual calendar. Unless notified to the contrary, all counsel who have timely filed their Request and have paid the fee may appear by dialing the toll-free teleconference number provided by CourtCall, LLC. A pre-hearing check-in will occur five minutes before the scheduled hearing time. CourtCall Appearances will generally be afforded a calendar preference.

A CourtCall Appearance is voluntary and may be made without consent of the other party or advance consent of the Court. The Court, however, reserves the discretion to require personal appearance. In matters where only one party elects to make a CourtCall Appearance, the matter will be heard on the Court's speakerphone.

See reverse side for "How to Use CourtCall"

COURTCALL, LLC
Telephonic Court Appearances
6365 ARIZONA CIRCLE
LOS ANGELES, CALIFORNIA 90045
(TEL) (310) 342-0888 (888) 88-COURT
(FAX) (310) 743-1850 (888) 88-FAXIN

How To Use CourtCall! – SAN MATEO

Filling Out The Form

1. Serve: Not less than 5 Court Days before the hearing (or 4:30 PM the Court day prior to hearing for Dept. 1 through 6/30/04 or Dept. 3 from 7/1/04 through 12/31/04) **COMPLETELY** fill out the original of the Request for CourtCall Appearance (the "Request Form"). Retain the original Request Form in your file. **DO NOT FILE IT WITH THE COURT.** Check the box indicating the method of payment of the fee. **INCOMPLETE REQUEST FORMS MAY RESULT IN A DELAY IN PROCESSING!!**

2. Fax to CourtCall: Fax a copy of the Form to CourtCall not less than 5 Court days prior to the hearing (of 4:30 pm the Court day prior to hearing for Dept. 1 or Dept. 3 as noted above). Do not fail to do so, as the CourtCall Calendar is set through these faxes!! **LATE FILINGS, IF ACCEPTED, ARE SUBJECT TO A LATE FEE!!**

3. Payment by Credit Card: Fill out credit card information only on the copy faxed to CourtCall and have that copy **SIGNED** by the **PERSON** WHOSE NAME IS ON THE CREDIT CARD.

4. Payment by Check: Fax a copy of check – write case # on check-payable to Telephonic Hearing Account to CourtCall with your Form and mail your check and a copy of your Form to CourtCall.

5. Proof of Payment/Calendar Confirmation: Under normal circumstances you should receive a Confirmation from CourtCall, by fax, within 24 hours of submission of a completed Request Form. The Confirmation will contain your teleconference number and access code (if any**).

IF YOU DO NOT RECEIVE YOUR FAXED CONFIRMATION FROM COURTCALL WITHIN 24 HOURS OF SUBMISSION, CALL COURTCALL IMMEDIATELY TO VERIFY YOUR STATUS – WITHOUT A WRITTEN CONFIRMATION YOU ARE NOT ON THE COURTCALL CALENDAR!

FOR INFORMATION AND QUESTIONS ABOUT A COURTCALL APPEARANCE, CALL COURTCALL, NOT THE CLERK/COURT!

When You Make The Call

*** YOU MUST CALL THE TOLL FREE NUMBER ON YOUR CONFIRMATION 5 MINUTES BEFORE YOUR SCHEDULED HEARING TIME.. NEVER USE A CELLULAR OR PAY PHONE.** If prompted, dial your Access Code.** You will be advised whether you are joining the call in progress or if you are the first to call or you may be placed on "music-on-hold."

*** If Court has commenced, DO NOT INTERRUPT!** You will have an opportunity to speak. If the call is in progress and you hear voices, wait until an opportunity to speak arises without interrupting others. The Clerk may be performing a check-in and will get to you.**

*** After check-in wait until your case is called.** Use your speakerphone while waiting if you are able to mute the microphone to eliminate ambient noise. When your case is called you **MUST USE THE HANDSET.** Identify yourself each time you speak and use common courtesy.

*** If you are the first person on the call be patient,** even if you experience silence or are placed on "music-on-hold," as the Clerk will join the call in due course. As others join you will hear a mild beep-beep" indicating others are on the line. Until your case is called do not speak other than with the Clerk. **** If the Clerk does not join the call within 15 minutes after your scheduled hearing time, have a staff member call CourtCall on our toll free Help Line – (888) 882-8878 and we will be happy to assist you. DO NOT LEAVE THE LINE!**

****If the Confirmation from CourtCall does not list an access code with your assigned teleconference number, your matter will be heard privately, not in open court. The 5 minute check-in period will be conducted by a Teleconference Specialist who will conduct the conference in accordance with the Court's instructions. You will be placed on "music-on-hold" while you wait for the Judge to call your matter. The rules regarding cell phones and use of handsets apply.**

IF YOUR HEARING IS CONTINUED YOU MUST NOTIFY COURTCALL OF THE CONTINUANCE, IN WRITING, PRIOR TO YOUR COURTCALL APPEARANCE TO HAVE YOUR FEE APPLY TO THE CONTINUED HEARING. MATTERS CONTINUED AT THE TIME OF THE HEARING REQUIRE A NEW FORM AND A NEW FEE FOR THE CONTINUED DATE.

ATTORNEY OF RECORD (Name /Address/Phone/Fax): State Bar No. _____ ATTORNEY FOR (Name): _____	DO NOT FILE WITH COURT COMPLETELY FILL OUT/CORRECT FORM BEFORE SUBMITTING TO COURTCALL!!
San Mateo Superior Court	
	CASE NUMBER: JUDGE/DEPARTMENT: DATE AND TIME: NATURE OF HEARING:
REQUEST FOR COURTCALL TELEPHONIC APPEARANCE	

1. _____ (Name of specific attorney appearing telephonically) requests a CourtCall telephonic calendar appearance at the above referenced proceeding and agrees to provisions of the Rule/Order/Procedure Re: CourtCall Telephonic Appearances. I UNDERSTAND THAT I DIAL INTO THE CALL FIVE MINUTES BEFORE ITS SCHEDULED START TIME.
2. Not less than five Court days prior to hearing (or 4:40 pm the Court day prior for Dept. 28), a copy of this document was served on all other parties and faxed to CourtCall, Telephonic Appearance Program Administrator at (310) 572-4679 OR (888) 88-FAXIN.
3. The non-refundable CourtCall Appearance Fee in the sum of \$55.00 (plus additional fee of \$35.00 if late filing is accepted) is paid as follows:
 - ☐ Check (copy faxed-write case # on check) payable to CourtCall. DO NOT MAIL ORIGINAL. Signature below authorizes an ACH (electronic) debit in the amount and from the account listed on the check.
 - ☐ Charged to CourtCall Debit Account No.: _____
 - ☐ Charged to VISA, MasterCard or American Express:

TO BE COMPLETED ONLY ON THE COPY SUBMITTED TO CourtCall, LLC:	
Credit Card:	☐ VISA ☐ MasterCard ☐ American Express
Credit Card Number: _____	Expiration Date: _____
To pay by credit card, the copy of this form submitted to CourtCall, LLC, must be signed by the person whose card is to be charged and must be faxed to CourtCall at (310) 572-4670 or (888) 88-FAXIN with the above credit card information completed. The signature below constitutes authorization to charge the above referenced credit card.	
Date: _____	Name on Card: _____
	Type Name Signature

4. Request Forms are processed within 24 hours. Call CourtCall if you do not receive a faxed Confirmation from CourtCall within 24 hours. WITHOUT A WRITTEN CONFIRMATION YOU ARE NOT ON THE COURTCALL CALENDAR AND MAY BE PRECLUDED FROM APPEARING TELEPHONICALLY! COURTCALL'S LIABILITY CONCERNING THIS TELEPHONIC APPEARANCE IS LIMITED TO THE FEE PAID TO COURTCALL.

Dated: _____

Signature

1 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **COUNTY OF SAN MATEO**
 UNLIMITED JURISDICTION

3 Todd M. Friedman, Esq.- state Bar #- 216752
4 Krohn & Moss
5 120 W. Madison, 10th Floor
6 Chicago, IL 60602
7 Attorneys for Plaintiff, Don-Juan Goode.

ENDORSED FILED
SAN MATEO COUNTY

NOV 3 n 2004

Clerk of the Superior Court
By N. Delgado
DEPUTY CLERK

8 [REDACTED]) Case No.: **CIV 4 4 3 4 1 6**
9 Plaintiff,)
10 vs.) COMPLAINT
11 AMERICAN HONDA MOTOR CO., INC.)
12 Defendant)

13
14 **COMPLAINT**

15 NOW COMES the Plaintiff, [REDACTED] by and through Plaintiff's attorneys,
16 KROHN & MOSS, LTD., and for Plaintiff's Complaint against Manufacturer, AMERICAN
17 HONDA MOTOR CO., INC., alleges and affirmatively states as follows:
18

19 **PARTIES**

20 1. Plaintiff, [REDACTED] ("Plaintiff"), is an individual who purchased
21 subject vehicle in the State of California.

22 2. Manufacturer, AMERICAN HONDA MOTOR CO., INC. ("Manufacturer"), is a
23 corporation authorized to do business in the State of California and is engaged in the
24 manufacture, sale, and distribution of motor vehicles and related equipment and services.
25 Manufacturer is also in the business of marketing, supplying and selling written warranties to the

1 public at large through a system of authorized dealerships, including Cycle Center of Fremont
2 ("Seller"). Manufacturer does business in all counties of the State of California.

3 **BACKGROUND**

4 3. On or about February 13, 2004, Plaintiff purchased from Seller a 2002 Honda
5 VFR8002 ("VFR8002"), manufactured by Manufacturer, Vehicle Identification No.
6 JH2RC46102M [REDACTED] for valuable consideration (A copy of Plaintiff's purchase contract is
7 attached hereto and marked as Exhibit "A").

8 4. The price of the VFR8002, including sales tax, registration charges, document
9 fees and other collateral charges, such as bank and finance charges, totaled more than
10 \$13,547.88.

11 5. In consideration for the purchase of the VFR8002, Manufacturer issued and
12 supplied to Plaintiff several written warranties, as well as other standard warranties fully outlined
13 in the Manufacturer's Warranty Booklet.

14 6. On or about February 13, 2004, Plaintiff took possession of the VFR8002 and
15 shortly thereafter experienced the various defects listed below that substantially impair the use,
16 value and/or safety of the VFR8002.

17 7. The defects listed below violate the express written warranties issued to Plaintiff
18 by manufacturer, as well as the implied warranty of merchantability.

19 8. Plaintiff brought the VFR8002 to seller and/or other authorized service dealers of
20 manufacturer for various defects, including, but not limited to the following:

- 21 a. Defective engine as evidenced by not starting and repeatedly dying; and
22 b. Any additional complaints made by our clients; whether or not they are contained
23 in records of Manufacturer's authorized dealerships or any other repair orders.

24 9. Plaintiff provided Manufacturer through Seller and/or other authorized dealers of
25 Manufacturer sufficient opportunities to repair the VFR8002.

1 10. Manufacturer, through its authorized dealers was unable and/or failed to repair the
2 VFR8002 within a reasonable number of attempts.

3 11. Plaintiff justifiably lost confidence in the VFR8002's reliability and said defects
4 have substantially impaired the value of the VFR8002 to Plaintiff.

5 12. Said defects could have not been discovered by Plaintiff prior to Plaintiff's
6 acceptance of the VFR8002.

7 13. As a result of said defects, Plaintiff revoked acceptance of the VFR8002 in
8 writing on October 27, 2004 (A copy of said letter is attached hereto and marked as Exhibit "B").

9 14. At the time of revocation, the VFR8002 was in substantially the same condition as
10 at delivery except for damage caused by its own defects and ordinary wear and tear.

11 15. Manufacturer refused Plaintiff's demand for revocation and has refused to provide
12 Plaintiff with the remedies Plaintiff is entitled upon revocation.

13 16. The VFR8002 remains in a defective and unmerchantable condition, and
14 continues to exhibit the above mentioned defects that substantially impair its use, value and/or
15 safety.

16 17. Plaintiff has and will continue to be financially damaged due to Manufacturer's
17 failure to comply with the provisions of its express and implied warranties.

18 18. Prior to filing this complaint, Plaintiff attempted to submit to Manufacturer's
19 informal dispute resolution program and was unsatisfied with the results therein.

20 **COUNT I**
21 **BREACH OF WRITTEN WARRANTY**
22 **PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT**
23 **MANUFACTURER**

24 19. Plaintiff realleges and incorporates by reference as fully set forth herein,
25 paragraphs 1-18 of this Complaint.

1 20. Plaintiff is a purchaser of a consumer product who received the VFR8002 during
2 the duration of a written warranty period applicable to the VFR8002 and who is entitled by the
3 terms of the written warranty to enforce against Manufacturer the obligations of said warranty.

4 21. Manufacturer is a person engaged in the business of making a consumer product
5 directly available to Plaintiff.

6 22. Seller is an authorized dealership/agent of Manufacturer designed to perform
7 repairs on vehicles under Manufacturer's automobile warranties.

8 23. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section, 2301 et. Seq.
9 ("Warranty Act") is applicable to Plaintiff's Complaint in that the VFR8002 was manufactured,
10 sold and purchased after July 4, 1975, and costs in excess of ten dollars (\$10.00).

11 24. Plaintiff's purchase of the VFR8002 was accompanied by written factory
12 warranties for any non-conformities or defects in materials or workmanship, comprising an
13 undertaking in writing in connection with the purchase of the VFR8002 to repair the VFR8002
14 or take other remedial action free of charge to Plaintiff with respect to the VFR8002 in the event
15 that the VFR8002 failed to meet the specifications set forth in said undertaking.

16 25. Said warranties were the basis of the bargain of the contract between the Plaintiff
17 and Manufacturer for the sale of the VFR8002 to Plaintiff.

18 26. Said purchase of Plaintiff's VFR8002 was induced by, and Plaintiff relied upon,
19 these written warranties.

20 27. Plaintiff has met all of Plaintiff's obligations and preconditions as provided in the
21 written warranties.

28. As a direct and proximate result of Manufacturer's failure to comply with its express written warranties, Plaintiff has suffered damages and, in VFR8002ance with 15 U.S.C. § 2310(d), Plaintiff is entitled to bring suit for such damages and other equitable relief.

- a. Return of all monies paid or in the alternative applicable damages pursuant to section 2714 of the Commercial Code, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other costs;
- c. Such other and further relief that the Court deems just and appropriate.

29. Plaintiff realleges and incorporates by reference as through fully set forth herein, paragraphs 1-18 of this complaint.

34. The VFR8002 was warranted to pass without objection in the trade under the contract description, and was required to conform to the descriptions of the vehicle contained in the contracts and labels.

35. The above described defects in the VFR8002 render the VFR8002 unfit for the ordinary and essential purpose for which the VFR8002 was intended.

36. As a result of the breaches of implied warranty by Manufacturer, Plaintiff has suffered and continues to suffer various damages.

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

- a. Return of all monies paid or in the alternative applicable damages pursuant to section 2714 of the Commercial Code, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other costs;
- c. Such other and further relief that the Court deems just and appropriate.

COUNT III
REVOCATION OF ACCEPTANCE
MANUFACTURER

37. Plaintiff realleges and incorporates by reference as though fully set forth herein, paragraphs 1-18 of this Complaint.

38. Manufacturer's tender of the VFR8002 was substantially impaired to Plaintiff.

39. Manufacturer's tender of the VFR8002, which was substantially impaired to Plaintiff, constitutes a violation of 15 U.S.C. §2310(d).

WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:

- a. Return of all monies paid or in the alternative applicable damages pursuant to section 2714 of the Commercial Code, and all incidental and consequential damages incurred;
- b. All reasonable attorneys' fees, witness fees and all court costs and other costs;
- c. Such other and further relief that the Court deems just and appropriate.

1 COUNT IV
2 SONG - BEVERLY CONSUMER WARRANTY ACT

3 40. Plaintiff realleges and incorporates by reference as though fully set forth herein,
4 paragraphs 1-18 of this Complaint.

5 41. Pursuant to Cal Civ. Code. § 1793.2, Plaintiff has presented the VFR8002 to
6 Seller and/or other authorized service dealers of Manufacturer within the term of protection and
7 has tendered the subject vehicle four (for the above-mentioned defects that substantially affect
8 the use, value and safety of the VFR8002.

9 42. Manufacturer, through Seller and/or other authorized dealerships, have been
10 unable to repair said defects in a reasonable number of attempts.

11 43. Pursuant to Cal Civ. Code. § 1793.2, Plaintiff is entitled to a refund of the full
12 purchase price of the vehicle, including all collateral charges and finance charges, and/or a
13 replacement vehicle, plus all attorney fees and costs.

14 44. Manufacturer has willfully violated the provisions of this act by knowing of its
15 obligations to refund or replace Plaintiff's vehicle, but failing to fulfill them.

16 WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:
17

- 18 a. Return of the VFR8002's purchase price and all incidental and consequential
19 damages incurred by Plaintiff;
20 b. Return of all finance charges incurred by Plaintiff for the VFR8002;
21 c. All reasonable attorneys' fees, witness fees, court costs and other fees incurred by
22 Plaintiff; and
23 d. A civil penalty pursuant to Cal. Civ. Code § 1794 (c).
24 e. Such other and further relief that this Court deems just and appropriate.

25 COUNT V
SONG - BEVERLY CONSUMER WARRANTY ACT

45. Plaintiff realleges and incorporates by reference as though fully set forth herein,
paragraphs 1-18 of this Complaint.

1 46. The VFR8002 purchased by Plaintiff was subject to an implied warranty of
2 merchantability as defined in Cal. Civ. Code §1790 running from the Manufacturer to the
3 intended consumer, Plaintiff herein.

4 47. Manufacturer is a supplier of consumer goods as a person engaged in the business
5 of making a consumer product directly available to Plaintiff.

6 48. Manufacturer is prohibited from disclaiming or modifying any implied warranty
7 under Cal. Civ. Code §1790.

8 49. Pursuant to Cal. Civ. Code §1790, Plaintiff's VFR8002 was impliedly warranted
9 to be fit for the ordinary use for which the VFR8002 was intended.

10 50. The VFR8002 was warranted to pass without objection in the trade under the
11 contract description, and was required to conform to the descriptions of the vehicle contained in
12 the contracts and labels.

13 51. The above described defects in the VFR8002 caused it to fail to possess even the
14 most basic degree of fitness for ordinary use..

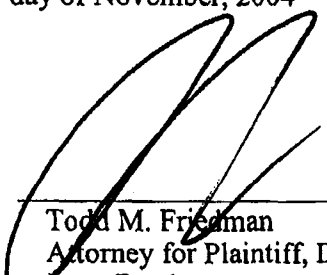
15 52. As a result of the breaches of implied warranty by Manufacturer, Plaintiff has
16 suffered and continues to suffer various damages.

17 WHEREFORE, Plaintiff prays for judgment against Manufacturer as follows:
18

- 19 a. Return of all monies paid or in the alternative applicable damages pursuant to
20 section 2714 of the Commercial Code, and all incidental and consequential
21 damages incurred;
22 b. All reasonable attorneys' fees, witness fees and all court costs and other costs;
23 c. Such other and further relief that the Court deems just and appropriate.
24
25

1 PLAINTIFF HEREBY REQUESTS A JURY TRIAL IN THIS MATTER.
2

3 Dated this 22nd day of November, 2004
4

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6 
7 Todd M. Friedman
8 Attorney for Plaintiff, Don-
9 Juan Goode
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EXHIBIT A

Contract Number

H.O.B. Number

Block Number

Buyer (and Co-Buyer Name and Address (Including County and Zip Code))

ROHAN SPODE 94541

Creditor - Seller (Name and Address)

CYCLE CENTER OF FREMONT

11315 ALBRAE ST

FREMONT CA 94538

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditor - Seller (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

New Used	Year	Make and Model	Odometer	Vehicle Identification Number	Primary Use For Which Purchased
ew	2002	HONDA VFR9002	3	JH2RC061J2M400102	☒ personal, family or household ☐ business or commercial

FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of \$2800.00
21.000 %	\$ 3181.35 (e)	\$ 7588.03	\$ 10747.39 (e)	\$ 13547.38 (e)
(e) means an estimate				

YOUR PAYMENT SCHEDULE WILL BE:

Number of Payments:	Amount of Payments:	When Payments Are Due:
One Payment of		
One Payment of		
41 Payments	\$ 255.89	Monthly, Beginning 03/13/2004
One Final Payment	\$ 255.89	08/13/2007

Late Charge. If payment is not received in full within 10 days after it is due, you will pay a late charge of 5% of the part of the payment that is late.

Prepayment. If you pay off all your debt early, you may be charged a minimum finance charge.

Security Interest. You are giving a security interest in the vehicle being purchased.

Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date, minimum finance charges, and security interest.

STATEMENT OF INSURANCE

NOTICE: No person is required as a condition of financing the purchase of a motor vehicle to purchase or negotiate any insurance through a particular insurance company, agent or broker.

Vehicle Insurance

	Term	Premium
\$ N/A Ded. Comp., Fire & Theft	N/A Mos.	\$ N/A
\$ N/A Ded. Collision	N/A Mos.	\$ N/A
Bodily Injury \$ N/A Limits	N/A Mos.	\$ N/A
Property Damage \$ N/A Limits	N/A Mos.	\$ N/A
Medical	N/A Mos.	\$ N/A
	N/A Mos.	\$ N/A
Total Vehicle Insurance Premiums		\$ N/A (e)

UNLESS A CHARGE IS INCLUDED IN THIS AGREEMENT FOR PUBLIC LIABILITY OR PROPERTY DAMAGE INSURANCE, PAYMENT FOR SUCH COVERAGE IS NOT PROVIDED BY THIS AGREEMENT.

You may buy the physical damage insurance this contract requires (see back) from anyone you choose who is acceptable to us. You are not required to buy any other insurance.

Co-Buyer A

Seller X

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Application for Optional Credit Insurance

☐ Credit Life: ☐ Buyer ☐ Co-Buyer ☐ Both
☐ Credit Disability (Buyer Only)

	Term	Exp.	Premium
Credit Life	N/A	Mos.	\$ N/A
Credit Disability	N/A	Mos.	\$ N/A
Total Credit Insurance Premiums			\$ N/A (b)

Insurance Company Name

Home Office Address

Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless you sign and agree to pay the extra cost. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown above.

You are applying for the credit insurance marked above. Your signature below means that you agree that: (1) You are not eligible for insurance if you have reached your 65th birthday. (2) You are eligible for disability insurance only if you are working for wages or profit 30 hours a week or more on the

ITEMIZATION OF THE AMOUNT FINANCED

1. Total Cash Price

A. Cash Price of Motor Vehicle and Accessories \$ 8525.00 (A)

1. Cash Price Vehicle \$ 8525.00

2. Cash Price Accessories \$ 0.00

3. Other (Nontaxable)

Describe \$

Describe \$

B. Document Preparation Fee (not a governmental fee) \$ 45.00 (B)

C. Smog Fee Paid to Seller \$ 0.00 (C)

D. Sales Tax (on taxable items in A+B+C) \$ 707.03 (D)

E. Optional DMV Electronic Filing Fee \$ N/A (E)

F. (Optional) Service Contract \$ 573.00 (F)

G. (Optional) Service Contract \$ (G)

H. Prior Credit or Lease Balance paid by Seller to \$ N/A (H)

(see downpayment and trade-in calculation)

I. (Optional) Gap Contract (to whom paid) AMERICAN \$ 400.00 (I)

J. Other (to whom paid) \$ N/A (J)

For

Total Cash Price (A through J) \$ 10247.03 (1)

2. Amounts Paid to Public Officials

A. License Fees \$ 117.00 (A)

B. Registration/Transfer/Titling Fees Estimated Fee \$ N/A (B)

C. California Title Fees \$ 2.00 (C)

D. Other \$ N/A (D)

510-923-7495
T-443 P-010/013 F-824
From INSPECTION DEPARTMENT
Oct-19-2004 12:56

Total Official Fees (A through Estimated Fee \$ 110.00 (2)

3. Amount Paid to Insurance Companies
(Total premiums from Statement of Insurance column a + b) \$ (3)

4. Smog Certification Fee Paid to State \$ (4)

5. Subtotal (C through 4) \$ 10388.03 (5)

6. Total Downpayment

A. Agreed Trade-In Value VIN/A Make N/A \$ N/A (A)
Model N/A Odom N/A
VIN N/A

B. Less Prior Credit or Lease Balance \$ N/A (B)

C. Net Trade-In (A less B) (indicate if a negative number) \$ N/A (C)

D. Deferred Downpayment \$ N/A (D)

E. Manufacturer's Rebate \$ N/A (E)

F. Other \$ N/A (F)

G. Cash \$ 2800.00 (G)

Total Downpayment (C through G) \$ 2800.00 (6)

(If negative, enter zero on line 6 and enter the amount less than zero as a positive number on line 1H above)

7. Amount Financed (5 less 6) \$ 7568.03 (7)

Seller may keep part of these amounts.

SELLER ASSISTED LOAN
BUYER MAY BE REQUIRED TO PLEDGE SECURITY FOR THE LOAN, AND WILL BE OBLIGATED FOR THE INSTALLMENT PAYMENTS ON BOTH THIS RETAIL INSTALLMENT SALE CONTRACT AND THE LOAN.

Proceeds of Loan From: N/A

Amount \$ N/A Finance Charge \$ N/A

Total \$ N/A Payable in N/A

Installments of \$ N/A \$ N/A

from this Loan is shown in item 6D.

AUTO BROKER FEE DISCLOSURE
If this contract reflects the retail sale of a new motor vehicle, the sale is not subject to a fee received by an autobroker from us unless the following box is checked:

☐ Name of autobroker receiving fee, if applicable:

NOTICE OF RESCISSION RIGHTS
Buyer and Co-Buyer sign here, the provisions of the Rescission Rights section on the back giving the Seller the right to rescind if Seller is unable to assign this contract

Co-Buyer X

The Annual Percentage Rate may be Negotiable With the Dealer.

OPTION: ☐ You pay no finance charge if the Amount Financed, item 7, is paid in full on or before _____, Year _____, SELLER'S INITIALS _____

THE MINIMUM PUBLIC LIABILITY INSURANCE LIMITS PROVIDED IN LAW MUST BE MET BY EVERY PERSON WHO PURCHASES A VEHICLE. IF YOU ARE UNSURE WHETHER OR NOT YOUR CURRENT INSURANCE POLICY WILL COVER YOUR NEWLY ACQUIRED VEHICLE IN THE EVENT OF AN ACCIDENT, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

WARNING:
YOUR PRESENT POLICY MAY NOT COVER COLLISION DAMAGE OR MAY NOT PROVIDE FOR FULL REPLACEMENT COSTS FOR THE VEHICLE BEING PURCHASED. IF YOU DO NOT HAVE FULL COVERAGE, SUPPLEMENTAL COVERAGE FOR COLLISION DAMAGE MAY BE AVAILABLE TO YOU THROUGH YOUR INSURANCE AGENT OR THROUGH THE SELLING DEALER. HOWEVER, UNLESS OTHERWISE SPECIFIED, THE COVERAGE YOU OBTAIN THROUGH THE DEALER PROTECTS ONLY THE DEALER, USUALLY UP TO THE AMOUNT OF THE UNPAID BALANCE REMAINING AFTER THE VEHICLE HAS BEEN REPOSSESSED AND SOLD.

FOR ADVICE ON FULL COVERAGE THAT WILL PROTECT YOU IN THE EVENT OF LOSS OR DAMAGE TO YOUR VEHICLE, YOU SHOULD CONTACT YOUR INSURANCE AGENT.

THE BUYER SHALL SIGN TO ACKNOWLEDGE THAT HE/SHE UNDERSTANDS THESE PUBLIC LIABILITY TERMS AND CONDITIONS.

X

truth and accuracy of the information provided by you in connection with the Trade-In Vehicle. you represent that you have given a true payoff amount on the vehicle traded in. If the payoff amount is more than the amount shown above in item 6B as "Prior Credit or Lease Balance," you must pay Seller the excess on demand. If the payoff amount is less than the amount shown above in the difference to you.

Co-Buyer X

eligible for disability insurance. **DISABILITY INSURANCE MAY NOT COVER CONDITIONS FOR WHICH YOU HAVE SEEN A DOCTOR OR CHIROPRACTOR IN THE LAST 6 MONTHS (Refer to "Total Disabilities Not Covered" in your policy for details)**

You _____

Date _____ Co-Buyer Signature _____ Age _____

OPTIONAL GAP CONTRACT A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in item 1F. See your gap contract for details on the protection it provides. It is a part of this contract.

Term 12 Mos. AMERICAN Name of Gap Contract

You want to buy a gap contract.

OPTIONAL SERVICE CONTRACT(S) You want to purchase the service contract(s) written with the following company(ies) for the term(s) shown below for the charge(s) shown in item 1F and/or 1G above.

1.F Company ONE

Term 0 Mos. or 0 Miles

1.G

Term

Buy

HO

This contract contains the entire agreement between you and us relating to this contract. Any change to the contract must be in writing and both you and we must sign it. No oral changes are binding.

Buyer Initials

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EXHIBIT B

COMPLAINT

Krohn & Moss, Ltd.

Main Office
120 West Madison, 10th Floor
Chicago, Illinois 60602
www.consumerlawcenter.net

Writer's Direct Number
(800) 875-3666 Ext. 232
Writer's Direct Facsimile
(866) 431-5575
Writer's Direct E-Mail
tfriedman@consumerlawcenter.net

Licensed to Practice in Illinois / California

Also Located In:
California
Florida
Arizona
Georgia
Indiana
Missouri
Ohio
Wisconsin

October 27, 2004

American Honda Motor Company, Inc.
ATTN: Legal Department
1919 Torrance Blvd.
Mailstop 100-1C-3A
Torrance, CA 90501

RE: Don-Juan Goode v. American Honda Motor Company, Inc.

Vehicle: 2002 Honda VFR8002

VIN: JH2RC46102M4 [REDACTED]

Our File No.: L04028525A

Dear Sir or Madam:

Pursuant to California Civil Code 1793.22(b)(3), please be advised that this office represents the above-named individual regarding claims against your company pursuant to the Song-Beverly Warranty Consumer Warranty Act ("Lemon Law") and/or the Federal Magnuson-Moss Warranty Act with regard to the above-listed vehicle. Please direct all future contacts and correspondence to our office as such.

Having been formally notified of our representation, you are instructed not to contact our client under any circumstances. Direct all inquiries to this office. If you fail to act in conformity with this directive, injunctive relief will be sought against you.

Pursuant to California Civil Code 1794 (d) and/or 15 U.S.C. 2310(d), you are hereby notified that any settlement made with our client requires payment of our attorneys' fees. If you settle directly with our client and do not make arrangements for payment of our attorneys' fees, we will file suit against you. In addition, you are hereby notified of our attorneys' lien.

There are numerous defects and non-conformities present in my client's automobile for which relief is sought, and numerous attempts to repair the vehicle have been unsuccessful. These defects and non-conformities include, but are not limited to:

November 22, 2004

1. Defective engine as evidenced by not starting and repeatedly dying; and
2. Any additional complaints made by our client, whether or not they are contained in your company's records or on any repair orders.

The defects and non-conformities listed above constitute a substantial impairment of the use, value and/or safety of the vehicle. Because of these defects and non-conformities, my client has justifiably lost confidence in the vehicle.

Therefore, you are hereby notified that my client is revoking acceptance of this vehicle. My client has directed me to demand the cancellation of the contracts and the return of all funds paid towards this vehicle, including any trade-in value given, all collateral charges, finance charges and incidental and consequential damages.

To avoid any litigation, my client merely requests a refund for the defective vehicle, plus payment of our attorneys' fees pursuant to the fee-shifting provisions of the Lemon Law and/or Federal Magnuson-Moss Warranty Act. Our attorneys' fees are minimal at this stage and we would prefer to resolve this matter without the need for any more time spent on our part or on the part of your attorneys. A great deal of time, money and effort could be saved by all parties involved with a quick resolution of this claim.

Accordingly, if you wish to resolve this matter amicably, please feel free to contact my office. If the matter has not been resolved within fourteen (14) days from the date of this letter, a lawsuit will be filed.

Sincerely,

Todd M. Friedman
Attorney at Law

TMF/bs

Cc: Mr. Don-Juan Goode

CT CORPORATION
A WoltersKluwer Company

Service of Process

Transmittal

03/23/2005

Log Number 510067193

TO: Denise Hill
Honda North America, Inc.
700 Van Ness Avenue
Torrance, CA, 90501-

RE: **Process Served in California**

FOR: Honda North America, Inc. (Domestic State: CA)

RECEIVED

MAR 24 2005

HONDA NORTH AMERICA
LAW DEPARTMENT

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: [REDACTED] Vs Honda North America, Inc., et.al, Dft.

DOCUMENT(S) SERVED: Summons, Complaint, Notice of Case Management Conference

COURT/AGENCY: Superior Court of California, .
Case # YC050535

NATURE OF ACTION: Breach of Warranty

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 03/18/2005 at 11:10

APPEARANCE OR ANSWER DUE: Within 30 Days

ATTORNEY(S) / SENDER(S): Ellen R. Serbin, Attorney at Law
Perona, Langer, Beck, Lallande & Serbin
300 E. San Antonio Drive
Long Beach, CA, 90807
562-426-6155

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day, 791016944420

SIGNED: C T Corporation System

PER: Jere Keprios

ADDRESS: 818 West Seventh Street
Los Angeles, CA, 90017

TELEPHONE: 213-627-8252

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

*HONDA NORTH AMERICA, INC., a corporation
THOUSAND OAKS HONDA; and DOES 1 through 100, inclusive*

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTA DEMANDANDO EL DEMANDANTE):

STUART KIRK, an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

LOS ANGELES SUPERIOR COURT
Southwest District
825 Maple Ave.

Torrance, California 90503

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

ELLEN R. SERBIN, Attorney At Law
Perona, Langer, Beck, Lallande & Serbin
300 E. San Antonio Drive, Long Beach, CA 90807

PATRICK F. VALDEZ, Attorney At Law

(562) 426-6155

DATE: **MAR 09 2005**

Clerk, by

KEVIN A. CLARKE (Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **Honda North America, Inc**

- Under:
- | | |
|--|---|
| ☒ CCP 416.10 (corporation) | ☐ CCP 416.60 (minor) |
| ☐ CCP 416.20 (defunct corporation) | ☐ CCP 416.70 (conservatee) |
| ☐ CCP 416.40 (association or partnership) | ☐ CCP 416.90 (authorized person) |
| ☐ other (specify): | |
4. ☐ by personal delivery on (date):

1 ELLEN R. SERBIN, Attorney at Law, SB#128895
PATRICK F. VALDEZ, Esq., SB#212797
2 PERONA, LANGER, BECK, LALLANDE & SERBIN
A Professional Corporation
3 300 E. San Antonio Drive
Long Beach, California 90807-0948
4 (562) 426-6155 Fax: (562) 490-9823

5 KURT DELSACK, Esq., SB#
DELSACK & ASSOCIATES, P.C.
6 A Professional Law Corporation
1801 Century Park East, Suite 2400
7 Los Angeles, California 90067
(310) 475-1700 Fax: (310) 475-1799

8
9 Attorneys for Plaintiff, [REDACTED]

[SPACE BELOW FOR COURT USE ONLY]

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAR 09 2005

John A. Clarke, Executive Officer/Clerk

By T. Rhodes, Deputy

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES, SOUTHWEST DISTRICT**

12 [REDACTED] an individual,

13 Plaintiff,

14 v.

15 HONDA NORTH AMERICA, INC., a
corporation; THOUSAND OAKS
16 HONDA; and DOES 1 through 100,
inclusive,

17 Defendants.
18

CASE NO. YC050535

COMPLAINT:

1. **SONG-BEVERLY CONSUMER
WARRANTY ACT [CIVIL CODE
§1793.2, et al.]**
2. **UNFAIR BUSINESS
PRACTICES [BUSINESS AND
PROFESSIONS CODE §17200]**
3. **NEGLIGENCE**

19
20 Plaintiff alleges:

21
22 **FIRST CAUSE OF ACTION**

23 (By Plaintiff Against Defendants, Does 1 through 100, and Each of Them,

24 For Violation of Civil Code §1793.2, et seq.)

25 1. Plaintiff, [REDACTED] ("Plaintiff") is an individual, residing in the City of
26 Oak View, County of Ventura, State of California. Plaintiff is a consumer as defined
27 under Civil Code §1795.90.

28 ///

1 2. The Plaintiff is informed, believes and, based thereon alleges, that
2 Defendant, AMERICAN HONDA MOTOR CORPORATION, ("Honda") is a
3 corporation duly formed under the laws of the State of California, doing business in the
4 City of Torrance, County of Los Angeles, State of California.

5 3. Defendant, THOUSAND OAKS HONDA-SUZUKI ("Thousand Oaks"), is a
6 business, type of which is unknown to Plaintiff, doing business in the City of Thousand
7 Oaks, County of Los Angeles, State of California.

8 4. The true names and capacities, whether individual, corporate, associate
9 or otherwise, of Defendants, Does 1 through 100, inclusive, are unknown to Plaintiff at
10 this time, and Plaintiff, therefore, sues said Defendants by such fictitious names.
11 Plaintiff will amend this Complaint to allege the true names and capacities of the Doe
12 Defendants when such names and capacities are ascertained. Plaintiff is informed and
13 believes, and thereon alleges, that each Doe Defendant is legally responsible in some
14 manner for the events and happenings herein referred to and has thereby proximately
15 caused injuries and damages to Plaintiff as herein alleged.

16 5. Plaintiff is informed and believes, and thereon alleges, that at all times
17 herein mentioned, each defendant, including each Doe defendant, was the agent,
18 ostensible agent, servant, representative, associate, borrowed servant and/or
19 employee of each of the other defendants and was, at all times herein mentioned,
20 acting within the course and scope of such agency, ostensible agency, and/or
21 borrowed servant authority and employment, and with the consent, permission and/or
22 ratification of his/her/its co-defendants, and each of them. Plaintiff is informed and
23 believes, and thereon alleges, that each corporate employer, through its officers,
24 directors or managing agents, had advance knowledge of the unfitness of said agents
25 and/or employees and did employ such agents and/or employees with a conscious
26 disregard of the rights and safety of Plaintiff and/or has authorized or ratified the
27 wrongful conduct alleged herein.

28 ///

1 6. On or about December 28, 2002, Plaintiff purchased new a 2002 Honda
2 VFR Motorcycle, VIN No. JH2RC46462M [REDACTED] that was manufactured and/or
3 distributed by the Defendant Honda, Does 1 through 100, and each of them. Plaintiff
4 further alleges that he purchased the 2002 Honda VFR Motorcycle from L.A. Cycle
5 Sports located 977 West Hyde Park Boulevard, Inglewood, California 90302, a
6 dealership authorized by Defendant Honda, Does 1 through 100, and each of them, to
7 engage in the business of distributing and/or selling consumer motorcycles
8 manufactured by Defendant Honda, Does 1 through 100, and each of them, at retail.

9 7. Pursuant to Civil Code §1793.2, et seq., the Defendants, Does 1 through
10 100, and each of them, had a duty to fix and repair Plaintiff's 2002 Honda VFR
11 Motorcycle ("Motorcycle") within thirty (30) days of the Motorcycle being presented to
12 Defendants and each of them, for repairs.

13 8. Within eighteen (18) months after purchase, and less than 18,000 miles,
14 the Plaintiff's Motorcycle developed defects and conditions affecting the safety, value
15 or use of this vehicle likely to cause serious bodily injury if the vehicle was driven,
16 including, and not limited to, a defective engine causing sudden, unexpected stalling
17 during normal use, causing the Motorcycle to be completely inoperable.

18 9. Plaintiff notified Defendants, Does 1 through 100, and each of them, of
19 the Motorcycle's nonconformities described in Paragraph 8, by delivering the
20 Motorcycle to Defendant Thousand Oaks on March 26, 2004 and May 12, 2004, to
21 repair the non-conformities described in Paragraph 8. The first time the Plaintiff
22 presented the Motorcycle while exhibiting the nonconformities described in Paragraph
23 8 to Defendant Thousand Oaks, the Motorcycle's odometer recorded the Motorcycle's
24 total mileage as 16,912 miles. On that, and subsequent, visits to Defendant Thousand
25 Oaks, Defendants, Does 1 through 100, and each of them, failed to fix and/or repair the
26 nonconformities described in Paragraph 8 without explanation.

27 ///

28 ///

1 10. Plaintiff's Motorcycle has been out of service for more that thirty (30) days
2 within 18 months and 18,000 miles from the date of purchase due to the non-
3 conformities described in Paragraph 8.

4 11. Pursuant to Civil Code §1793.2, the Defendants, Does 1 through 100, and
5 each of them, were required to either replace the Plaintiff's Motorcycle with a new
6 motorcycle or make restitution to the Plaintiff in an amount equal to the actual price
7 paid because the Motorcycle suffered a nonconformity that resulted in a condition that
8 was likely to cause death or serious bodily injury when driven, and that nonconformity
9 had been subject to repair on two (2) or more occasions, or otherwise rendered the
10 Motorcycle out of service for a cumulative total of more than thirty (30) calendar days.

11 12. Defendants, Does 1 through 100, and each of them, do not maintain a
12 qualified third-party dispute resolution process that substantially complies with
13 Civil Code §1793.22. Prior to filing this lawsuit, Plaintiff served upon Defendant Honda,
14 Does 1 through 100, and each of them, a written notice requesting that it comply with
15 its obligations pursuant to Civil Code §1793.2(d). Despite Defendants, Does 1 through
16 100, and each of their, violation of Civil Code §1793.2(d) and its notice thereof,
17 Defendants, Does 1 through 100, and each of them, failed to comply with their
18 obligations thereunder within a reasonable time.

19 13. The Defendants, Does 1 through 100, failed to comply with their
20 obligations under Civil Code §1793.2 by refusing to replace Plaintiff's Motorcycle or
21 restitution to Plaintiff as described in Paragraph 7. Defendants, Does 1 through 100,
22 and each of them, and their authorized representatives, were aware that they were
23 unable to service or repair the Plaintiff's Motorcycle to conform with the provisions of
24 Civil Code §1793.22 after a reasonable number of repair attempts, but refused to
25 replace the Plaintiff's Motorcycle or make restitution despite Plaintiff's requests.

26 14. Plaintiff has been damaged in the sum of \$10,405.00, as a result of
27 Defendants, Does 1 through 100, and each of their, failure to comply with their

28 ///

1 obligations under Civil Code §1973.2. and, therefore, brings this action pursuant to the
2 provisions of Civil Code §1794.

3 15. Defendants', Does 1 through 100, and each of their, failure to comply with
4 their obligations under Civil Code §1793.2(b) was willful, in that Defendant Honda,
5 Does 1 through 100, and each of them, and their representatives, were aware that they
6 were obligated to service or repair the nonconformities as described Paragraphs 8
7 within thirty (30) days, but still failed and refused to replace the Motorcycle, or make
8 restitution to Plaintiff. Plaintiff is therefore entitled to a civil penalty of two (2) times his
9 actual damages pursuant to Civil Code §1794(a) and (b), and attorneys' fees and costs
10 pursuant to Civil Code §1794(d).

11 12 **SECOND CAUSE OF ACTION**

13 (For Unfair Business Practices – California Business and
14 Professions Code §17200, et seq., By Plaintiff Against Defendant Honda,
15 and Does 51 through 75)

16 16. Plaintiff re-alleges Paragraphs 1 through 15 of the First Cause of Action,
17 and incorporates them herein by reference as though set forth in full.

18 17. At all times relevant to this action, Defendant Honda, and Does 51
19 through 100, and each of them, gave Plaintiff an express warranty ("Honda warranty")
20 with the purchase of the Motorcycle. Under the Honda warranty, during the first twelve
21 (12) months after the sale of the Motorcycle, or within 12,000 miles, Defendant Honda
22 was required to repair or replace any part of a motorcycle which is proven to be
23 defective in material or factory workmanship under normal use while the warranty is in
24 force.

25 18. At all times relevant to this action, the Honda warranty violated the
26 provision of the Song-Beverly Consumer Warranty Act, Civil Code §1793.2, et seq., in
27 that California consumer protection law establishes a presumption that a motor vehicle
28 is a "lemon" if within eighteen (18) months or 18,000 miles that new motor vehicle

1 develops a nonconformity and/or defect that results in a condition that is likely to cause
2 death or serious bodily injury when driven, and that nonconformity has been subject to
3 repair on two (2) or more occasions, or otherwise rendered the motor vehicle out of
4 service for a cumulative total of more than thirty (30) calendar days.

5 19. Although the Motorcycle was presented within eighteen (18) months after
6 purchase, and within 18,000 miles, and Defendants failed to repair it, Defendant Honda
7 and Does 51 through 75, and each of them, refused to make restitution as required
8 under Civil Code §1793.2, et seq, on the grounds that Plaintiff did not present the
9 Motorcycle during the warranty period set forth in the Honda warranty.

10 20. At all times relevant to this action, Defendant Honda, and Does 51
11 through 75, and each of them, engaged in unfair, unlawful and deceptive business
12 practices in violation of Business and Professions Code §17200, et seq. by enforcing
13 and/or imposing an express warranty that violates the Song-Beverly Consumer
14 Warranty Act, Civil Code §1793.2, et seq.

15 21. As a direct result of the conduct of Defendant Honda, and Does 51
16 through 75, and each of them, Defendant Honda should be enjoined from engaging in
17 unlawful business practices by enforcing the warranty period in the Honda warranty
18 and refusing to accept the return of the Motorcycle as a nonconforming vehicle as
19 defined under the Song-Beverly Consumer Warranty Act.

20 22. A further direct result of the conduct of Defendant Honda and Does 51
21 through 75, and each of them, Plaintiff should be awarded restitution in the sum of
22 \$10,405.00, for all monies incurred for the purchase and registration of the Motorcycle.

23 23. The Plaintiff is further entitled to his attorney's fees under Business &
24 Professions Code, §17200.

25 ///

26 ///

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 (For Negligence By Plaintiff [REDACTED] Against Defendant Thousand Oaks
3 Honda-Suzuki, Does 51 through 100, and Each of Them)

4 24. Plaintiff re-alleges Paragraphs 1 through 15 of the First Cause of Action,
5 Paragraphs 17 through 23 of the Second Cause of Action, and incorporates them
6 herein by reference as though set forth in full.

7 25. At all times relevant to this action, the Defendant Thousand Oaks, Does
8 76 through 100, and each of them, is a Honda motorcycle dealership, in the business of
9 selling and repairing Honda motorcycles. Plaintiff further alleges that Defendant
10 Thousand Oaks, Does 76 through 100, and each of them, had a duty to maintain, repair
11 and/or service the Plaintiff's Motorcycle so that it could be operated safely, free of the
12 defects and conditions described in Paragraph 8.

13 26. At all times relevant to this action, Defendant Thousand Oaks, Does 76
14 through 100, and each of them, employed mechanics who at all times mentioned in this
15 Complaint were acting within the course and scope of their employment with Defendant
16 Thousand Oaks, Does 76 through 100, and each of them.

17 27. At all times relevant to this action, Defendant, Does 76 through 100, had a
18 duty to maintain, repair, and service the Motorcycle in a workmanlike manner, and in
19 compliance with all warranties, expressed or implied, on the Motorcycle.

20 28. On at least two (2) separate occasions, between March 26, 2004 and May
21 12, 2004, Plaintiff delivered his Motorcycle to Defendant Thousand Oaks, Does 76
22 through 100, and each of them, for the purpose of maintaining, repairing, and/or
23 servicing the Motorcycle to remedy the defects and conditions described in Paragraph
24 8.

25 29. At all times relevant to this action, Defendant Thousand Oaks, Does 76
26 through 100, and each of them, breached their duty of care by negligently repairing,
27 maintaining, and/or servicing the Motorcycle by failing to correct the defects described
28 in Paragraph 8.

1 30. As a direct result of the negligence of Defendant Thousand Oak's, Does
2 76 through 100, and each of them, the Plaintiff sustained damages including, and not
3 limited to, an amount equal to the cost of replacing the Motorcycle. All of said damages
4 to be proven at trial.

5
6 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of
7 them as follows:

8
9 **FOR THE FIRST CAUSE OF ACTION:**

- 10 1. For restitution in the sum of \$10,405.00;
11 2. For interest at the legal rate from the date of the violation of
12 Civil Code §1793.22;
13 3. For a civil penalty in the amount of two (2) times Plaintiff's total damages
14 pursuant to Civil Code §1794(c) and (e).
15 4. For attorneys' fees and costs pursuant to Civil Code §1793.2, et. seq.

16
17 **FOR THE SECOND CAUSE OF ACTION :**

- 18 5. For restitution from Defendant Honda in the sum of \$10,405.00;
19 6. For an order enjoining Defendant Honda from engaging in unfair business
20 practices by enforcing the warranty period in the Honda warranty and
21 by refusing to accept the return of the Motorcycle in compliance with
22 Civil Code §1793.2, et. seq.;
23 7. For attorneys fees' and costs pursuant to Business and Professions Code
24 §17200, et. seq.;

25
26 **FOR THE THIRD CAUSE OF ACTION :**

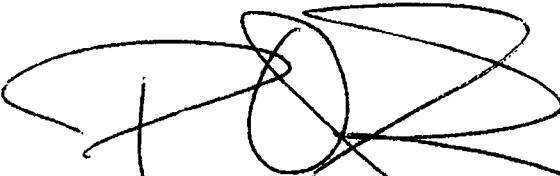
- 27 8. For compensatory damages according to proof at the time of trial;
28 9. For consequential damages according to proof at the time of trial;

1 **FOR ALL CAUSES OF ACTION**

2 10. For costs of suit incurred herein; and,

3 11. For such other and further relief as the court deems just and
4 proper.

5
6
7
8 Dated: March 8, 2005


9 **PATRICK F. VALDEZ**, A Member of
10 **PERONA, LANGER, BECK, LALLANDE &**
11 **SERBIN**, A Professional Corporation,
12 Attorneys for Plaintiff, **STUART KIRK**
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SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		CONFIRMED COPY OF ORIGINAL FILED Los Angeles Superior Court MAR 09 2005 John A. Clarke, Executive Officer/Clerk By T. Rhodes, Deputy CASE NUMBER: YC050535
COURT-HOUSE ADDRESS: 825 MAPLE AVENUE TORRANCE, CA 90503		
PLAINTIFF: [REDACTED]		
DEFENDANT: <i>Donita D. Hernandez</i>		
NOTICE OF CASE MANAGEMENT CONFERENCE		

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

You are ordered to serve this notice of hearing to all parties/attorneys of record forthwith, and meet and confer with all parties/attorneys of record about the matters to be discussed no later than 30 days before the Case Management Conference.

Your Case Management Conference has been scheduled at the courthouse address shown above on:

10/8/05

Date: <i>8-11-05</i>	Time: <i>8:30</i>	Div/Dept: <i>CR</i>
----------------------	-------------------	---------------------

Pursuant to CRC 212, a completed Case Management Statement (Judicial Council form # CM-110) must be filed at least 15 calendar days prior to the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference.

At the Case Management Conference, the Court may make pretrial orders including the following, but not limited to, an order establishing a discovery schedule; an order referring the case to Alternative Dispute Resolution (ADR); an order reclassifying the case; an order dismissing fictitious/unnamed defendants; an order setting subsequent conference and the trial date; or other orders to achieve the goals of the Trial Court Delay Reduction Act (GC 68600 et. seq.)

Notice is hereby given that if you do not file the Case Management Statement or appear and effectively participate at the Case Management Conference, the Court may impose sanctions (including dismissal of the case, striking of the answer and payment of money), pursuant to LASC Local Rules Chapter 7, CCP Sections 177.5, 583.150, 586.360 and 583.420 and GC Section 68608 (b).

Date: *3-9-05*

Judge/Commissioner

Jean Marusinka

CERTIFICATE OF SERVICE

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Management Conference upon each party or counsel named below:

- ☐ by depositing in the United States mail at the courthouse in _____, California, one copy of the original filed herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid.
- ☒ by personally giving the party notice upon filing of the complaint.

Date: _____

John A. Clarke, Executive/Officer Clerk

By _____, Deputy Clerk

7/11/05

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: (Aviso a Acusado)
AMERICAN HONDA MOTOR COMPANY,
LA CYCLE SPORTS,
and DOES 1-20

HONDA NORTH AMERICA
LAW DEPARTMENT

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

REC'D ON 11/27/02 BY T. Skelton
SENT TO LEGAL
RECEIVED BY: [Signature]
DATE: 11/27/02 TIME: 2:50 pm

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)

NEIL ROBERTSON

RECEIVED
NOV 27 2002

You have **30 CALENDAR DAYS** after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book.)

Después de que le entreguen esta citación judicial usted tiene un plazo de **30 DIAS CALENDARIOS** para presentar una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: *(El nombre y dirección de la corte es)*
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT
111 N. HILL STREET
LOS ANGELES, CALIFORNIA 90012-3117

CASE NUMBER: *(Número del Caso)*
EC285596

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)
Lawrence J. Hutchens
9047 Flower Street
Bellflower, CA 90706-5708
(562) 804-0600

DATE: **NOV 20 2002**
(Fecha)

JOHN A. CLARKE, CLERK, by [Signature]
(Claro)

C.L. Coleman, Deputy
(Delegado)



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): American Honda Motor Co.
under:
☒ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other:
4. ☒ by personal delivery on (date): 11-27-02

- ☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (individual)

PLEASE CONFORM
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IN ENVELOPE PROVIDED

ORIGINAL FILED

NOV 20 2002

**LOS ANGELES
SUPERIOR COURT**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

Case No. **BC285596**

Plaintiff,

v.

AMERICAN HONDA MOTOR COMPANY,
LA CYCLE SPORTS,
and DOES 1-20,

Defendants.

**COMPLAINT FOR DAMAGES
BASED ON VIOLATION OF
SONG-BEVERLY CONSUMER
WARRANTY ACT;
RESCISSION AND
RESTITUTION; REVOCATION
OF ACCEPTANCE**

PLAINTIFF NEIL ROBERTSON ALLEGES:

I

Plaintiff entered into the contract in the above-entitled case in
the City of Inglewood, County of Los Angeles, State of California.

///

///

///

II

1. Defendant, AMERICAN HONDA MOTOR COMPANY, and DOES 1 to 10 is and at all times herein mentioned was a corporation organized and existing under the laws of the State of California.

2. Defendant, LA CYCLE SPORTS, and DOES 11 to 20 is and at all times herein mentioned was a corporation organized and existing under the laws of the State of California.

**FIRST CAUSE OF ACTION - VIOLATION OF SONG-BEVERLY
CONSUMER WARRANTY ACT AGAINST DEFENDANT AMERICAN
HONDA MOTOR COMPANY AND DOES 1-10.**

I

On or about the year 2002, AMERICAN HONDA MOTOR COMPANY manufactured the following consumer goods: a 2002 Honda VFR, Serial Number JH2RC46162M[REDACTED] AMERICAN HONDA MOTOR COMPANY manufactured this consumer goods for its eventual sale to retail buyers. Defendant AMERICAN HONDA MOTOR COMPANY appended to such goods an express warranty; undertaking to preserve or maintain the utility or performance of the goods by means of a written statement designed to accompany the product.

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1 II

2
3 On or about February 16, 2002, at Inglewood, California, a retail
4 merchant, LA CYCLE SPORTS sold the subject motorcycle to the plaintiff
5 for his personal use, at retail for the amount of \$11,085.00. A true
6 copy of the sales contract between the parties is attached hereto as
7 Exhibit A and made a part hereof by reference.
8

9 III

10
11 In connection with the sale, Plaintiff received the express
12 warranty of the manufacturer in that the written statement of Defendant,
13 AMERICAN HONDA MOTOR COMPANY and DOES 1-10 described above, accompanied
14 the product.
15

16 IV

17
18 Plaintiff discovered that said motorcycle failed to conform to the
19 manufacturer's specifications, in that the 2002 Honda VFR was
20 defectively manufactured, designed or assembled. Plaintiff thereon
21 attempted to act on Defendant's express warranty, as subject to the
22 requirements of the Song-Beverly Act, under which Defendant AMERICAN
23 HONDA MOTOR COMPANY was required to and did maintain local service and
24 repair facilities.
25

26 ///

27 ///

V

However, on or about June 7, 2002 Defendant, AMERICAN HONDA MOTOR COMPANY and DOES 1-10 willfully violated the provisions of the Act and breached the express warranty made to Plaintiff, in that defendant AMERICAN HONDA MOTOR COMPANY failed to service and repair the motorcycle to conform to its applicable warranties within thirty (30) days and after a reasonable number of attempts for the following complaint(s): engine stalls.

In addition, AMERICAN HONDA MOTOR COMPANY failed to return the consideration paid by Plaintiff, or failed to replace the defective motorcycle. Plaintiff performed all conditions precedent necessary to require the contractual performance of services by Defendant. Plaintiff gave notification to Defendant on or about May 21, 2002, but Defendant, although receiving such notification, failed to replace such motorcycle or return consideration paid, although Plaintiff persisted in reminding Defendant of its warranty obligation.

VI

Plaintiff was damaged as a result of such willful breach and violation in that Plaintiff has paid LA CYCLE SPORTS \$11,085.00.

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///

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VII

By reason of Defendant's failure to restore the consideration paid by Plaintiff, Plaintiff has been specifically damaged in the sum of \$11,085.00. Pursuant to California Civil Code Section 1794, Plaintiff is entitled to actual damages and a civil penalty which shall not exceed two times the amount of actual damages and reasonable attorney fees according to proof.

**SECOND CAUSE OF ACTION: RESCISSION AND
RESTITUTION BASED ON BREACH OF EXPRESS
WARRANTIES AND FAILURE OF CONSIDERATION
AGAINST DEFENDANT LA CYCLE SPORTS
AND DOES 11-20.**

I

Plaintiff refers to the First Cause of Action and incorporates it as a part hereof. On or about February 16, 2002, Plaintiff and LA CYCLE SPORTS entered into a written contract, a copy of which is attached, marked Exhibit A and made a part hereof by reference, by the terms of which Plaintiff was to pay said Defendant the sum of \$11,085.00. For this consideration, LA CYCLE SPORTS was to deliver to Plaintiff a 2002 Honda VFR.

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///

///

1 II

2
3 On or about February 16, 2002, plaintiff paid LA CYCLE SPORTS the
4 sum of \$11,085.00 as required by the sales contract, and thereafter
5 performed everything required by the contract to be performed by
6 Plaintiff.

7
8 III

9
10 Despite numerous demands by Plaintiff to do so, Defendant AMERICAN
11 HONDA MOTOR COMPANY has failed and has refused to perform the conditions
12 of its warranty with Plaintiff, in that it has failed to repair the
13 subject motorcycle so that it is in a drivable condition even after a
14 reasonable number of attempts at repair.

15
16 IV

17
18 Plaintiff intends service of Summons of this Complaint to serve as
19 notice of rescission of the aforementioned contract, and will tender the
20 motorcycle on condition that Defendant LA CYCLE SPORTS restores to
21 Plaintiff the consideration advanced by Plaintiff in the sum of
22 \$11,085.00 Defendant refuses, and continues to refuse to return said
23 consideration or to recognize that said contract has been rescinded.

24 ///

25 ///

26 ///

V

Plaintiff will suffer irreparable and substantial harm if consideration furnished by Plaintiff in the sum of \$11,085.00 with interest thereon at the rate of ten percent per annum from February 16, 2002, is not restored.

**THIRD CAUSE OF ACTION: REVOCATION OF
ACCEPTANCE AGAINST DEFENDANT LA CYCLE
SPORTS AND DOES 11-20**

I

Plaintiff refers to the First and Second Causes of Action and incorporates them as a part hereof. On or about February 16, 2002, Plaintiff and LA CYCLE SPORTS entered into a written contract, a copy of which is attached, marked Exhibit A and made a part hereof by reference, by the terms of which Plaintiff was to pay said Defendant the sum of \$11,085.00. For this consideration, LA CYCLE SPORTS was to deliver to Plaintiff a 2002 Honda VFR.

///

///

///

1 II

2
3 On or about February 16, 2002, plaintiff paid LA CYCLE SPORTS, the
4 sum of \$11,085.00 as required by the sales contract, and thereafter
5 performed everything required by the contract to be performed by
6 Plaintiff, including monthly payments.

7
8 III

9
10 Despite numerous demands by Plaintiff to do so, Defendant AMERICAN
11 HONDA MOTOR COMPANY has failed and has refused to perform the conditions
12 of its warranty with Plaintiff, in that it has failed to repair the
13 subject motorcycle so that it is in a drivable condition even after a
14 reasonable number of attempts at repair.

15
16 IV

17
18 Plaintiff intends service of Summons of this Complaint to serve as
19 notice that plaintiff has revoked acceptance of the aforementioned
20 contract, and will tender the motorcycle on condition that Defendant LA
21 CYCLE SPORTS restores to Plaintiff the consideration advanced by
22 Plaintiff in the sum of \$11,085.00. Defendant refuses, and continues to
23 refuse to return said consideration or to recognize that plaintiff has
24 revoked acceptance of said contract.

25 ///

26 ///

V

Plaintiff will suffer irreparable and substantial harm if consideration furnished by Plaintiff in the sum of \$11,085.00 with interest thereon at the rate of ten percent per annum from February 16, 2002, is not restored.

///

///

///

1 WHEREFORE, Plaintiff prays for judgment on the First Cause of
2 Action as follows;

3 1. For three times general damages according to proof as provided
4 by California Civil Code beginning at section 1794.

5 2. For incidental and consequential damages pursuant to Civil
6 Code §1794 (b) (1) and (2) in an amount to be determined by the court.

7 3. For reasonable attorney's fees as provided by California Civil
8 Code Section 1794.

9 4. For costs of suit herein.

10 5. For such other and further relieve as the Court may deem
11 proper.

12 Plaintiff prays for judgment on the Second Cause of Action as
13 follows:

14 1. A determination by the Court that said contract has been
15 rescinded and ordering a restitution of the consideration paid by
16 Plaintiff in the sum of \$11,085.00 with interest at the rate of ten
17 percent per annum from February 16, 2002.

18 2. For incidental and consequential damages pursuant to
19 Commercial Code Section 2711 through 2715 according to proof.

20 3. For reasonable attorney's fees as provided by California Civil
21 Code Section 1717.

22 4. For costs of suit herein.

23 5. For such other and further relief as the Court may deem proper.

24 ///

25 ///

26 ///

1 Plaintiff prays for judgment on the Third Cause of Action as
2 follows:

3 1. A determination by the Court that plaintiff has revoked
4 acceptance of said contract and ordering restitution of the
5 consideration paid by Plaintiff in the sum of \$11,085.00 with interest
6 at the rate of ten percent per annum from February 16, 2002.

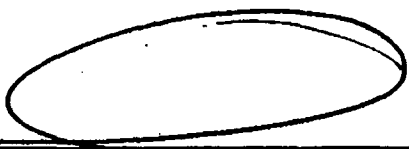
7 2. For incidental and consequential damages pursuant to
8 Commercial Code Section 2711 through 2715 according to proof.

9 3. For reasonable attorney's fees as provided by California Civil
10 Code Section 1717.

11 4. For costs of suit herein.

12 5. For such other and further relief as the Court may deem proper.

13
14 DATED: November 18, 2002

15
16 By 
17

LAWRENCE J. HUTCHENS
Attorney for Plaintiff

Attachment Q6

LABOR OPERATION
DESCRIPTIONS

LABOROP	LABOROP DESCRIPTION
610199	BATTERY - STRAIGHT TIME REPLACE
610899	BATTERY - STRAIGHT TIME REPAIR
611100	ELECTRICAL - WIRE HARNESS (MAIN)
611135	ELECTRICAL - HANDLEBAR WIRE HARNESS
611199	WIREHARNESS - STRAIGHT TIME REPLACE
611499	WIREHARNESS - STRAIGHT TIME TEST
611899	WIREHARNESS - STRAIGHT TIME REPAIR
613499	CHARGING SYSTEM - STRAIGHT TIME TEST
616199	LIGHTS/HORN - STRAIGHT TIME REPLACE

PROBLEM CODE
DESCRIPTIONS

CODE	DESCRIPTION
02200	DAMAGE - BURNT/MELTED
06400	ELECTRICAL - SHORT/GROUNDED
06600	ELECTRICAL - POOR CONNECTION
06700	ELECTRICAL - INSUFFICIENT CHARGE RATE
06800	ELECTRICAL - OPEN/BURNT OUT CIRCUIT
80100	GOODWILL (AHM INTERNAL USE ONLY)