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13 UNITED STATES DISTRICT COURT

14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 RONDA ANN BROWNING, ELAUNAH  
PETRUSKO, DIVINA PAPPAS, BRIAN  
16 PAPPAS, KALI WESCOTT, ERIC  
WESCOTT, TONY BOATWRIGHT,  
17 CHUEN YONG, and DANIEL PINA,  
individually, and on behalf of other members  
18 of the general public similarly situated,

19 Plaintiffs,

20 v.

21 AMERICAN HONDA MOTOR CO., INC.,  
a California corporation, and HONDA  
22 MOTOR COMPANY LTD., a Japanese  
corporation,

23 Defendants.

Case No.: 5:20-cv-05417-BLF

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

- (1) Violation of Florida Deceptive and Unfair Trade Practices Act
- (2) Breach of Implied Warranty Pursuant to F.S.A. §§672.314, 680.212
- (3) Violation of the Ohio Consumer Sales Practices Act
- (4) Breach of Implied Warranty Pursuant to Ohio Rev. Code § 1345.01 *et seq.*
- (5) Violation of the Michigan Consumer Protection Act
- (6) Breach of Express Warranty Pursuant to Mich. Comp. Laws §§ 440.2313 and 440.2860
- (7) Breach of Implied Warranty Pursuant to Mich. Comp. Laws §§ 440.2314 and 440.2860
- (8) Violation of South Carolina Regulation of Manufacturers, Distributors, and Dealers Act, S.C. Code Ann. § 56-15-10, *et seq.*
- (9) Breach of Express Warranty Pursuant to S.C. Code Ann. § 36-2-313

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- (10) Breach of Implied Warranty Pursuant to S.C. Code Ann. § 36-2-314
- (11) Violation of Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code § 17.41, *et seq.*
- (12) Breach of Express Warranty Pursuant to Tex. Bus. & Com. Code §§ 2.313 and 2A.210
- (13) Breach of Implied Warranty Pursuant to Tex. Bus. & Com. Code §§ 2.314 and 2A.212
- (14) Viol. of California’s Consumers Legal Remedies Act
- (15) Viol. of Cal. Unfair Competition Law
- (16) Viol. of Cal. Song-Beverly Consumer Warranty Act;
- (17) Breach of Express Warranty under California Law; and
- (18) Unjust Enrichment

**DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1  
2 1. Plaintiffs Ronda Ann Browning, Elaunah Petrusko, Divina Pappas, Brian Pappas,  
3 Kali Wescott, Eric Wescott, Tony Boatwright, Chuen Yong, and Daniel Pina bring this action  
4 for themselves and on behalf of all Class Members, *i.e.*, all current and former owners or lessees  
5 who purchased or leased: any 2018-2019 Honda Odyssey equipped with a 9-speed automatic  
6 transmission (“ZF 9HP Automatic Transmission”) (collectively, “Class Vehicles”) designed,  
7 manufactured, marketed, distributed, sold, warranted, and/or serviced by American Honda  
8 Motor Co., Inc., (“AHMC”) and Honda Motor Company Ltd. (“HMC”) (collectively  
9 “Defendants”). Plaintiffs allege as follows:

10 2. This is a consumer class action concerning a failure to disclose material facts and  
11 a safety concern to consumers.

12 3. In 2014, faced with increasing United States Corporate Average Fuel Economy  
13 standards, Honda began equipping select vehicle models with a 9-speed “automatic”  
14 transmission designed to increase fuel economy. Unfortunately, the improved fuel economy  
15 came at a significant and undisclosed cost: rough and delayed shifting, loud noises during  
16 shifting, harsh engagement of gears, sudden, harsh accelerations and decelerations, and sudden  
17 loss of power.

18 4. “Instinctively responsive,” “firmly planted,” and “incredibly nimble” is how  
19 Mike Accavitti, a former vice president at Honda, characterized the ZF 9HP Transmission when  
20 it was first released in vehicles distributed, marketed, and sold by American Honda Motor  
21 Company, Inc., in 2014. However, the 2015 vehicles hit the market with reviews critical of the  
22 ZF 9HP Transmission. A journalist from Road & Track Magazine noted that the ZF 9HP  
23 Transmission “uses an electronic shifter...[that] takes an eternity to engage drive, its shifts are  
24 clunky, and it’s painfully slow to react to manual commands.”<sup>1</sup>

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27 <sup>1</sup>Jason Cammisa, *11 things you need to know about the 2015 Acura TLX*, Road &  
28 Track Magazine (Aug. 5, 2015), <http://www.roadandtrack.com/new-cars/news/a6338/2015-acura-tlx-first-drive-review/> (last visited May 5, 2016).

1           5.       The ZF 9HP Automatic Transmission’s unique 9.8 ratio spread and computer-  
2 controlled shifting were marketed as a significant technological advancement from previously  
3 employed six-speed automatic transmissions and were claimed to have better performance and  
4 fuel economy while maintaining the ease of use of traditional automatic transmissions.<sup>2</sup>

5           6.       Defendants failed to disclose to future owners and lessees that the ZF 9HP  
6 transmission contained one or more design and/or manufacturing defects that render the 2018  
7 through 2019 Honda Odyssey unsafe.

8           7.       Plaintiffs are informed and believe, and based thereon allege, that the Class  
9 Vehicles equipped with the ZF 9HP Automatic Transmission contain design defects that cause  
10 the transmission to exhibit the following: rough, delayed, or sudden shifting or failure to shift;  
11 grinding or other loud noises during shifting; harsh engagement of gears; sudden or harsh  
12 accelerations/decelerations; and sudden loss of power (the “Transmission Defect”).

13           8.       Traditional automatic transmissions use a set of gears that provides a given  
14 number of ratios. The transmission shifts between gears to provide the most appropriate ratio for  
15 a given situation. Normally, that means the transmission will automatically shift into lower  
16 gears for starting, middle gears for acceleration and passing, and higher gears for more fuel-  
17 efficient cruising. The ZF 9HP Automatic Transmission differs from traditional automatic  
18 transmissions in that it employs a 9.8 ratio spread, as opposed to 6, ideally allowing for shorter  
19 shifts between gears keeping the engine in a narrow, optimal band of RPMs for as long as  
20 possible, and contributing to greater fuel-efficiency. Additionally, the ZF 9HP Automatic  
21 Transmission borrows characteristics typically seen in manual transmissions, such as “dog  
22 clutches,” which use less power to shift than the friction clutches normally utilized in automatic  
23 transmissions. However, in contrast to manual transmissions, the ZF 9HP Automatic  
24 Transmission engages the dog clutches with computer software commands from an electronic

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26           <sup>2</sup> “The new 9-speed is substantially lighter...with a wider overall ratio range and more  
27 closely spaced individual gear ratios to enhance both performance and fuel efficiency.” Acura,  
28 *2015 Acura TLX: Overview Press Release* (Aug. 4, 2014),  
[http://www.acura.com/PressReleaseArticle.aspx?category=tlx&year=2014&id=7884-  
en#~pKn3TC4Wn3qMMY](http://www.acura.com/PressReleaseArticle.aspx?category=tlx&year=2014&id=7884-en#~pKn3TC4Wn3qMMY) (last visited May 5, 2016).



1           13.     As a result of the Transmission Defect, Honda issued a service campaign and  
2 multiple Technical Service Bulletins (“TSBs”) to its dealers in the United States, acknowledging  
3 defects in the ZF 9HP Automatic Transmission and attempting to address them. These service  
4 bulletins are discussed more fully *infra*.

5           14.     However, in the 2018-2019 Honda Odyssey vehicles, on information and belief,  
6 consumers continue to experience problems with their vehicles, despite the purported fixes,  
7 including: rough, delayed, or sudden shifting or failure to shift; grinding or other loud noises  
8 during shifting; harsh engagement of gears; sudden or harsh accelerations/decelerations; and  
9 sudden loss of power.

10           15.     On information and belief, despite knowledge from numerous consumer  
11 complaints, dealership repair orders, and TSBs, Honda has not issued a warranty extension for  
12 the Class Vehicles, has not recalled the Class Vehicles to repair the defects, and has not offered  
13 its customers a suitable repair or replacement free of charge.

14           16.     Because Honda will not notify Class Members that the ZF 9HP Automatic  
15 Transmission is defective, Plaintiffs and Class Members (as well as members of the general  
16 public) are subjected to potentially dangerous driving conditions that can occur without  
17 warning.

18           17.     The alleged Transmission Defect was inherent in each Class Vehicle and was  
19 present in each Class Vehicle at the time of sale.

20           18.     Honda knew about and concealed the Transmission Defect present in every Class  
21 Vehicle, along with the attendant dangerous safety problems, from Plaintiffs and Class  
22 Members, prior to the time of sale, lease, repair, and thereafter. In fact, instead of repairing the  
23 defects in the ZF 9HP Automatic Transmission, Honda performed work, such as software  
24 updates, that simply masked the defects.

25           19.     For instance, the Transmission Defect has plagued the Fiat Chrysler 2014 Jeep  
26 Cherokee equipped with the ZF 9HP Automatic Transmission since it was first introduced to the  
27 U.S. market. In fact, after several transmission-related delays of the Cherokee’s release, Sergio  
28 Marchionne, CEO of FCA US, told Automotive News that “[w]e have had to do an inordinate

1 amount of intervention” on the ZF 9HP Automatic Transmission to correct problems with the  
2 transmission software.<sup>4</sup> Before Honda’s release of the Class Vehicles, over a hundred Jeep  
3 Cherokee owners filed complaints with the National Highway Traffic Safety Administration  
4 (“NHTSA”),<sup>5</sup> and FCA had already issued three TSBs relating to problems with the ZF 9HP  
5 Automatic Transmission.<sup>6</sup> On information and belief, Honda was aware of the Transmission  
6 Defect through its analysis of the ZF 9HP Automatic Transmission’s prior application and use  
7 by other manufacturers, and by Honda’s own use of the ZF 9HP Automatic Transmission in  
8 predecessor vehicles, including the Acura TLX, beginning with the 2015 model year, and the  
9 Honda Pilot, beginning with the 2016 model year.

10 20. If they had known about these defects at the time of sale or lease, Plaintiffs and  
11 Class Members would not have purchased or leased the Class Vehicles or would have paid less  
12 for them.

13 21. As a result of their reliance on Defendants’ omissions, owners and lessees of the  
14 Class Vehicles suffered an ascertainable loss of money, property, and value of their Class  
15 Vehicles. Additionally, as a result of the Transmission Defect, Plaintiffs and Class Members  
16 were harmed and suffered actual damages in that the Class Vehicles’ transmission components  
17 are substantially certain to fail or require replacement or repair, before their expected useful life  
18 has run.

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23 <sup>4</sup> See Larry P. Vellequette, *Another fix for Jeep’s troubled 9-speed*, Automotive News  
24 (Feb. 2, 2015, 12:01AM), <http://www.autonews.com/article/20150202/OEM01/302029930/another-fix-for-jeeps-troubled-9-speed> (last visited May 18, 2016).

25 <sup>5</sup> *Id.*

26 <sup>6</sup> FCA issued TSB 21-013-13 on or around November 14, 2013, instructing dealers to  
27 evaluate and identify “poor shift quality” if 2014 Jeep Cherokee owners “indicate that their  
28 transmission shift quality does not meet their expectations.” FCA then issued TSB 21-014-13  
on or around December 19, 2013, instructing dealers to reprogram the TCM to cure  
“Inconsistent and/or harsh” 1-2 and 2-3 upshifts. Further, FCA issued TSB 21-018-14 on or  
around May 15, 2014, which superseded the previous TSB and instructed dealers to perform a  
software update to cure a number of transmission malfunctions.

**PARTIES**

**PLAINTIFF RONDA BROWNING**

22. Plaintiff Ronda Ann Browning (“Browning”) is a Florida citizen who resides in Lake Alfred, Florida.

23. On July 3, 2018 Browning purchased a new 2019 Honda Odyssey from Coggin Honda of Orlando, an authorized Honda dealership in Orlando, Florida.

24. Browning purchased her vehicle primarily for personal, family, or household use. Honda manufactured, sold, distributed, advertised, marketed, and warranted the vehicle.

25. Passenger safety and reliability were important factors in Browning’s decision to purchase her vehicle. Before purchasing her vehicle, Browning spent time researching the Honda Odyssey online. Specifically, prior to purchase Browning researched the vehicle on Google, visited both the dealership and manufacturer’s websites, researched owner reviews online, and reviewed the window sticker. Additionally, at Coggin Honda of Orlando Browning test drive the Odyssey vehicle with a sales representative, and during the test drive they discussed the vehicle. Based on her research and her interaction with American Honda Motor Co. and its authorized dealership, Browning believed that the Honda Odyssey would be a safe and reliable vehicle.

26. Had Honda disclosed its knowledge of the Transmission Defect before Browning purchased her vehicle, Browning would have seen such disclosures and been aware of them. Indeed, Honda’s omissions were material to Browning. Like all members of the Class, Browning would not have purchased her Class Vehicle, or would have paid less for the vehicle, had she known of the Transmission Defect.

27. Within the first few months after purchasing her Honda Odyssey, Browning’s vehicle was exhibiting harsh or delayed shifting and engagement, delayed accelerations, banging into gear, hesitation, jerking, shuddering, lurching, and lack of power. Despite repair attempts, these problems continue at present. Browning feels unsafe in the vehicle. Moreover, the delayed acceleration presents a safety defect at intersections, because, for example, Browning cannot predictably accelerate her vehicle when turning left across oncoming traffic.



1 These symptoms worry Browning, particularly at intersections.

2 28. Ms. Browning returned the vehicle to the dealership on multiple occasions,  
3 complaining that the vehicle suffered from the acceleration and shifting problems, particularly  
4 delayed accelerations followed by banging into gear.

5 29. Specifically, at 8,447 miles, Plaintiff Browning delivered her vehicle to an  
6 authorized repair facility complaining that “WHEN ACCELERATING BELOW 40 MPH THE  
7 VAN IS JERKING IN BETWEEN.” The technician claimed to have “TEST DROVE THE  
8 VEHICLE AND IS WORKING AS DESIGNED.” The vehicle was returned to Plaintiff  
9 Browning without any repairs.

10 30. Plaintiff again returned her vehicle to an authorized repair facility at 9,746 miles  
11 complaining that “CUSTOMER STATES WHEN TAKING OFF THE TRANSMISSION  
12 JERKS....” In response the technician claims that the vehicle was “WORKING AS  
13 DESIGNED.” The vehicle was returned to Plaintiff Browning without any repairs.

14 31. During one service visit, Ms. Browning drove the vehicle accompanied by a  
15 service technician to demonstrate the problem. During the drive, the vehicle exhibited delayed  
16 acceleration followed by a bang, which the service technician acknowledged he heard. In  
17 response, the service technician kept the vehicle for further inspection and a software update.

18 32. However, after each visit, Ms. Browning’s vehicle was returned to her with no  
19 permanent repair.

20 33. Accordingly, despite these repair attempts, Browning continued to experience the  
21 Transmission Defect, including rough shifting, jumping, lunging, shaking, hesitation and  
22 delayed acceleration, until trading it in on a replacement vehicle at a large monetary loss.

23 34. At all times, Ms. Browning, like all Class Members, has attempted to drive her  
24 vehicle in a foreseeable manner and in the manner in which it was intended to be used.

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1 **PLAINTIFF ELAUNAH PETRUSKO**

2 35. Plaintiff Eluanah Petrusko is a Florida citizen who resides in St. Augustine,  
3 Florida.

4 36. In or around February 2019, Plaintiff Petrusko purchased a new 2019 Honda  
5 Odyssey from Coggin Honda, an authorized Honda dealership in Jacksonville, Florida.

6 37. Plaintiff Petrusko purchased her vehicle primarily for personal, family, or  
7 household use. Honda manufactured, sold, distributed, advertised, marketed, and warranted the  
8 vehicle.

9 38. Passenger safety and reliability were important factors in Plaintiff Petrusko's  
10 decision to purchase her vehicle. Before purchasing her vehicle, Ms. Petrusko spent time  
11 researching the Honda Odyssey online, and reviewed the Odyssey's options. At the Coggin  
12 Honda dealership, Ms. Petrusko reviewed the vehicle's Monroney window sticker and Honda's  
13 brochure for the 2019 Honda Odyssey, and she spoke with employees of the authorized Honda  
14 dealership regarding the vehicle and the fact that it is safe. Based on her research and interaction  
15 with American Honda Motor Co. and its authorized dealership, Ms. Petrusko believed that the  
16 Honda Odyssey would be a safe and reliable vehicle.

17 39. Had Honda disclosed its knowledge of the Transmission Defect before Plaintiff  
18 Petrusko purchased her vehicle, Plaintiff Petrusko would have seen such disclosures and been  
19 aware of them. Indeed, Honda's omissions were material to Plaintiff Petrusko. Like all members  
20 of the Class, Plaintiff Petrusko would not have purchased her Class Vehicle, or would have paid  
21 less for the vehicle, had she known of the Transmission Defect.

22 40. Within a few months of ownership, Plaintiff Petrusko's vehicle was exhibiting  
23 hesitation and delayed acceleration, with an accompanying sensation as if the transmission were  
24 slipping gears. After the delay, the vehicle would jerk forward, as if Plaintiff Petrusko had  
25 punched the accelerator to the floor.

26 41. On or around August 26, 2019, with 11,295 miles on the odometer, Ms. Petrusko  
27 brought her vehicle to Honda of the Avenues, an authorized Honda dealership in Jacksonville,  
28 Florida, complaining of the above symptoms. In response, the dealership told her, falsely, that

1 there was nothing wrong with her vehicle, and that for that reason, the dealership would not be  
2 performing any repairs. The dealership also admitted, however, that they received a large  
3 volume of similar complaints regarding the Honda Odyssey's transmission. Moreover, despite  
4 the fact that Ms. Petrusko's vehicle was only a few months old and well within warranty, the  
5 Honda dealership refused to pay for Ms. Petrusko's rental car while it examined Ms. Petrusko's  
6 transmission symptoms, so Ms. Petrusko had to pay for the rental car out of her own pocket.

7 42. Accordingly, despite this repair attempt, Plaintiff Petrusko continues to  
8 experience the Transmission Defect, including hesitation, delayed acceleration, and jerking  
9 forward as if the accelerator had been punched to the floor.

10 43. At all times, Plaintiff Petrusko, like all Class Members, has attempted to drive  
11 her vehicle in a foreseeable manner and in the manner in which it was intended to be used.

12 **PLAINTIFFS DIVINA AND BRIAN PAPPAS**

13 44. Plaintiffs Divina and Brian Pappas ("Pappases") are Ohio citizens who reside in  
14 Maumee, Ohio.

15 45. On March 6, 2018 the Pappases purchased a new 2018 Honda Odyssey from Jim  
16 White Honda, an authorized Honda dealership in Maumee, Ohio.

17 46. The Pappases purchased their vehicle primarily for personal, family, or  
18 household use. Honda manufactured, sold, distributed, advertised, marketed, and warranted the  
19 vehicle.

20 47. Passenger safety and reliability were important factors in the Pappases' decision  
21 to purchase their vehicle. Before purchasing their vehicle, the Pappases spent time researching  
22 the Honda Odyssey, and also relied on their years of ownership of prior Honda models.  
23 Specifically, prior to purchase the Pappases researched the vehicle on online and reviewed the  
24 window sticker. Additionally, at Jim White Honda the Pappases test drove the Odyssey vehicle  
25 with a sales representative, and during the test drive they discussed the vehicle, and specifically  
26 the Pappases asked the salesman about the Transmission. Based on her research and their  
27 interaction with American Honda Motor Co. and its authorized dealership, the Pappases  
28 believed that the Honda Odyssey would be a safe and reliable vehicle.

1           48.     Had Honda disclosed its knowledge of the Transmission Defect before the  
2 Pappases purchased their vehicle, the Pappases would have seen such disclosures and been  
3 aware of them. Indeed, Honda’s omissions were material to the Pappases. Like all members of  
4 the Class, the Pappases would not have purchased their Class Vehicle, or would have paid less  
5 for the vehicle, had they known of the Transmission Defect.

6           49.     Within the first day after purchasing their Honda Odyssey, the Pappases vehicle  
7 was exhibiting harsh or delayed shifting and engagement, delayed accelerations, banging into  
8 gear, hesitation, jerking, shuddering, lurching, and lack of power, sometimes feeling like it was  
9 going to stall. Despite repair attempts, these problems continue at present. The Pappases feels  
10 unsafe in the vehicle. Moreover, the delayed acceleration and feeling of imminent stall, present  
11 a safety defect at intersections, because, for example, the Pappases cannot predictably accelerate  
12 their vehicle when turning left across oncoming traffic. These symptoms worry the Pappases,  
13 particularly at intersections.

14           50.     On July 1, 2019 and at 21,294 miles the Pappases returned the vehicle to Jim  
15 White Honda complaining that the vehicle suffers from a vibration at 25-35 miles per hour when  
16 shifting. In response, the dealership “PERFORMED ROAD FORCE UPDATE” and returned  
17 the vehicle to the Pappases claiming, “VEHICLE OPERATING AS DESIGNED.”

18           51.     As recently as August 1, 2020 and at just under 36,000 miles, after waiting at a  
19 stop light to turn left, Mrs. Pappas pressed the accelerator and the vehicle started shaking  
20 violently for an elongated period and felt like it was stalling.

21           52.     Accordingly, despite these repair attempts, the Pappases continues to experience  
22 the Transmission Defect, including rough shifting, hesitation, and feelings of imminent stalling.

23           53.     At all times, the Pappases, like all Class Members, have attempted to drive their  
24 vehicle in a foreseeable manner and in the manner in which it was intended to be used.

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1 **PLAINTIFFS KALI AND ERIC WESCOTT**

2 54. Plaintiffs Kali and Eric Wescott (“Wescotts”) are Michigan citizens who reside  
3 in Grand Haven, Michigan.

4 55. On December 28, 2018 the Wescotts purchased a new 2019 Honda Odyssey from  
5 Betten Baker Honda, an authorized Honda dealership in Muskegon, Michigan.

6 56. The Wescotts purchased their vehicle primarily for personal, family, or  
7 household use. Honda manufactured, sold, distributed, advertised, marketed, and warranted the  
8 vehicle.

9 57. Passenger safety and reliability were important factors in the Wescotts’ decision  
10 to purchase their vehicle. Before purchasing their vehicle, the Wescotts spent time researching  
11 the Honda Odyssey, and also relied on their years of ownership of prior Honda models.  
12 Specifically, prior to purchase the Wescotts researched the vehicle on Google and reviewed the  
13 window sticker. Additionally, at Betten Baker Honda, the Wescotts test drove the Odyssey  
14 vehicle with a sales representative. Further, in discussing the vehicle with dealership personnel  
15 prior to purchase, the Wescotts were informed that the Honda Odyssey was top rated for safety  
16 and that it came with a top-of-the-line nine-speed transmission. Based on their research and her  
17 interaction with American Honda Motor Co. and its authorized dealership, the Wescotts  
18 believed that the Honda Odyssey would be a safe and reliable vehicle.

19 58. Had Honda disclosed its knowledge of the Transmission Defect before the  
20 Wescotts purchased their vehicle, the Wescotts would have seen such disclosures and been  
21 aware of them. Indeed, Honda’s omissions were material to the Wescotts. Like all members of  
22 the Class, the Wescotts would not have purchased their Class Vehicle, or would have paid less  
23 for the vehicle, had they known of the Transmission Defect.

24 59. Within the first couple of months after purchasing their Honda Odyssey, the  
25 Wescotts vehicle was stuck in second gear and would not shift. Thereafter, and within the first  
26 six months of ownership, the vehicle was exhibiting harsh or delayed shifting and engagement,  
27 delayed accelerations, hesitation, jerking, shuddering, lurching, and lack of power. Despite  
28 repair attempts, these problems continue at present. The Wescotts feels unsafe in the vehicle.

1 Moreover, the delayed acceleration and feeling of imminent stall, present a safety defect at  
2 intersections, because, for example, the Wescotts cannot predictably accelerate their vehicle  
3 when turning left across oncoming traffic. These symptoms worry the Wescotts, particularly at  
4 intersections.

5 60. On February 27, 2019 and at 4,744 miles, the Wescotts returned the vehicle to  
6 Betten Baker Honda complaining that “TRANSMISSION PROBLEM DETECTED MESSAGE  
7 CAME ON.” The technician found the cause to be “INTERNAL SWITCH DEFECT.”  
8 Specifically, the technician “INSTALLED SCAN TOOL AND CHECKED FOR STORED  
9 DTC’S. FOUND TRANSMISSION CODE U12AA STORED FOR LOST  
10 COMMUNICATION WITH THE SHIFTER. INSPECTED SHIFTER ASSEMBLY.  
11 CHECKED FOR PROPER HARNESS CONNECTION TO THE SHIFTER. ALSO CHECKED  
12 ALL CONNECTIONS AT THE TRANSMISSION CONTROL MODULE. ALL CHECK OK.  
13 REPLACED GEAR SELECTOR ASSEMBLY. CLEARED ALL CODES. ROAD TESTED  
14 VEHICILE MULTIPLE TIMES, AN SEVERAL MILES TO VERIFY REPAIRS.” The vehicle  
15 as then returned to the Wescotts.

16 61. On August 13, 2019 and at 12,559 miles, the Wescotts returned to Batten Baker  
17 Honda complaining that “BETWEEN 2ND AND 3RD GEARS THE TRANSMISSION FEELS  
18 LIKE IT SLIPS, THEN IT SLAMS INTO GEAR, DOESNT (sp) DO IT ALL THE TIME,  
19 GOES DAYS INBETEEN (sp) DOING TRASNMISSION SHIFTING THING, SOME DAYS  
20 IT DOES IT 12 TIMES A DAY.” In response the technician “ROAD TESTED VEHICLE  
21 SEVERAL MILES AND CHECKED TRANSMISISON OPERATION THROUGH ALL THE  
22 GEARS. I DID NOT NOTICE ANY ABNORMAL TRANSMISSION SHIFTING DURING  
23 ROAD TEST. I INSTALLED THE SCAN TOOL AND PERFORMED CHECKS. NO  
24 TRANSMISSION MALFUNCTIONS WERE FOUND. THESE 9 SPEED TRANSMISSIONS  
25 CAN SHIFT A LOT DIFFERENTLY THAN EXPECTED DUE TO HOW THE  
26 TRANSMISSION IS SET UP. **ACCORDING TO HONDA THIS IS A NORMAL  
27 CHARACTERISTIC OF THESE TRANSMISSIONS. I DID RELEARN ALL THE  
28 SHIFT POINTS TO SEE IF THAT CHANGES THE SHIFT QUALITY. THIS MAY**

1 **ONLY BE A TEMPORARY REPAIR. THERE IS NO PERMANENT FIX FOR THIS**  
2 **CONCERN AT THIS TIME.”** (emphasis added.) The vehicle was returned to the Wescotts  
3 with no permanent repair.

4 62. On August 19, 2019 and at 12,559 miles, the Wescotts returned to Batten Baker  
5 Honda requesting that the dealership “CHECK OPERATION OF 9 SPEED TRANSMISSION  
6 FOR SMOOTHNESS OF SHIFTING.” In response the technician “ROAD TESTED VEHICLE  
7 SEVERAL MILES WHILE CHECKING THE TRANSMISSION OPERATION.  
8 ACCORDING TO HONDA THIS TRANSMISSION CAN SHIFT HARDER AT LOWER  
9 SPEED DUE TO THE THROTTLE INPUT FROM THE CUSTOMER. AND IF THE  
10 CUSTOMER ACCELERATES CONSISTANTLY (sp) THROUGH ALL THE GEARS THE  
11 TRANSMISSION WILL SHIFT SMOOTH. I WAS ABLE TO DUPLICATE HARDER  
12 SHIFTS WHEN I ACCELERATED FROM A STOP AND THEN LET OFF THE THROTTLE  
13 A LITTLE AND THEN ACCELERATED AGAIN, OR WHEN SLOWING DOWN TO TURN  
14 A CORNER AND THEN ACCELERATING AGAIN. BUT IF I ACCELERATED THE  
15 VEHICLE FROM A STOP AND DID NOT CHANGE THE THROTTLE INPUT UNTIL I  
16 REACHED HIGHER SPEEDS THE TRANSMISSION SHIFTED SMOOTH. THIS IS A  
17 NORMAL CHARACTERISTIC OF THIS TRANSMISSION.” The vehicle was returned to the  
18 Wescotts with no permanent repair.

19 63. Accordingly, despite these repair attempts, the Wescotts continues to experience  
20 the Transmission Defect, including rough shifting, hesitation, and feelings of imminent stalling.

21 64. At all times, the Wescotts, like all Class Members, have attempted to drive their  
22 vehicle in a foreseeable manner and in the manner in which it was intended to be used.

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**PLAINTIFF TONY BOATWRIGHT**

65. Plaintiff Tony Boatwright (“Boatwright”) is a South Carolina citizen who resides in Hickory Grove, South Carolina.

66. In or around September 2018, Boatwright purchased a new 2019 Honda Odyssey from Honda Cars of Rock Hill, South Carolina, an authorized Honda dealership.

67. Boatwright purchased his vehicle primarily for personal, family, or household use. Honda manufactured, sold, distributed, advertised, marketed, and warranted the vehicle.

68. Passenger safety and reliability were important factors in Boatwright’s decision to purchase his vehicle. Before purchasing his vehicle, Boatwright spent time researching the Honda Odyssey online. Specifically, prior to purchase Boatwright researched the vehicle on Google, and visited both the dealership and manufacturer’s websites. Additionally, at Honda Cars of Rock Hill, he spoke with a sales representative about his requirements for the vehicle. Based on his research and his interaction with American Honda Motor Co. and its authorized dealership, Boatwright believed that the Honda Odyssey would be a safe and reliable vehicle.

69. Had Honda disclosed its knowledge of the Transmission Defect before Boatwright purchased his vehicle, Boatwright would have seen such disclosures and been aware of them. Indeed, Honda’s omissions were material to Boatwright. Like all members of the Class, Boatwright would not have purchased his Class Vehicle, or would have paid less for the vehicle, had he known of the Transmission Defect.

70. Within the first few months after purchasing his Honda Odyssey, Boatwright’s vehicle experienced many problems with the transmission. While slowing down and then attempting to reaccelerate, the vehicle fails to get into gear and does not accelerate. When the transmission does get into gear, with the engine revving, it does so with a jerk, causing the vehicle to lurch. The transmission will also independently shift such that the vehicle gains too much speed while going downhill and Mr. Boatwright is forced to aggressively brake in order to avoid a collision. Due to these issues, he fears for his safety and the safety of his passengers while driving the vehicle, particularly at intersections where he is afraid the sluggish



1 acceleration may cause him to be involved in a collision.

2 71. Mr. Boatwright returned the vehicle to the dealership within three months of his  
3 purchase, complaining about the delayed acceleration and hesitation, as well as the independent  
4 shifting while going downhill causing him to slam on his brakes. Despite requesting repairs, and  
5 leaving his vehicle at the dealership for those repairs, Mr. Boatwright was informed that his  
6 vehicle was operating normally and no repairs were performed.

7 72. Mr. Boatwright also called Honda's customer service hotline to report the  
8 Transmission Defect in his vehicle. Again, he was told that the transmission was operating as  
9 expected.

10 73. Mr. Boatwright also filed a complaint with the National Highway Traffic Safety  
11 Administration ("NHTSA") regarding his experience with the Transmission Defect on January  
12 11, 2019 (NHTSA ID 11166490):

13 MY MAIN ISSUE HAS TO DO WITH DOWNSHIFTING. SINCE THESE NEW  
14 VANS HAVE NO EMERGENCY BRAKE PEDAL TO USE IF ALL BRAKING FAILS, I  
15 BECAME VERY CONCERNED WHEN I NOTICED THAT THE 9-SPEED REVS THE  
16 MOTOR UP GOING DOWN HILL WHILE DOWNSHIFTING. THIS IS TO SUCH A  
17 LEVEL THAT THE VEHICLE CANNOT ENGINE BRAKE ITSELF. YOU ABSOLUTELY  
18 HAVE TO HIT THE BRAKES BECAUSE IT WILL NOT SLOW ITSELF DOWN.

19 SO, WHEN COASTING DOWN A 6% AND STEEPER GRAD WITH NO ACCEL  
20 PEDAL AT ALL.....THE TRANSMISSION DOES NOT GEAR DOWN ON ITS OWN AT  
21 ALL. IT WILL FREE WHEEL. WHICH IS FINE.

22 SO WHEN THE ACC CRUISE IS ENGAGED WITH MINIMUM FOLLOW  
23 DISTANCE SET, ON A 6% OF STEEPER GRADE.....THE TRANSMISSION WILL  
24 SEQUENTIALLY DOWNSHIFT. UPON EACH DOWNSHIFT THE ENGINE THROTTLE  
25 IS BLIPPED CAUSING THE VEHICLE TO SPEED DOWNHILL A BIT MORE.....AND A  
26 BIT MORE. WHEN YOU GET TO THE D5 TO D4 DOWNSHIFT THE THROTTLE IS  
27 AGRESSIVELY BLIPPED AND THE VAN WILL SPEED AHEAD AS IF TO PASS.  
28 SOMETIMES SPEEDS WILL REACH 75MPH DOWN HILL AND AGGRESSIVE

1 BRAKING IS REQUIRED BY THE DRIVER. YOU THEN LOSE YOUR PRESET ACC..  
2 KNOWING I HAVE NO EMERGENCY BRAKE PEDAL THAT I CAN MODULATE  
3 PRESSURE/BRAKING WITH THE RELEASE HANDLE.

4 SO. WHEN USING STANDARD  
5 CRUISE CONTROL SET ON A 6% OR STEEPER GRADE.... THE  
6 TRANSMISSION WILL DOWNSHIFT. UPON EACH DOWNSHIFT THE ENGINE  
7 THROTTLE IS BLIPPED CAUSING THE VEHICLE TO SPEED DOWNHILL A BIT  
8 MORE....AND A BIT MORE. WHEN YOU GET TO THE D5 TO D4 DOWNSHIFT THE  
9 THROTTLE IS AGRESSIVELY BLIPPED AND THE VAN WILL SPEED AHEAD AS IF  
10 TO PASS. SOMETIMES SPEEDS WILL REACH 75MPH DOWNHILL AND AGRESSIVE  
11 BRAKING IS REQUIRED BY THE DRIVER. YOU THEN LOSE YOUR PRESET CRUISE  
12 CONTROL. KNOWING THAT I HAVE NO EMERGENCY BRAKE PEDAL THAT I CAN  
13 MODULATE PRESSURE/BRAKING WITH THE RELEASE HANDLE.

14 THE SITUATION HAS BEEN PRESENT SINCE PURCHASE.

15 74. Despite Mr. Boatwright complaining multiple times about the uneven shifting  
16 and hesitation he has experienced in his vehicle, his vehicle has not received any repairs.

17 75. Accordingly, Mr. Boatwright continues to experience the Transmission Defect,  
18 including hesitation, improper downshifting, and delayed accelerations.

19 76. At all times, Plaintiff Boatwright, like all Class Members, has attempted to drive  
20 his vehicle in a foreseeable manner and in the manner in which it was intended to be used.

21 **PLAINTIFF CHUEN YONG**

22 77. Plaintiff Chuen Yong (“Yong”) is a Texas citizen who resides in Fort Worth,  
23 Texas.

24 78. On or around January 12, 2019, Plaintiff purchased a new 2019 Honda Odyssey  
25 LX from David McDavid Honda, an authorized Honda dealership in Irving, Texas.

26 79. Mr. Yong purchased his vehicle primarily for personal, family, or household use.  
27 Honda manufactured, sold, distributed, advertised, marketed, and warranted the vehicle.

28 80. Passenger safety and reliability were important factors in Mr. Yong's decision to

1 purchase his vehicle. Before purchasing his vehicle, Mr. Yong spent time researching the Honda  
2 Odyssey online, and also relied on his years of ownership of prior Honda models, including an  
3 older Odyssey. Specifically, prior to purchase, Mr. Yong researched the vehicle on Google, and  
4 visited both the dealership and manufacturer's websites. Additionally, at David McDavid  
5 Honda, he test drove the vehicle. Based on his research and his interaction with American  
6 Honda Motor Co. and its authorized dealership, Yong believed that the Honda Odyssey would  
7 be a safe and reliable vehicle.

8           81. Had Honda disclosed its knowledge of the Transmission Defect before Mr. Yong  
9 purchased his vehicle, Mr. Yong would have seen such disclosures and been aware of them.  
10 Indeed, Honda's omissions were material to Mr. Yong. Like all members of the Class, Mr. Yong  
11 would not have purchased his Class Vehicle, or would have paid less for the vehicle, had he  
12 known of the Transmission Defect.

13           82. A week or two after purchase, Mr. Yong experienced various problems with the  
14 transmission in his vehicle. Thereafter, his vehicle was exhibiting harsh or delayed shifting and  
15 engagement, hesitation, jerking, shuddering, lurching, clanging and banging of gears, and  
16 shifting back and forth between 2nd and 3rd gear, all of which continues at present. The  
17 problems occur frequently while driving his vehicle at slower speeds, under approximately 30  
18 miles per hour, making it difficult for Mr. Yong to drive at residential speeds.

19           83. In or around the spring of 2020, Mr. Yong took the vehicle to David McDavid  
20 Honda, complaining about the jerking and rough or delayed shifting at low speeds. At the  
21 dealership, two service technicians and Mr. Yong took his vehicle for a test drive to demonstrate  
22 the problem. During the drive, the vehicle exhibited the jerking and rough shifting, which the  
23 service technicians acknowledged. Thereafter, the service technicians contacted Honda for  
24 direction. However, when the dealership technician called Mr. Yong to report on Honda's  
25 recommendation, the technician informed Mr. Yong that according to Honda, the problems were  
26 normal characteristics of this vehicle and blamed the problems on the driver.

27           84. Thereafter, Mr. Yong delivered his vehicle to Huggins Honda, an authorized  
28 Honda dealership and service entity in North Richland Hills, Texas on two additional occasions

1 to report the ongoing harsh or delayed shifting, jerking, and banging while driving between 20-  
2 30 miles per hours. Despite Mr. Yong complaining multiple times about the uneven shifting and  
3 hesitation he has experienced in his vehicle and his requests for repairs, his vehicle has not  
4 received any repairs.

5 85. Accordingly, Mr. Yong continues to experience the Transmission Defect,  
6 including the following issues while driving under approximately 30 miles per hour: harsh or  
7 delayed shifting and engagement, hesitation, jerking, shuddering, lurching, clanging and  
8 banging of gears, and shifting back and forth between 2nd and 3rd gear.

9 86. At all times, Mr. Yong, like all Class Members, has attempted to drive his  
10 vehicle in a foreseeable manner and in the manner in which it was intended to be used.

11 **PLAINTIFF DANIEL PINA**

12 87. Plaintiff Daniel Pina is a California citizen who resides in Riverside, California.

13 88. In October 2018, Plaintiff Pina purchased a new 2019 Honda Odyssey from  
14 Rock Honda, an authorized Honda dealership in Fontana, California.

15 89. Plaintiff Pina purchased his vehicle primarily for personal, family, or household  
16 use. Honda manufactured, sold, distributed, advertised, marketed, and warranted the vehicle.

17 90. Passenger safety and reliability were important factors in Plaintiff Pina's  
18 decision to purchase his vehicle. Before purchasing his vehicle, Plaintiff Pina spent time  
19 researching the Honda Odyssey online. Additionally, at Rock Honda, Plaintiff Pina reviewed  
20 the vehicle's Monroney sticker (a.k.a., the window sticker), and spoke with an employee of  
21 the authorized Honda dealership regarding the 2019 Honda Odyssey's features, including the  
22 9HP transmission with which it was equipped. Plaintiff Pina believed that the Honda Odyssey  
23 would be a safe and reliable vehicle.

24 91. Had Honda disclosed its knowledge of the Transmission Defect before Plaintiff  
25 Pina purchased his vehicle, Plaintiff Pina would have seen such disclosures and been aware of  
26 them. Indeed, Honda's omissions were material to Plaintiff Pina. Like all members of the  
27 Class, Plaintiff Pina would not have purchased his Class Vehicle, or would have paid less for  
28 the vehicle, had he known of the Transmission Defect.

1           92.     Shortly after his purchase, Plaintiff Pina’s vehicle began to exhibit harsh or  
2 delayed shifting, delayed acceleration, hesitation, jerking, lurching, and lack of power.  
3 Despite repair attempts, these problems continue at present. Plaintiff Pina feels unsafe in the  
4 vehicle. Moreover, the delayed acceleration and hard jerking present a safety defect at  
5 intersections, because, for example, Plaintiff Pina cannot predictably accelerate his vehicle  
6 when turning left across oncoming traffic. These symptoms worry Plaintiff Pina, particularly  
7 at intersections.

8           93.     On February 14, 2019 Plaintiff Pina returned his vehicle to Rock Honda,  
9 complaining of transmission’s delayed acceleration, hesitation, and hard jerking. The  
10 dealership test drove Plaintiff Pina’s vehicle, but failed to perform any repairs. Furthermore,  
11 when Plaintiff Pina asked the dealership to note his transmission complaints in the repair  
12 records, the dealership refused to make a note of his complaints, stating that they were  
13 declining to do so because it was not part of the service they were performing.

14           94.     On or around May 7, 2019, with the problems continuing, Plaintiff Pina  
15 decided to bring his vehicle to Riverside Honda, a different authorized Honda dealership, to  
16 report the continuing transmission problems and determine if they could be fixed. His vehicle  
17 had only 13,635 miles on the odometer at the time of the visit. However, Riverside Honda,  
18 like Rock Honda, failed to perform any repairs.

19           95.     On or around October 20, 2019, with 26,008 miles on the odometer, Plaintiff  
20 Pina returned to Rock Honda, the dealership that sold him the Odyssey, complaining that his  
21 vehicle’s transmission light had illuminated while traveling approximately 65 mph on a  
22 freeway. The dealership failed to perform any repairs.

23           96.     In or around October or November 2019, Plaintiff brought his vehicle back to  
24 Riverside Honda, again complaining of his transmission symptoms.

25           97.     Despite this visit, Plaintiff’s vehicle continues to exhibit transmission  
26 symptoms. Specifically, when accelerating out of a stop or traveling uphill, the vehicle will  
27 take approximately five seconds to start accelerating, at which time the front wheels will  
28 accelerate with such force that they lose traction and skid.



**VENUE**

106. Honda, through its business of distributing, selling, and leasing the Class Vehicles, has established sufficient contacts in this district such that personal jurisdiction is appropriate. Defendants is deemed to reside in this district pursuant to 28 U.S.C. § 1391(a).

107. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendants American Honda Motor Co., Inc. and Honda North America, Inc. are incorporated and headquartered in the state of California and maintain the Honda Research& Developments Innovations in Mountain View, California. In addition, a substantial part of the events or omissions giving rise to the claims alleged herein occurred, or a substantial part of property that is the subject of this action, is situated in California.

**FACTUAL ALLEGATIONS**

108. In 2014, Honda released the first Honda-made vehicle equipped with a 9-speed transmission. “Instinctively responsive,” “firmly planted,” and “incredibly nimble” is how Mike Accavitti, a former vice president at Honda, characterized the ZF 9HP Transmission when it was first released in vehicles distributed, marketed, and sold by American Honda Motor Company, Inc., in 2014. As discussed above, however, the 2015 Acura TLX 3.5-liter vehicles hit the market with reviews critical of the ZF 9HP Transmission. Journalist Jason Cammisa noted that the TLX’s ZF 9HP Transmission “uses an electronic shifter...[that] takes an eternity to engage drive, its shifts are clunky, and it’s painfully slow to react to manual commands.”<sup>7</sup>

109. As early as December 2014, through TSBs, consumer complaints, and dealership repair orders, among other internal sources, Defendants knew or should have known that the ZF 9 HP Automatic Transmissions contained design defects that cause safety hazards. Despite this knowledge, Defendants chose to equip the Class Vehicles with the ZF 9HP Transmission, and Defendants have actively concealed and failed to disclose this defect to Plaintiffs and Class Members prior to the time of purchase or lease and thereafter. As a result of this failure, Plaintiffs and Class Members have been damaged.

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<sup>7</sup> Jason Cammisa, *11 things you need to know about the 2015 Acura TLX*, Road & Track Magazine (Aug. 5, 2015), <http://www.roadandtrack.com/new-cars/news/a6338/2015-acura-tlx-first-drive-review/> (last visited May 5, 2016).

1                   **Honda Had Superior and Exclusive Knowledge of the Transmission Defect**

2           110.   Honda had superior and exclusive knowledge of the Transmission Defect and  
3 knew or should have known that the defect was not known or reasonably discoverable by  
4 Plaintiffs and Class Members before they purchased or leased the Class Vehicles.

5           111.   Plaintiffs are informed and believe and based thereon alleges that before  
6 Plaintiffs purchased their Class Vehicle, and well before the first class vehicle was sold, Honda  
7 knew about the Transmission Defect through sources not available to consumers, including: data  
8 from Honda’s own predecessor vehicles equipped with the 9-speed transmission dating back to  
9 2014 and other pre-release testing data; consumer complaints about the Transmission Defect to  
10 Defendants’ dealers who are their agents for vehicle repairs; aggregate data from Honda’s  
11 dealers; consumer complaints to and resulting notice from NHTSA; early consumer complaints  
12 on websites and internet forums; dealership repair orders; TSBs applicable to the Class  
13 Vehicles; and other internal sources of information about the problem. Publicly available facts  
14 set forth *infra* further confirm Honda’s knowledge.

15           112.   Honda is experienced in the design and manufacture of consumer vehicles. As an  
16 experienced manufacturer, Honda conducts tests, including pre-sale durability testing, on  
17 incoming components, including the subject Transmissions, to verify the parts are free from  
18 defect and align with Honda’s specifications. Thus, Honda knew or should have known that the  
19 subject Transmissions were defective and prone to put drivers in a dangerous position due to the  
20 inherent risk of the defect.

21           113.   Additionally, Honda should have learned of this widespread defect from the  
22 sheer number of reports received from dealerships and from customer complaints directly to  
23 Honda. Honda’s customer relations department collects and analyzes field data including, but  
24 not limited to, repair requests made at dealerships, technical reports prepared by engineers who  
25 have reviewed vehicles for which warranty coverage is being requested, parts sales reports, and  
26 warranty claims data.

27           114.   Honda’s warranty department similarly analyzes and collects data submitted by  
28 its dealerships in order to identify trends in its vehicles. It is Honda’s policy that when a repair is



1 made under warranty the dealership must provide Honda with detailed documentation of the  
2 problem and the fix employed to correct it in order to be reimbursed. Dealerships have an  
3 incentive to provide detailed information to Honda, because they will not be reimbursed for any  
4 repairs unless the justification is sufficiently detailed.

#### 5 **Technical Service Bulletins**

6 115. As a result of the Transmission Defect, Honda issued a service campaign and  
7 multiple Technical Service Bulletins (“TSBs”) to its dealers in the United States, acknowledging  
8 defects in the ZF 9HP Automatic Transmission and attempting to address them.

9 116. On or around August 21, 2015, Honda issued TSB 15-041 covering 2015 Acura  
10 TLX vehicles and informing dealers as to circumstances where the “the transmission is stuck in  
11 4th gear, and temporary DTC P0714 is stored (ATF Temperature Sensor (Intermittent failure)).”  
12 Dealers were advised to update the TCM software in affected vehicles. Then, in or around  
13 September 2015, Honda issued TSB 15-034, which covered 2015 Acura TLX and 2016 Acura  
14 MDX vehicles and informed dealers that that “[w]hile driving, the vehicle may shift into Neutral  
15 and the transmission indicator comes on. The driver will not be able to select any other gear  
16 until the vehicle is turned off and restarted.” Dealers were again advised to update the TCM  
17 software.

18 117. In November 2015, Honda issued several service bulletins regarding software  
19 issues with the vehicle’s Powertrain Control Module and/or Transmission Control Module. For  
20 example, on or around November 15, 2015, Honda issued service bulletin A15110F regarding  
21 2016 Pilot vehicles equipped with the 9-speed automatic transmission. In the service bulletin,  
22 Honda acknowledged that its dealerships were seeing “fairly low mileage vehicle(s) with the  
23 MIL [malfunction indicator lamp] on, the Gear Position indicator blinking, and A/T DTC  
24 [automatic transmission diagnostic trouble code P2638 (torque feedback signal A  
25 range/performance). In response, Honda directed its dealerships to reset the Powertrain Control  
26 Module with the Honda Diagnostic System and to perform an “idle learn procedure.”

27 118. Likewise, Honda’s November 2015 service bulletin A15110H for the 2016 Pilot  
28 equipped with the 9-speed transmission noted that “multiple loss-of-communication” diagnostic

1 trouble codes were occurring in the Transmission Control Module.

2 119. On or around January 28, 2016, Honda issued service bulletin 16-008,  
3 “Transmission Function Improvements: Sensation of Surge While Braking, Slow Downshift  
4 Response at Low Engine Speeds, and Other Listed Symptoms.” The service bulletin applied to  
5 the 2016 Honda Pilot equipped with the 9-speed transmission. In the service bulletin, as shown  
6 in the image below taken directly from the bulletin, Honda admitted that the vehicles were  
7 surging while braking, staying in gear too long, surging out of a stop, hesitating out of a stop,  
8 exhibiting poor acceleration or bogging noise, and that the transmission “feels rough at low  
9 speeds.” In response, Honda directed its dealerships to update both the Powertrain Control  
10 Module and the Transmission Control Module software. Honda also admitted that “Failure to  
11 update both the PCM and the TCM software at the same time will result in poor shift quality  
12 and a comeback.”

13 120. On October 7, 2016, Honda issued service bulletin No. 16-087, entitled  
14 “Transmission End Cover Leaks (9-Speed A/T). The bulletin applied to 2016 Honda Pilot  
15 vehicles. In the bulletin, Honda admitted that “The transmission end cover leaks on vehicles  
16 with a 9-speed A/T” and that “the transmission end cover sealing gasket was torn.” In response,  
17 Honda directed its dealerships to replace the transmission end cover sealing gasket.

18 121. In December 2016, Honda issued service bulletin No. A16120B, for the 2016  
19 Honda Pilot entitled “Shift Quality Issues in a 9-Speed A/T? Check the ATF Level.” In the  
20 bulletin, Honda admitted that “In a 9-speed A/T, the ATF [Automatic Transmission Fluid] is  
21 *critical*. If it’s too high, the transmission could shift hard. If it’s too low, the transmission could  
22 slip. This transmission also doesn’t use a dipstick” [emphasis in original].

23 122. On January 24, 2017, Honda issued service bulletin No. A17010D, applicable to  
24 the 2016-2017 Honda Pilot. In the bulletin, Honda acknowledged that the 2016-2017 Pilots were  
25 failing to go into gear, failures which Honda attributed to debris in the shifter assembly.

26 123. On or around February 17, 2016, Honda issued service bulletin No. 16-012  
27 covering 2015-2016 Acura TLX vehicles and informing dealers that “[t]he transmission feels  
28 like it stays in gear too long.” Dealers were again advised to update the TCM software. The TSB

1 also cautioned that the software update “will change the way the transmission shifts.”

2 124. On or around February 18, 2017, Honda issued service bulletin no. 17-014,  
3 applicable to the 2016 and 2017 Honda Pilot. In the bulletin, which was a follow up to the  
4 earlier service bulletin 16-091, Honda again admitted that the vehicles were juddering at speeds  
5 between 20 and 60mph due to “deteriorated transmission fluid” which was “deteriorate[ing]  
6 quicker than expected when it is exposed to intermittent high heat loads under specific driving  
7 conditions.” In response, Honda issued an automatic transmission software update.

8 125. On or around July 26, 2017, Honda issued service bulletin no. A17070C, entitled  
9 “Where’s the Sealing Bolt in That Reman 9-Speed A/T?” In the bulletin, applicable to the 2017-  
10 2017 Honda Pilot Touring and Elite, Honda admitted that a transmission case casting flaw was  
11 causing transmission fluid leaks from some of the 9-speed automatic transmissions.

12 126. On or around August 4, 2017, Honda issued service bulletin no. 17-009. In the  
13 bulletin, applicable to the 9-speed-equipped 2016 Honda Pilot, Honda acknowledge that some  
14 9-speed transmission warmers had been improperly manufactured and were failing to keep  
15 separate the engine coolant and automatic transmission fluid, which could cause the engine and  
16 transmission to be “permanently damaged and require replacement.” In response, Honda  
17 directed its dealerships to replace the affected transmissions, transmission warmers, radiators,  
18 thermostats, coolant reserve tanks, all of the coolant hoses, ECT sensors, and/or the O-rings,  
19 depending on the severity of the damage.

20 127. On or around August 25, 2017, Honda issued service bulletin no. 17-001. The  
21 bulletin reiterated the problems identified in bulletin no. 17-009, and it added the 2017 Honda  
22 Pilot as an affected vehicle.

23 128. On or around September 9, 2017, Honda added the 2018 Honda Odyssey to the  
24 list of vehicles equipped with 9-speed transmissions subject to leaks due to a torn transmission  
25 end cover sealing gasket.

26 129. On or around September 18, 2018, Honda added the 2019 Odyssey and then  
27 2019 Pilot to the list of vehicles affected by transmission end cover leaks due to the torn sealing  
28 gasket in the 9-speed transmission. The affected vehicles thus included the 2016-2019 Honda

1 Pilot and the 2018-2019 Odyssey.

2 130. On or around June 12, 2019, Honda issued service bulletin 19-004. In the  
3 bulletin, which applied to the 2016-2017 Pilot vehicles, Honda admitted that during downshifts  
4 from the 9<sup>th</sup> or 8<sup>th</sup> gear to the 7<sup>th</sup> gear or lower, a miscalculation in the 9-speed transmission's  
5 Transmission Control Module software causes the Malfunction Indicator Lamp to illuminate. In  
6 response, Honda directed its dealerships to update the Transmission Control Module software.

7 131. On or around December 23, 2019, Honda issued service bulletin no. 19-124,  
8 entitled "9-Speed A/T Hard Upshift with Steady Acceleration or MIL On with DTC P0716." In  
9 the bulletin, which applied to the 2018-2019 Honda Odyssey vehicles, Honda admitted that "the  
10 transmission has intermittent harsh or jerky upshifts with steady acceleration, or the MIL comes  
11 on with DTC P0716." Honda attributed this problem to abnormal Transmission Control Module  
12 adaptation values or a miscalculation in the Transmission Control Module software. In response,  
13 Honda directed its dealerships to update the Transmission Control Module.

14 132. On or around August 21, 2015, Honda issued TSB 15-041 covering 2015 Acura  
15 TLX vehicles and informing dealers that the "transmission is stuck in 4th gear, and temporary  
16 DTC P0714 is stored (ATF Temperature Sensor (Intermittent failure))." Dealers were advised to  
17 update the TCM software in affected vehicles to correct the ATF temperature sensor circuit.  
18 Then, in or around September 2015, Honda issued TSB 15-034, which covered 2015 Acura  
19 TLX and 2016 Acura MDX vehicles and informed dealers that "[w]hile driving, the vehicle may  
20 shift into Neutral and the transmission indicator comes on. The driver will not be able to select  
21 any other gear until the vehicle is turned off and restarted." Dealers were again advised to  
22 update the TCM software.

23 133. On or around February 17, 2016, Honda issued TSB 16-012 covering 2015-2016  
24 Acura TLX vehicles and informing dealers that "[t]he transmission feels like it stays in gear too  
25 long." Dealers were again advised to update the TCM software. The TSB also cautioned that the  
26 software update "will change the way the transmission shifts."

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1                    **Class Members' Complaints to the National Highway Traffic Safety**

2                    **Administration and Elsewhere**

3                    134. Automakers like Honda monitor customers' complaints made to the National  
4 Highway Traffic Safety Administration ("NHTSA.") Federal law requires automakers like  
5 Honda to be in close contact with NHTSA regarding potential auto defects, including imposing  
6 a legal requirement (backed by criminal penalties) compelling the confidential disclosure of  
7 defects and related data by automakers to NHTSA, including field reports, customer complaints,  
8 and warranty data. *See TREAD Act*, Pub. L. No. 106-414, 114 Stat.1800 (2000).

9                    135. Automakers have a legal obligation to identify and report emerging  
10 safety-related defects to NHTSA under the Early Warning Report requirements. *Id.* Similarly,  
11 automakers monitor NHTSA databases for consumer complaints  
12 regarding their automobiles as part of their ongoing obligation to identify potential defects in  
13 their vehicles, including safety-related defects. *Id.* Thus, Honda knew or should have known of  
14 the many complaints about the Transmission Defect logged by NHTSA Office of Defect  
15 Investigation (ODI), and the content, consistency, and large number of those complaints alerted,  
16 or should have alerted, Honda to the Transmission Defect.

17                    136. The following are examples of complaints from owners and lessees of the Class  
18 Vehicles concerning the Transmission Defect available through NHTSA's website,  
19 www.safercar.gov. Unless otherwise specified, spelling and grammar mistakes appear as in  
20 original.

21                    a. **DATE OF INCIDENT:** March 3, 2018

22                    **DATE COMPLAINT FILED:** July 29, 2018

23                    **NHTSA/ODI ID:** 11114414

24                    **SUMMARY:** IF I BUY A NEW 2018 HONDA ODYSSEY AT AROUND 4000  
25 MILES START HAVING TRANSMISSION PROBLEMS AT AROUND FIVE  
26 TO SIX THOUSAND MILES I START GETTING A HORRIBLE TOXIC  
27 BURNING CHEMICAL SMELL COMING FROM INSIDE THE CAR  
28 SOMEWHERE DO YOU TAKE IT TO THE DEALERSHIP THEY SAY

1 NOTHING'S WRONG OBVIOUSLY THERE IS SOMETHING WRONG WITH  
2 HIS DOING WHAT IT'S DOING.

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b. **DATE OF INCIDENT:** June 15, 2018

**DATE COMPLAINT FILED:** August 27, 2018

**NHTSA/ODI ID:** 11122827

**SUMMARY:** TL\* THE CONTACT OWNS A 2018 HONDA ODYSSEY. WHILE DRIVING APPROXIMATELY 15 MPH, THE VEHICLE JERKED AND THE ENGINE REVVED. THE CONTACT STATED THAT THE ENGINE REMAINED ON, BUT THE VEHICLE DID NOT SHIFT INTO DRIVE OR REVERSE. ALL THE WARNING INDICATORS ILLUMINATED ON THE INSTRUMENT PANEL. PRIOR TO THIS, WHILE DRIVING DIFFERENT SPEEDS, THE VEHICLE DECELERATED, LOST POWER, AND SHUT OFF. THE VEHICLE WAS TAKEN TO PERFECTION HONDA (2603 AMERICAN RD SE, RIO RANCHO, NM 87124, 505-221-5084) WHERE IT WAS DETERMINED THAT THERE WAS NO FAILURE. THE FAILURE RECURRED SEVERAL TIMES AND THE VEHICLE WAS TAKEN TO THE SAME DEALER WHO WAS UNABLE TO DUPLICATE THE FAILURES. THE MANUFACTURER WAS MADE AWARE OF THE FAILURES AND STATED THAT THEY WOULD BE INVESTIGATED. THE CONTACT STATED THAT NOTHING WAS DONE...

c. **DATE OF INCIDENT:** July 22, 2018

**DATE COMPLAINT FILED:** July 24, 2018

**NHTSA/ODI ID:** 11113272

**SUMMARY:** HAVING ISSUE OF ACCELERATION AT ROAD SPEED. WHEN DOING ROAD SPEED I HAVE HAD FLAT ACCELERATION WHEN PRESSING GAS PEDAL.

1 ALMOST FEELS AS IF VEHICLE IS ABOUT TO STALL OR DECELERATE.  
2 DEALER WITH VEHICLE AND THEY CAN'T FIND ISSUE. DEALER  
3 CLAIMS THEY HAVE NOT HAD ANY  
4 HONDA COMPANY REPORTS ABOUT THIS.  
5 THIS EVENT HAS HAPPENED SEVERAL TIMES.  
6 LAST EVENT INTERESTING IS THAT THIS HAS HAPPENED WHEN  
7 DECELERATING TO ENTER EZPASS EXPRESS TOLL AT AT 50MPH AND  
8 THEN TRYING TO ACCELERATE TO FLOW OF TRAFFIC.

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10 d. **DATE OF INCIDENT:** August 26, 2018

11 **DATE COMPLAINT FILED:** November 28, 2018

12 **NHTSA/ODI ID:** 11154477

13 **SUMMARY:** TWICE IN THE FIRST YEAR OF OWNERSHIP, THE CAR WAS  
14 PARALLEL PARKED AND I PUT THE VEHICLE IN DRIVE (PUSH BUTTON  
15 SIFTER). UPON THE VEHICLE BEGINNING TO MOVE IN FORWARD  
16 MOTION IT WOULD IMMEDIATELY SHIFT BACK INTO PARK. I  
17 REPEATED AN IT DID THE SAME OVER AND OVER AGAIN. EVEN AFTER  
18 SHUTTING DOWN THE ENGINE AND RESTARTING; I HAD THE SAME  
19 ISSUE. BOTH TIMES THIS OCCURRED, HAD TO GO IN REVERSE FOR A  
20 SHORT DISTANCE IN ORDER TO GET THE VAN TO THEN MOVE  
21 FORWARD WITHOUT ALMOST INSTANTLY SHIFTING BACK INTO  
22 PARK. IN THE SECOND CASE THERE WAS NO VEHICLE PARKED IN  
23 FRONT OR BEHIND ME AND I STILL HAD THE SAME ISSUE. I DID  
24 RECORD A VIDEO OF THE ERRATIC BEHAVIOR ON 8/26/2018 (SECOND  
25 TIME) .

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27 e. **DATE OF INCIDENT:** September 10, 2018

28 **DATE COMPLAINT FILED:** December 11, 2018

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**NHTSA/ODI ID:** 11160764

**SUMMARY:** USUALLY AT LOWER SPEED(15~30MPH),

TRANSMISSION STRUGGLES TO SHIFTING GEAR. AND HESITATES TO SHIFT.

ALSO, THERE IS SHIFT SHOCK AT LOW SPEED.

IT IS WORST IN THE MORNING.

I WENT TO DEALER TO CHECK THAT CONDITION AND TECHNICIAN SAID

THAT IS NORMAL.

f. **DATE OF INCIDENT:** November 1, 2018

**DATE COMPLAINT FILED:** November 19, 2018

**NHTSA/ODI ID:** 11152405

**SUMMARY:** WITH APPROXIMATELY 10,000 MILES ON THE VEHICLE, THE TRANSMISSION UNDER PERFORMS. WHILE DRIVING, USUALLY AT SPEEDS UNDER 30MPH, THE TRANSMISSION STRUGGLES TO SHIFT SMOOTHLY. IT ALSO MAKES A LOUD JERKING SOUND AND MOTION WHEN SHIFTING GEARS. THE TRANSMISSION ALSO SOMETIMES HESITATES TO SHIFT, ALLOWING YOU TO BE ABLE TO FEEL THE VAN SLOW DOWN WHILE IN PROCESS OF SHIFTING, APPROXIMATELY 2 SECONDS LATER YOU CAN HEAR AND FEEL IT GO INTO GEAR. LASTLY, THE PICK UP ON THE VAN IS SLOWER THAN MOST CARS I HAVE DRIVEN.



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g. **DATE OF INCIDENT:** January 20, 2019

**DATE COMPLAINT FILED:** May 14, 2019

**NHTSA/ODI ID:** 11207593

**SUMMARY:** AUTO SHIFTING ANYWHERE FROM 20-30MPH RESULTS IN HARD SHIFT OR KNOCK. WHEN VAN IS DOWNSHIFTING THERE IS AN ACCELERATION OR KNOCK. TRANSMISSION WAS REPLACED AT 22,000 MILES. NO EXPLANATION FOR THE CAUSE. THIS WAS NOTICED ABOUT 3 MONTHS INTO OWNING THE VEHICLE BRAND NEW AT 8 MILES FROM A HONDA DEALERSHIP. IT TOOK THEM 13 MONTHS OF A CONTINUOUS CYCLE OF GOING INTO THE HONDA CERTIFIED SHOP FOR THEM TO BELIEVE US. NOW OUR VEHICLE AT 25,000 MILES CONTINUES TO REPRODUCE THE SAME PROBLEM.

h. **DATE OF INCIDENT:** February 4, 2019

**DATE COMPLAINT FILED:** February 8, 2019

**NHTSA/ODI ID:** 11175742

**SUMMARY:** I'VE HAD MY 2018 HONDA ODYSSEY TOURING FOR 2 MONTHS; IT HAS 2600 MILES.

MY VEHICLE SHIFTED INTO PARK WHILE DRIVING 70MPH ON THE INTERSTATE! THE CAR MADE A POPCORN/GRAVEL SLAMMING AGAINST THE CAR SOUND WHILE FELT AS THOUGH THE BOTTOM HALF OF THE VAN WAS TRYING TO SEPARATE FROM THE TOP!! TALK ABOUT FRIGHTENING! IT BRIEFLY FLASHED ""COLLISION MITIGATION"-SOMETHING,, BUT IT WAS JUST ON THE SCREEN FOR A HALF-SECOND. I PULIED OVER TO THE SIDE OF THE HIGHWAY, PUT MY FOOT ON THE BRAKE AND PRESSED THE DRIVE BUTTON. IT

1 HAPPENED AGAIN MAYBE 10 MINUTES LATER ON A BUSY ROAD  
2 TRAVELING AT 45MPH.

3  
4 I ARRIVED AT MY FIRST DESTINATION, RESEARCHED HOW TO TURN  
5 OFF THE COLLISION MITIGATION SYSTEM, AND CONTINUED TO MY  
6 SECOND DESTINATION. IT HAPPENED TWICE ON THE HIGHWAY ON  
7 THE WAY TO THAT DESTINATION, FLASHING THE SAME WARNING SO  
8 QUICKLY THAT I COULDN'T READ IT, SAME NOISE, VIBRATION.

9  
10 I CALLED THE DEALERSHIP FROM WHICH I BOUGHT IT. THEY TOWED  
11 THE VEHICLE TO THE DEALERSHIP. THEY COULD NOT REPRODUCE  
12 THE PROBLEM. "BEST EDUCATED GUESSED" THAT THE BATTERY  
13 WAS THE PROBLEM, THOUGH I NEVER RECEIVED A LOW BATTERY  
14 WARNING FROM MY VEHICLE, AND THEY PERFORMED A BATTERY  
15 RESET PROCEDURE.

16  
17 THE DEALERSHIP EXPECTS ME TO DRIVE MY FAMILY HOME IN THIS  
18 VEHICLE WITHOUT CHANGING OR EVEN INSPECTING THE  
19 TRANSMISSION OR PARKING PAWL, WHICH WAS THE CAUSE OF THE  
20 LOAD POPCORN/GRAVEL NOISE.

21  
22 I HAVE CONTACTED HONDA AND A CASE HAS BEEN OPENED.

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24 i. **DATE OF INCIDENT:** March 29, 2019

25 **DATE COMPLAINT FILED:** May 29, 2019

26 **NHTSA/ODI ID:** 11210574

27 **SUMMARY:** THE VEHICLE IS HAVING INTERMITTENT ISSUES WITH  
28 THE TRANSMISSION SHIFTING. THE SPEED SEEMS TO VARY, THE

1 RANGE IS BETWEEN 24 AND 33 MPH. IT SEEM TO BE MOST PREVALENT  
2 AFTER BEING ON THE HIGHWAY FOR A LONGER PERIOD OF TIME, 45  
3 MINUTES AND LONGER. THEN WHEN AACCELERATING GENTLY  
4 FROM A STOP IT CAN LURCH WHEN SHIFTING, OR SHIFT HARD AND  
5 MAKE AN AUDIBLE CLUNK.

6  
7 OTHER TIMES, NOT HAVING BEEN DRIVEN FOR ANY LENGTH OF TIME,  
8 IN THE SAME SPEED RANGE, 24 TO 33 MPH, DURING GENTLE  
9 ACCELERATION IT DOES NOT SHIFT EASILY OR SMOOTHLY. THERE IS  
10 NOT NECESSARILY A CLUNK (THERE CAN BE), BUT IT DOES NOT SHIFT  
11 NORMALLY OR SMOOTHLY, I WOULD DESCRIBE IT A MISS OR LURCH.

12  
13 IN BOTH CASES IT WILL SHIFT, BUT NOT AS IT SHOULD. THIS BEGAN  
14 AROUND 17,000 MILES.

15  
16 I AM NOTICING VERY FINE VIBRATIONS IN THE STEERING WHEEL  
17 AND THROUGHOUT THE FRONT END, ITS NOT ALL THE TIME, BUT IT  
18 DOES NOT SEEM RIGHT. I AM UNABLE TO ASSOCIATE IT WITH ANY  
19 PARTICULAR SPEED OR STRETCH OF ROAD, BUT IT DID NOT DO THIS  
20 WHEN THE VEHICLE WAS NEW.

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22 j. **DATE OF INCIDENT:** April 1, 2019

23 **DATE COMPLAINT FILED:** May 11, 2019

24 **NHTSA/ODI ID:** 11207033

25 **SUMMARY:** AUTO SHIFTING ANYWHERE FROM 20-30 MPH RESULTS IN  
26 HARD SHIFT AND KNOCK. WHEN VAN DOWNSHIFTS AROUND 20-30  
27 MPH THERE IS A JUMP OF ACCELERATION AND KNOCK. SOMETIMES  
28 WHEN ACCELERATING AND GEARS SHIFT THERE IS UN EXPECTED

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JUMP IN ACCELERATION

k. **DATE OF INCIDENT:** April 13, 2019

**DATE COMPLAINT FILED:** April 15, 2019

**NHTSA/ODI ID:** 11196583

**SUMMARY:** WHILE DRIVING ON A 50 MPH, TWO LANE ROAD, THE VEHICLE ABRUPTLY SHIFTED INTO NEUTRAL AUTONOMOUSLY AFTER EXPERIENCING A TRANSMISSION FAILURE AND PROHIBITED THE DRIVER FROM RETAKING CONTROL OF THE VEHICLE. WITH NO POWER AVAILABLE, THE DRIVER WAS ULTIMATELY FORCED TO COAST TO A STOP ON THE SHOULDER OF THE ROAD. WARNING MESSAGES INDICATED A TRANSMISSION FAILURE, EMISSION CONTROL FAILURE, AND BLIND SPOT MONITORING FAILURE. THE CAR WAS TOWED TO THE NEAREST HONDA DEALER.

l. **DATE OF INCIDENT:** May 1, 2019

**DATE COMPLAINT FILED:** May 22, 2019

**NHTSA/ODI ID:** 11209239

**SUMMARY:** TL\* THE CONTACT OWNS A 2018 HONDA ODYSSEY. WHILE DRIVING VARIOUS SPEEDS, THE VEHICLE SHIFTED INTO NEUTRAL GEAR WITHOUT WARNING. THE FAILURE OCCURRED INTERMITTENTLY. THE CHECK ENGINE AND COLLISION WARNING INDICATORS ILLUMINATED. HONDA OF OLATHE (1000 N ROGERS RD, OLATHE, KS 66062, (913) 782-3636) DIAGNOSED THAT THE FUSE AND THE BATTERY NEEDED TO BE REPLACED. THE VEHICLE WAS REPAIRED, BUT THE FAILURE RECURRED. THE MANUFACTURER WAS NOT MADE AWARE OF THE FAILURE. THE FAILURE MILEAGE WAS 24,000. THE VIN WAS UNAVAILABLE.

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m. **DATE OF INCIDENT:** May 21, 2019

**DATE COMPLAINT FILED:** July 3, 2019

**NHTSA/ODI ID:** 11229195

**SUMMARY:** TRANSMISSION SLIPPING WHEN ACCELERATING FROM STATIONARY POSITION OR WHENEVER MORE SPEED IS NEEDED. HAPPENS WHEN GOING UPHILL OR LANE CHANGING WHEN MORE SPEED IS NEEDED.

n. **DATE OF INCIDENT:** July 3, 2019

**DATE COMPLAINT FILED:** October 8, 2019

**NHTSA/ODI ID:** 11266984

**SUMMARY:** VEHICLE EXPERIENCES ROUGH SHIFTING WHEN SLOWING DOWN AND SPEEDING UP IN STOP IN GO TRAFFIC. IT IS LIKE IT FALLS INTO GEAR, AND NOT A SMOOTH SHIFT. VERY DISAPPOINTED FOR A \$33,000 PURCHASE. THIS HAPPENS ON THE HIGHWAY, OR ON RESIDENTIAL ROADS.

o. **DATE OF INCIDENT:** August 30, 2019

**DATE COMPLAINT FILED:** August 30, 2019

**NHTSA/ODI ID:** 11252464

**SUMMARY:** WHEN DECELERATING AT THE SPEED AROUND OF 25 MAKES A LOUD KNOCKING SOUND AND SHIFTS ERATTICALLY [spelling corrected].

p. **DATE OF INCIDENT:** November 26, 2019

**DATE COMPLAINT FILED:** December 1, 2019

**NHTSA/ODI ID:** 11283068

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**SUMMARY:** OWNER OF 2018 ODYSSEY EXL RESNAV W/ 9SPEED AT WIFE IS PRIMARY DRIVER AND WE RECENTLY RETURNED FROM A ROAD TRIP. VEHICLE PERFORMS VERY SMOOTHLY 95% OF THE TIME. THE OTHER 5% YOU CAN EXPECT ABRUPT AND VIOLENT UP AND DOWN SHIFTS. FURTHER, THIS IS THE SAFETY VS ANNOYANCE ISSUE, THE VEHICLE WILL HESITATE WHEN ACCELERATING FROM A STOP. THIS IS A FACTOR THREAT WHEN PULLING INTO TRAFFIC. HESITATION CAN AND WILL CAUSE AN ACCIDENT. HONDA OF NA NEEDS TO GET TO WORK AND TAKE RESPONSIBILITY FOR THIS UNACCEPTABLE SAFETY ISSUE. SOMEONE IS GOING TO BE HURT.

q. **DATE OF INCIDENT:** December 30, 2019

**DATE COMPLAINT FILED:** January 21, 2020

**NHTSA/ODI ID:** 11300974

**SUMMARY:** I HAVE HAD THIS VERY PROBLEM IN MY 2018 EX WITH NAV RES. I'LL BE ON THE HIGHWAY, GOING 65MPH+, AND I WILL ACCELERATE TO CHANGE LANES OR PASS AND THE ENGINE WILL SEEMINGLY STALL FOR SEVERAL SECONDS. AS I PRESS THE GAS, THE CAR ACTUALLY DECELERATES AS IF IT'S COASTING IN NEUTRAL. AFTER A FEW SECONDS, IT REENGAGES, THE ENGINE REVS A LITTLE, AND THE CAR BEGINS ACCELERATION. I ALSO OFTEN NOTICE THAT THE VAN DOES A SIMILAR THING WHEN I'M ACCELERATING FROM A STOP TO ENTER TRAFFIC OR MAKE A TURN. WHEN I HIT THE GAS, THE CAR COASTS FORWARD FOR A SECOND BEFORE ACTUALLY ACCELERATING. IT IS ACTUALLY DANGEROUS, ESPECIALLY SINCE IT HAS HAPPENED WHEN THERE HAS BEEN ONCOMING TRAFFIC. I HAVE HAD IT INTO THE DEALERSHIP MULTIPLE TIMES AND THEY "CAN'T

1 REPLICATE THE PROBLEM.” TODAY MY DEALERSHIP TOLD ME THAT  
2 I SHOULD OPEN A CASE WITH HONDA, WHICH I DID. I WAS TOLD THAT  
3 THE 9-SPEED TRANSMISSION WAS DISCONTINUED BECAUSE  
4 CONSUMERS “COMPLAINED” AND “DIDN’T LIKE IT.” THEY FURTHER  
5 SAID THAT THEY COULD NOT REPLICATE THE PROBLEM AND  
6 THEREFORE COULD NOT FIX IT. IN THE CASE OF MY VAN, IT IS  
7 DEFECTIVE AND DANGEROUS. MY SON IS LEARNING TO DRIVE AND I  
8 AM FEARFUL FOR HIS SAFETY. I HAVE FELT IN DANGER IN THIS CAR  
9 MYSELF. WHEN I ASKED ABOUT TO WHOM I COULD SPEAK TO  
10 ADDRESS MY CONCERNS, I WAS DIRECTED TO “PAGE 2 OF THE  
11 ONLINE OWNER’S MANUAL.” THIS HAS HAPPENED ON NUMEROUS  
12 OCCASIONS AND HAS BEEN INTO THE DEALERSHIP FREQUENTLY  
13 WITHOUT RESOLUTION.

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15 r. **DATE OF INCIDENT:** February 27, 2020

16 **DATE COMPLAINT FILED:** March 6, 2020

17 **NHTSA/ODI ID:** 11316579

18 **SUMMARY:** TL- THE CONTACT OWNS A 2018 HONDA ODYSSEY. THE  
19 VIN WAS NOT PROVIDED. THE CONTACT STATED THAT WHILE  
20 BACKING UP AT ABOUT 2 MPH, THE TRANSMISSION WENT FROM  
21 DRIVE TO PARK WITHOUT WARNING. THE VEHICLE WAS TAKEN TO  
22 THE GENTHE HONDA DEALER, LOCATED AT 15100 EUREKA RD,  
23 SOUTHGATE, MI 48195, WHERE THE TECHNICIAN WAS UNABLE TO  
24 DIAGNOSE THE FAILURE. THE FAILURE RECURRED ON THE SAME  
25 DAY AND DID NOT RECUR IN THE FOLLOWING DAYS. . THE  
26 MANUFACTURER WAS NOT MADE AWARE OF THE FAILURE. THE  
27 VEHICLE WAS NOT REPAIRED. THE FAILURE MILEAGE WAS  
28 APPROXIMATELY 33,000. FE

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s. **DATE OF INCIDENT:** March 2, 2020

**DATE COMPLAINT FILED:** March 6, 2020

**NHTSA/ODI ID:** 11316560

**SUMMARY:** THE TRANSMISSION IN THIS VEHICLE LAGS AND SLIPS REGULARLY WHEN SHIFTING FROM 2ND TO 3RD GEAR. IT IS A MAJOR SAFETY ISSUE. WE TOOK THE VEHICLE IN TO A HONDA DEALER TO SERVICE THIS PROBLEM UNDER WARRANTY AND WERE TOLD THAT THE PERFORMANCE WE ARE EXPERIENCING IS NORMAL FOR THIS SPECIFIC TRANSMISSION. IT US UNACCEPTABLE THAT HONDA WOULD ALLOW THIS TRANSMISSION TO BE USED BY SO MANY IN SUCH AN UNSAFE WAY.

137. Class Members also reported the Transmission Defect on online forums:

**www.OdyClub.com<sup>8</sup> – What’s the Verdict on the 9-Speed Transmission?**

a. **March 9, 2018** (posted by salsolomon): Based on reading these comments on the transmission issues with the 2018 Odyssey, I have now almost decided that I will go with the 2019 Subaru Ascent instead of the 5'th generation Odyssey. Honda has given me enough sleepless nights worrying about about the transmission on my 2004 Odyssey. The 2004 Odyssey is a great vehicle, but I could have done without the heartburn that the worries about its transmission caused me. And, Honda really needs to learn a lesson on the Transmission front. Honda has a great 10-speed transmission now. And, yet it is shoving down that problematic ZF transmission down our throats. I used to be a great Honda fan. I am not sure anymore. So sad.

b. **March 12, 2018** (posted by jrc87): The 9speed is not refined at all, I would consider it garbage (I bought an EX-L with one so, yes, I can say that). It's depressing to

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<sup>8</sup>Thread available at <https://www.odyclub.com/threads/whats-the-verdict-on-the-9-speed-transmission.323474/page-2>, last accessed March 16, 2020.



1 drive a brand new car with a transmission that feels worse than your average 10-  
2 year old dump.

3  
4 Unfortunately, when test driving the vehicle you're driving around with a sales guy  
5 in the back seat talking about features. You're stunned with all the technology and  
6 your brain is more focused on testing what this or that shiny button does instead of  
7 paying attention to so many other factors.

8  
9 After buying the car and letting all things set in, you start noticing that the  
10 transmission jerks when shifting gears up or down. It gets confused many times so  
11 it has to change gears again which causes the car to jerk yet again. You then start  
12 reading that it has presented so many problems in the past and doubt start setting  
13 in.... Your 4, 5, 6, 7 hundred dollar car payment starts to hurt a little more when you  
14 realize you just got a piece of junk.

15 My previous vehicle was a Kia Sorrento SXL (which was flawless by the way,  
16 drove like a 70k SUV). The dealer had this "24hr test drive" where they gave me a  
17 sorrento to try for a whole day/night. I wish more dealers did this. I would have  
18 probably detected the garbage the 9-speed is before committing to it.

19 So, if you're reading this and you already bought it: sorry, we're all on the same  
20 boat now.

21 if you're reading this and you haven't bought it: Skip it. Seriously, save more money  
22 to get the 10-speed or go elsewhere (Kia/Toyota). That is my humble opinion.  
23 (Note: the Chrysler pacifica uses the SAME transmission built by the SAME  
24 manufacturer, so you're not safe there either)

25 Good luck everyone!

26  
27 c. **March 21, 2019** (posted by HondaBox): +10000000 As an ex 2016 Acura MDX  
28 owner the ZF 9spd was total garbage. It made me almost walk away from

1 Honda/Acura completely. I've been warning people over and over when I can on  
2 this forum to stay away from the 9 spd ZF...

3  
4 d. **July 12, 2018** (posted by FreeRadical): In my opinion, the transmission is a  
5 monster. It fights me at every turn.

6 Most of the time on launch, it wants to immediately upshift (since we all have to  
7 worship at the altar of fuel efficiency), and I have to work it to get the acceleration  
8 I want. Sometimes, it just acts bizarrely. If I put my foot into it, it seems to go  
9 through a bunch of decision-making: it goes to higher RPMs, then briefly upshifts,  
10 then downshifts and makes a racket, all the while with not much happening at the  
11 tires. It will finally realize that I want to go briskly and will let the excellent engine  
12 do its thing.

13 It mightily resists downshifting if I want to squeeze on the power at mid to high  
14 speeds. I have to get into it more than I would like and then it downshifts and makes  
15 a racket and lunges ahead. Sometimes it makes a racket and I feel nothing at the  
16 tires for quite a while.

17 When coasting at low speeds, it seems to be in too low a gear and that causes lashing  
18 on small throttle changes. And even though it seems like it's in a low gear, it still  
19 takes forever to do anything if I want to increase my speed.

20 The silly "sport" mode makes it drive like a tractor with even more lash than in  
21 normal mode. It seems like a CVT, but is supposed to be a 9 speed.

22 It makes me pine for my beloved 2006 Odyssey that I traded in. That was probably  
23 the best auto transmission I have ever driven. It seemed to always be in the right  
24 gear, like when I was in a slowing coast and wanted to go faster, or in exiting a  
25 turn. It was ready and able to downshift with a bit of added throttle.

26 Oh, what happened? When did Honda start making Toyotas?

27  
28 138. Likewise, owners of predecessor Honda-made vehicles equipped with the ZF

1 9HP 9-speed transmission had been reporting the 9HP's problems to NHTSA for years before  
2 the Class Vehicles were released. Despite these reports, Honda chose to equip the 2018-2019  
3 Honda Odyssey with the defective 9HP transmission. Below is but a small sample of the scores  
4 of similar complaints about other vehicles with the 9HP transmission:

5  
6 **2015 Acura TLX**

- 7 (a) 11/10/14 ABNORMAL SHIFTS LOW SPEED
- 8 (b) 1/16/15 TRANSMISSION IS JERKY. DOES NOT SHIFT SMOOTHLY IN 2  
9 AND 3 GEARS. SOMETIMES ACCELERATES BEFORE DOWNSHIFTING  
10 TRANSMISSION SEEMS OK IN HIGHER GEARS. CAR DOES NOT  
11 ACCELERATE PROPERLY IN LOW GEARS. MAKES DRIVING RISKY  
12 AND DIFFICULT UNTIL CAR IS IN HIGHER GEARS. \*TR
- 13 (c) 2/5/15 TRANSMISSION HAS EXTREMELY BAD JERK FROM 2ND TO  
14 3RD GEAR. ALSO, TRANSMISSION TENDS TO MAKE CAR  
15 ACCELERATE ON ITS OWN SOMETIMES. ALSO, DOWNSHIFTING IS  
16 TOO SLOW TO MAKE AN EFFECTIVE PASS ON A HIGHWAY.  
17 HORRIBLE, UNSAFE FEELING TRANSMISSION. \*TR
- 18 (d) 2/10/15 ISSUES WITH TRANSMISSION SHIFTING. 1. DELAY OF  
19 ACCELERATION AT LOW SPEED SUCH AS AT AN INTERSECTION (4  
20 OCCURRENCES) WHERE MAKING A TURN CAR DOES NOT READILY  
21 ACCELERATE DUE TO BEING IN TOO HIGH OF A GEAR WHILE IN  
22 AUTOMATIC MODE. AFTER ABOUT 2 SECONDS, CAR DOWNSHIFTS  
23 AND RESUMES NORMAL ACCELERATION. HAS NOT RECURRED IN  
24 AT LEAST A MONTH. 2. ROUGH SHIFT (LAG) WHEN CAR UPSHIFTS  
25 FROM 2ND TO 3RD. THIS HAS BEEN PRESENT SINCE PURCHASE AND  
26 OCCURS REGARDLESS OF WHAT MODE (AUTO/MANUAL) IS  
27 SELECTED. HAS NOT IMPROVED. 3. WITHIN LAST 30 DAYS, VEHICLE  
28

1 IS NOT DOWNSHIFTING CORRECTLY WHEN COMING TO A STOP. CAR  
2 DOES NOT ACTUALLY DOWNSHIFT INTO 1ST UNTIL AFTER IT IS AT  
3 A COMPLETE STOP RESULTING IN A LURCH. NO MATTER HOW  
4 SMOOTHLY THE CAR IS BROUGHT TO A STOP, THE FINAL  
5 DOWNSHIFT IN AUTO MODE DOESN'T OCCUR UNTIL AFTER  
6 REACHING A STOP. THE PROBLEM DOES NOT START TO HAPPEN  
7 UNTIL ENGINE/CAR IS WARM AS THE FIRST FEW COMPLETE STOPS  
8 WHEN COLD ARE 100% OK, THEN AFTER WARMED UP IT WILL  
9 OCCUR EVERY TIME THEREAFTER. 4. WHEN ENGAGING DRIVE OR  
10 REVERSE, THE VEHICLE WILL BEGIN TO ACCELERATE SLIGHTLY  
11 WITHOUT PEDAL INPUT SUCH AS WHEN BACKING OUT OF A  
12 PARKING SPACE. CONTACTED DEALER AND DEALER SAID NO  
13 INSTRUCTIONS FROM MAKER OR TSB'S YET AND THAT  
14 TRANSMISSION WAS NEW MODEL AND MAKER NOT SURE WHAT TO  
15 EXPECT. TOLD DEALER I WOULD DRIVE THE CAR FOR A FEW MORE  
16 WEEKS TO SEE IF SITUATION IMPROVES. DID NOT TAKE CAR IN FOR  
17 CHECK BASED ON DEALER COMMENT THAT THERE WAS NO  
18 INSTRUCTION FROM ACURA YET FOR A FIX. VEHICLE IS NOW 3500  
19 MILES AND ISSUES 2, 3, 4 STILL OCCURRING. \*TR

- 20 (e) 2/10/15 THERE IS A VERY ROUGH UPSHIFT FROM SECOND TO THIRD,  
21 ON A LONG RIGHT HAND TURN WHEN TRANSMISSION IS COLD, IN  
22 THE MIDDLE OF THE TURN, POWER TO WHEELS DISAPPEARS AND  
23 REAPPEARS WHEN ROAD STRAITENS, TRANSMISSION/CAR SURGES  
24 FORWARD ON DOWN SHIFT 3 TO 2 (SOMETIMES). \*TR

25 **2016 Acura TLX**

- 26  
27 (a) 2/4/16 ACCELERATION FROM LOW GEARS REV RPM UP TO 6000  
28 WHEN MOVING OUT OF A PARKING SPOT. WHEN GOING ONTO

1 HIGHWAY SAME THING ANYTHING LOWER THAN 20 MPH HAS A  
2 HESITATION. NOT SURE WHAT MY OPTIONS ARE.

- 3 (b) 1. WHEN ACCELERATING FROM A STOP, THE TRANSMISSION  
4 OCCASIONALLY FEELS LIKE IT SLIPS INTO NEUTRAL. THE ENGINE  
5 RES BUT DOES NOT MOVE FORWARD FOR 1-2 SECONDS. 2. CAR  
6 DOWNSHIFTS INTO 1ST GEAR AND LURCHES FORWARD AFTER  
7 COMING TO A STOP. 3. TRANSMISSION SHIFTS VERY ABRUPTLY AND  
8 ROUGH DURING ALMOST ALL ACCELERATIONS.

9 **2016 Acura MDX**

- 10  
11 (a) 7/13/15 THE 9 SPEED ZF TRANSMISSION HAS UNPREDICTABLE  
12 BEHAVIOR INCLUDING: DELAYED SHIFTING LEADING TO PAUSES IN  
13 POWER, DELAYED DOWN SHIFT DURING ATTEMPTS AT HIGHWAY  
14 SPEED ACCELERATION, JERKY SHIFTS, CAR REMAINS IN NEUTRAL  
15 WHEN SHIFTING FROM DRIVE TO REVERSE. VERY UNSAFE  
16 CONDITION DUE TO UNPREDICTABLE EFFECTS ON SPEED AND CAR  
17 CONTROL. THIS IS NOW A WIDESPREAD PROBLEM AFFECTING THE  
18 SAME TRANSMISSION IN JEEP, CHRYSLER, AND ACURA MODELS.  
19 THE ACURA TLX HAS PREVIOUSLY BEEN DESCRIBED WITH THIS  
20 PROBLEM. NOW THE SAME TRANSMISSION HAS BEEN INCLUDED IN  
21 THE 2016 MDX WITH THE SAME OUT COME.....UPDATED 10/20/15 \*BF  
22 THE CONSUMER STATED THE TRANSMISSION WAS REPLACED.  
23 UPDATED 12/17/15.\*JB

- 24 (b) 8/3/15 WHILE DRIVING, THE MDX SHIFTS INTO NEUTRAL AND  
25 CANNOT BE SHIFTED OUT OF NEUTRAL. THIS HAS OCCURRED ON  
26 THE HIGHWAY MULTIPLE TIMES. THE INFORMATION DISPLAY  
27 SHOWS FIRST EMISSIONS PROBLEM, THEN TRANSMISSION  
28 PROBLEM. ACURA HAS A TSB OUT FOR THIS B15-034, BUT WON'T

1 APPLY IT UNTIL THE PROBLEM APPEARS. HAVING YOUR VEHICLE  
2 SHIFT INTO NEUTRAL IN A HIGH SPEED ENVIRONMENT IS  
3 EXTREMELY DANGEROUS. TSB B15-034 NEEDS TO BE A RECALL  
4 BEFORE THEIR MDX SHIFTS INTO NEUTRAL DRIVING ON THE  
5 HIGHWAY AND THEY BECOME IMMOBILIZED AND PEOPLE ARE  
6 KILLED AS A RESULT....UPDATED 09/22/15 \*BF

7 139. The Transmission Defect was inherent in each Class Vehicle and was present in  
8 each Class Vehicle at the time of sale.

9 140. The existence of the Transmission Defect is a material fact that a reasonable  
10 consumer would consider when deciding whether to purchase or lease a vehicle. Had they  
11 known that the Class Vehicles were equipped with defective transmissions, Plaintiffs and Class  
12 Members would not have purchased or leased the Class Vehicles or would have paid less for the  
13 vehicles.

14 141. Reasonable consumers, like Plaintiffs, expect that a vehicle's transmission is  
15 safe, will function in a manner that will not pose a safety hazard, and is free from defects.  
16 Plaintiffs and Class Members further reasonably expect that Honda will not sell or lease  
17 vehicles with known safety defects, such as the Transmission Defect, and will disclose any such  
18 defects to its consumers when it learns of them. They did not expect Honda to fail to disclose  
19 the Transmission Defect to them and continually to deny the defect.

20 **Honda Has Actively Concealed the Transmission Defect**

21 142. While it has been fully aware of the Transmission Defect in the Class Vehicles,  
22 Honda actively concealed the existence and nature of the defect from Plaintiffs and Class  
23 Members at the time of purchase, lease, or repair and thereafter. Specifically, Honda failed to  
24 disclose or actively concealed at and after the time of purchase, lease, or repair:

- 25 (a) any and all known material defects or material nonconformity of the  
26 Class Vehicles, including the defects relating to the ZF 9HP Automatic  
27 Transmission;
- 28 (b) that the Class Vehicles, including their ZF 9HP Automatic Transmission,

1                    were not in good in working order, were defective, and were not fit for  
2                    their intended purpose; and

3                    (c)        that the Class Vehicles and their ZF 9HP Automatic Transmission were  
4                    defective, despite the fact that Honda learned as early as 2014 of such  
5                    defects through high failure rates, customer complaints, and other internal  
6                    sources.

7                    143.        As a result of the Transmission Defect, Honda received several complaints  
8                    regarding the Class Vehicles' ZF 9HP Automatic Transmissions, including customers'  
9                    experiencing rough, delayed, or sudden shifting or failure to shift, grinding or other loud noises  
10                    during shifting, harsh engagement of gears, sudden or harsh accelerations/decelerations, and  
11                    sudden loss of power.

12                    144.        Despite the TSBs discussed above, on information and belief, consumers  
13                    continued to experience problems with their vehicles, including rough, delayed, or sudden  
14                    shifting or failure to shift, grinding or other loud noises during shifting, harsh engagement of  
15                    gears, sudden or harsh accelerations/decelerations, and sudden loss of power, which necessitated  
16                    additional repairs to the ZF 9HP Automatic Transmission.

17                    145.        On information and belief, the repairs outlined by the various TSBs issued by  
18                    Honda failed to resolve the Transmission Defect.

19                    146.        When consumers presented the Class Vehicles to an authorized Honda dealer for  
20                    problems with the vehicle's ZF 9HP Automatic Transmission, rather than repair the problems  
21                    under warranty, Honda dealers either informed consumers that their vehicles were functioning  
22                    properly, or "as designed," or performed work or software updates that merely masked the  
23                    defect.

24                    147.        To this day, Honda still has not notified Plaintiffs and Class Members that the  
25                    Class Vehicles suffer from a systemic defect that causes the ZF 9HP Automatic Transmission to  
26                    malfunction.

27  
28        ///

1 **CLASS ACTION ALLEGATIONS**

2 148. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all  
3 others similarly situated as members of the proposed Class pursuant to Federal Rules of Civil  
4 Procedure 23(a) and 23(b)(3). This action satisfies the numerosity, commonality, typicality,  
5 adequacy, predominance, and superiority requirements of those provisions.

6 149. The Class and Sub-Class are defined as:

7  
8 **Class:** All individuals in the United States who purchased or  
9 leased any 2018-2019 Honda Odyssey vehicle equipped with a 9-  
10 speed Automatic Transmission.

11 **Florida Sub-Class:** All individuals in the State of Florida who  
12 purchased or leased any 2018-2019 Honda Odyssey vehicle  
13 equipped with a 9-speed Automatic Transmission.

14 **Michigan Sub-Class:** All individuals in the State of Michigan  
15 who purchased or leased any 2018-2019 Honda Odyssey vehicle  
16 equipped with a 9-speed Automatic Transmission.

17 **Ohio Sub-Class:** All individuals in the State of Ohio who  
18 purchased or leased any 2018-2019 Honda Odyssey vehicle  
19 equipped with a 9-speed Automatic Transmission.

20 **South Carolina Sub-Class:** All individuals in the State of South  
21 Carolina who purchased or leased any 2018-2019 Honda Odyssey  
22 vehicle equipped with a 9-speed Automatic Transmission.

23 **Texas Sub-Class:** All individuals in the State of Texas who  
24 purchased or leased any 2018-2019 Honda Odyssey vehicle  
25 equipped with a 9-speed Automatic Transmission.

26 **California Sub-Class:** All individuals who purchased or leased  
27 any 2018-2019 Honda Odyssey vehicle equipped with a 9-speed  
28 Automatic Transmission in the State of California.

**CLRA Sub-Class:** All members of the California Sub-Class who  
are “consumers” within the meaning of California Civil Code §  
1761(d).

150. Excluded from the Class and Sub-Classes are: (1) Defendants, any entity or  
division in which Defendants have a controlling interest, and their legal representatives, officers,  
directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge’s  
staff; (3) any Judge sitting in the presiding state and/or federal court system who may hear an  
appeal of any judgment entered; and (4) those persons who have suffered personal injuries as a



1 result of the Transmission Defect alleged herein. Plaintiffs reserve the right to amend the Class  
2 and Sub-Class definitions if discovery and further investigation reveal that the Class and Sub-  
3 Class should be expanded or otherwise modified.

4 151. There is a well-defined community of interest in the litigation and each subclass  
5 is readily ascertainable.

6 152. Numerosity: Although the exact number of prospective class members is  
7 uncertain and can only be ascertained through appropriate discovery, the number is great  
8 enough such that joinder is impracticable. The disposition of prospective class members' claims  
9 in a single action will provide substantial benefits to all parties and to the Court. The prospective  
10 class members are readily identifiable from information and records in Defendants' possession,  
11 custody, or control, as well as from records kept by the departments of motor vehicles of the  
12 various states.

13 153. Typicality: The claims of the representative Plaintiffs are typical of the claims of  
14 the all prospective class members in that the representative Plaintiffs and the prospective class  
15 members purchased and leased a Class Vehicle designed, manufactured, and distributed by  
16 Honda and equipped with a defective ZF 9HP Automatic Transmission. The representative  
17 Plaintiffs, like all prospective class members, have been damaged by Defendants' misconduct in  
18 that they have incurred or will incur the cost of repairing or replacing the defective transmission.  
19 Furthermore, the factual bases of Honda's misconduct are common to all prospective class  
20 members and represent a common thread resulting in injury to all prospective class members.

21 154. Commonality: There are numerous questions of law and fact common to  
22 Plaintiffs and the prospective class members that predominate over any question affecting  
23 individual prospective class members. These common legal and factual issues include the  
24 following:

- 25 (a) Whether Class Vehicles contain defects relating to the ZF 9HP Automatic  
26 Transmission;
- 27 (b) Whether the defects relating to the ZF 9HP Automatic Transmission  
28 constitute an unreasonable safety risk;

- 1 (c) Whether Defendants knew about the defects relating to the ZF 9HP  
2 Automatic Transmission and, if so, how long Defendants have known of  
3 the defect;
- 4 (d) Whether the defective nature of the ZF 9HP Automatic Transmission  
5 constitutes a material fact;
- 6 (e) Whether Defendants have a duty to disclose the defective nature of the ZF  
7 9HP Automatic Transmission to Plaintiffs and prospective class members;
- 8 (f) Whether Plaintiffs and the prospective class members are entitled to  
9 equitable relief, including a preliminary and/or permanent injunction;
- 10 (g) Whether Defendants knew or reasonably should have known of the defects  
11 relating to the ZF 9HP Automatic Transmission before selling and leasing  
12 Class Vehicles to prospective class members;
- 13 (h) Whether Defendants should be declared financially responsible for  
14 notifying all prospective class members of the problems with the Class  
15 Vehicles and for the costs and expenses of repairing and replacing the  
16 defective ZF 9HP Automatic Transmission;
- 17 (i) Whether Defendants is obligated to inform prospective class members of  
18 their right to seek reimbursement for having paid to diagnose, repair, or  
19 replace the defective ZF 9HP Automatic Transmission; and
- 20 (j) Whether Defendants breached consumer protection statutes under the laws  
21 of the states of Florida, Ohio, Michigan, South Carolina, Texas, and  
22 California; and
- 23 (k) Whether Defendants breached the implied warranty of merchantability  
24 under the laws of the states of Florida, Ohio, Michigan, South Carolina,  
25 Texas, and California.

26 155. Adequate Representation: Plaintiffs will fairly and adequately protect the  
27 interests of the Class Members. Plaintiffs has retained attorneys experienced in the prosecution  
28 of class actions, including consumer and product defect class actions, and Plaintiffs intends to



1           162. The practices of Honda, described above, violate the FDUTPA for, *inter alia*,  
2 one or more of the following reasons:

- 3           (a) Honda represented that goods or services have sponsorship, approval,  
4 characteristics, uses, and benefits that they do not have;
- 5           (b) Honda provided, disseminated, marketed, and otherwise distributed  
6 uniform false and misleading advertisements, technical data and other  
7 information to consumers regarding the performance, reliability, quality  
8 and nature of the ZF 9HP transmissions;
- 9           (c) Honda represented that goods or services were of a particular standard,  
10 quality, or grade, when they were of another;
- 11           (d) Honda engaged in unconscionable commercial practices in failing to  
12 reveal material facts and information about the ZF 9HP transmissions,  
13 which did, or tended to, mislead Browning and the Florida Sub-Class  
14 Members about facts that could not reasonably be known by the  
15 consumer;
- 16           (e) Honda failed to reveal facts that were material to the transactions in light  
17 of representations of fact made in a positive manner;
- 18           (f) Honda caused Browning and the Florida Sub-Class Members to suffer a  
19 probability of confusion and a misunderstanding of legal rights,  
20 obligations, and/or remedies by and through its conduct;
- 21           (g) Honda failed to reveal material facts to Browning and the Florida Class  
22 with the intent that Browning and the Florida Sub-Class Members rely  
23 upon the omission;
- 24           (h) Honda made material representations and statements of fact to Browning  
25 and the Florida Sub-Class Members that resulted in Browning and the  
26 Florida Sub-Class Members reasonably believing the represented or  
27 suggested state of affairs to be other than what they actually were;  
28

1 (i) Honda intended that Browning and the Florida Sub-Class Members rely  
2 on their misrepresentations and omissions, so that Browning and the  
3 Florida Sub-Class Members would purchase vehicles equipped with the  
4 ZF 9HP transmissions.

5 163. Honda's actions impact the public interest because Browning and the Florida  
6 Sub-Class Members were injured in exactly the same way as thousands of others purchasing  
7 and/or leasing the vehicles with ZF 9HP transmissions as a result of and pursuant to Honda's  
8 generalized course of deception.

9 164. Had Browning and the Florida Sub-Class Members known of the defective  
10 nature of the ZF 9HP transmissions, they would not have purchased or leased vehicles equipped  
11 with the ZF 9HP transmissions or would have paid less for them.

12 165. The foregoing acts, omissions and practices proximately caused Browning and  
13 the Florida Sub-Class Members to suffer actual damages in the form of, *inter alia*, overpaying  
14 for the vehicles, as well as diminution in value of the vehicles equipped with ZF 9HP  
15 transmissions, and they are entitled to recover such damages, together with all other appropriate  
16 damages, attorneys' fees and costs of suit.

17 **SECOND CAUSE OF ACTION**

18 **(Breach of Implied Warranty**

19 **F.S.A. §§ 672.314 and 680.212)**

20 166. Plaintiffs incorporate by reference the allegations contained in the preceding  
21 paragraphs of this complaint.

22 167. Plaintiffs Browning and Petrusko bring this cause of action on their own behalf  
23 and on behalf of the Class, or, alternatively, the members of the Florida Sub-Class.

24 168. Honda is and was at all relevant times a "merchant" with respect to motor  
25 vehicles under F.S.A. §§ 672.104(1) and 680.1031(3)(k), and a "seller" of motor vehicles under  
26 § 672.103(1)(d).

27 169. With respect to leases, Honda is and was at all relevant times a "lessor" of motor  
28 vehicles under F.S.A. § 680.1031(1)(p).

1           170. The Class Vehicles are and were at all relevant times “goods” within the meaning  
2 of F.S.A. §§ 672.105(1) and 680.1031(1)(h).

3           171. A warranty that the Class Vehicles were in merchantable condition and fit for the  
4 ordinary purpose for which vehicles are used is implied by law under F.S.A. §§ 672.314 and  
5 680.212.

6           172. Honda knew or had reason to know of the specific use for which the Class  
7 Vehicles were purchased or leased. Honda directly sold and marketed vehicles equipped with  
8 the ZF 9HP transmissions to customers through authorized dealers, like those from whom  
9 Browning and the Florida Sub-Class Members bought or leased their vehicles, for the intended  
10 purpose of consumers purchasing the vehicles. Honda knew that the Class Vehicles would and  
11 did pass unchanged from the authorized dealers to Browning and the Florida Sub-Class  
12 Members, with no modification to the defective transmissions.

13           173. Honda provided Plaintiffs and Class Members with an implied warranty that the  
14 Class Vehicles and their components and parts are merchantable and fit for the ordinary  
15 purposes for which they were sold.

16           174. This implied warranty included, among other things: (i) a warranty that the Class  
17 Vehicles and their transmissions that were manufactured, supplied, distributed, and/or sold by  
18 Honda were safe and reliable for providing transportation; and (ii) a warranty that the Class  
19 Vehicles and their transmissions would be fit for their intended use while the Class Vehicles  
20 were being operated.

21           175. Contrary to the applicable implied warranties, the Class Vehicles and their  
22 transmissions at the time of sale and thereafter were not fit for their ordinary and intended  
23 purpose of providing Plaintiffs and Class Members with reliable, durable, and safe  
24 transportation. Instead, the Class Vehicles are defective, including, but not limited to, the  
25 defective design or manufacture of their transmissions and the existence of the Transmission  
26 Defect at the time of sale or lease and thereafter. Honda knew of this defect at the time these  
27 sale or lease transactions occurred.  
28

1           176. As a result of Honda's breach of the applicable implied warranties, Browning  
2 and the Florida Sub-Class Members of the Class Vehicles suffered an ascertainable loss of  
3 money, property, and/or value of their Class Vehicles. Additionally, as a result of the  
4 Transmission Defect, Browning and the Florida Sub-Class Members were harmed and suffered  
5 actual damages in that the Class Vehicles' transmission components are substantially certain to  
6 fail before their expected useful life has run.

7           177. Honda's actions, as complained of herein, breached the implied warranty that the  
8 Class Vehicles were of merchantable quality and fit for such use in violation of F.S.A. §§  
9 672.314 and 680.212.

10           178. Browning and the Florida Sub-Class Members have complied with all  
11 obligations under the warranty, or otherwise have been excused from performance of said  
12 obligations as a result of Honda's conduct described herein.

13           179. Browning and the Florida Sub-Class Members were not required to notify Honda  
14 of the breach because affording Honda a reasonable opportunity to cure its breach of written  
15 warranty would have been futile. Honda was also on notice of the Transmission Defect from the  
16 complaints and service requests it received from Plaintiffs and the Class Members, from repairs  
17 and/or replacements of the transmissions or components thereof, and through other internal  
18 sources.

19           180. As a direct and proximate cause of Honda's breach, Browning and the Florida  
20 Sub-Class Members suffered damages and continue to suffer damages, including economic  
21 damages at the point of sale or lease and diminution of value of their Class Vehicles.  
22 Additionally, Browning and the Florida Sub-Class Members have incurred or will incur  
23 economic damages at the point of repair in the form of the cost of repair.

24           181. As a direct and proximate result of Honda's breach of the implied warranty of  
25 merchantability, Browning and the Florida Sub-Class Members have been damaged in an  
26 amount to be proven at trial.

27  
28

**THIRD CAUSE OF ACTION**

**(Violation of the Ohio Consumer Sales Practices Act**

**OHIO REV. CODE ANN. § 1345.01 *et seq.*)**

182. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this complaint.

183. The Pappases bring this cause of action on their own behalf and on behalf of the Class, or, alternatively, the members of the Ohio Sub-Class.

184. The Pappases and the Ohio Sub-Class Members are “consumers” as defined by the Ohio Consumer Sales Practices Act, OHIO REV. CODE ANN. § 1345.01 (“Ohio CSPA”).

185. Honda is a “supplier” as defined by the Ohio CSPA.

186. The Pappases’ and the Ohio Sub-Class Members’ purchases or leases of Class Vehicles were “consumer transactions” as defined by the Ohio CSPA.

187. The Ohio CSPA, OHIO REV. CODE ANN. § 1345.02, broadly prohibits “an unconscionable act or practice in connection with a consumer transaction.” Specifically, and without limitation of the broad prohibition, the Act prohibits suppliers from representing “(1) That the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have; [and] (2) That the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription, or model, if it is not.” OHIO REV. CODE ANN. § 1345.02. Defendants’ conduct as alleged above and below constitutes unfair and unconscionable acts or practices in consumer sales transactions in violation of OHIO REV. CODE ANN. § 1345.02. By concealing the known defects in the Class Vehicles, Honda participated in unconscionable acts and practices that violated the Ohio CSPA.

188. Honda participated in misleading, false, or deceptive acts that violated the Ohio CSPA as described below and alleged throughout the Complaint. By failing to disclose the Transmission Defect, by concealing the Transmission Defect, by marketing its vehicles as safe, reliable, easily operable, efficient, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, cleanliness, performance and efficiency, and stood behind its vehicles after they were sold, Honda knowingly and intentionally misrepresented and omitted



1 material facts in connection with the sale or lease of the Class Vehicles. Honda systematically  
2 misrepresented, concealed, suppressed, or omitted material facts relating to the Class Vehicles  
3 and Transmission Defect in the course of its business.

4 189. Honda also engaged in unlawful trade practices by employing deception,  
5 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission  
6 of any material fact with intent that others rely upon such concealment, suppression or omission,  
7 in connection with the sale of the Class Vehicles.

8 190. Honda's unfair and deceptive acts or practices occurred repeatedly in Honda's  
9 trade or business, were capable of deceiving a substantial portion of the purchasing public and  
10 imposed a serious safety risk on the public.

11 191. Honda knew that the Class Vehicles and their transmissions suffered from an  
12 inherent defect, were defectively designed or manufactured, and were not suitable for their  
13 intended use.

14 192. Honda knew or should have known that its conduct violated the Ohio CSPA.

15 193. The Pappases and the Ohio Sub-Class Members reasonably relied on Honda's  
16 misrepresentations and omissions of material facts in its advertisements of the Class Vehicles  
17 and in the purchase of the Class Vehicles.

18 194. Had the Pappases and the Ohio Sub-Class Members known that the Class  
19 Vehicles would exhibit the Transmission Defect, they would not have purchased or leased the  
20 Class Vehicles or would have paid less for them. Plaintiffs did not receive the benefit of their  
21 bargain as a result of Honda's misconduct.

22 195. Honda owed the Pappases and the Ohio Sub-Class Members a duty to disclose  
23 the truth about the Transmission Defect because Honda: (a) possessed exclusive knowledge of  
24 the Class Vehicles and the Transmission Defect; (b) intentionally concealed the foregoing from  
25 the Pappases and the Ohio Sub-Class Members; and/or (c) made incomplete representations  
26 regarding the quality and durability of the Class Vehicles, while purposefully withholding  
27 material facts from the Pappases and the Ohio Sub-Class Members that contradicted these  
28 representations.

1           196. Due to Honda's specific and superior knowledge that the transmissions in the  
2 Class Vehicles will fail due to the Transmission Defect, its false representations regarding the  
3 increased durability of the Class Vehicles, and reliance by the Pappases and the Ohio Sub-Class  
4 Members on these material representations, Honda had a duty to disclose to Class members that  
5 the ZF 9HP transmissions will cause failure in Class Vehicles, that Class Vehicles do not have  
6 the expected durability, reliability, and/or safety over other vehicles or of their predecessor  
7 transmissions, that failure of the ZF 9HP transmissions will cause damage to Class Vehicle  
8 engines and engine systems, and that Class members would be required to bear the cost of the  
9 damage to their vehicles. Having volunteered to provide information to the Pappases and the  
10 Ohio Sub-Class Members, Honda had the duty to disclose not just the partial truth, but the entire  
11 truth. These omitted and concealed facts were material because they directly impact the value of  
12 the Class Vehicles purchased or leased by the Pappases and the Ohio Sub-Class Members.  
13 Longevity, durability, performance, and safety are material concerns to Honda consumers.  
14 Honda represented to the Pappases and the Ohio Sub-Class Members that they were purchasing  
15 or leasing vehicles that were durable, reliable, safe, efficient, of high quality, and containing  
16 transmissions of advanced and superior characteristics and technology as alleged throughout this  
17 Complaint, when in fact it is only a matter of time before the transmissions fail due to the  
18 Transmission Defect.

19           197. The Pappases and the Ohio Sub-Class Members suffered injury in fact to a  
20 legally protected interest. As a result of Honda's conduct, the Pappases and the Ohio Sub-Class  
21 Members were harmed and suffered actual damages in the form of the diminished value of their  
22 vehicles.

23           198. As a result of Honda's conduct, the Pappases and the Ohio Sub-Class Members  
24 were harmed and suffered actual damages as a result of Honda's misrepresentations and  
25 omissions with regard to their Class Vehicles' transmissions because they purchased vehicles  
26 which do not perform as advertised.

27           199. As a direct and proximate result of Honda's unfair or deceptive acts or practices,  
28 the Pappases and the Ohio Sub-Class Members suffered and will continue to suffer injury in fact

1 and/or actual damages.

2 200. Defendants' violations present a continuing risk to the Pappases and the Ohio  
3 Sub-Class Members as well as to the general public. Defendants' unlawful acts and practices  
4 complained of herein affect the public interest.

5 201. Plaintiffs seek actual damages, plus an amount not exceeding \$5,000 in  
6 noneconomic damages, an order enjoining Honda's deceptive and unfair conduct, court costs  
7 and attorneys' fees as a result of Defendants' violations of the Ohio CSPA as provided in OHIO  
8 REV. CODE ANN. § 1345.09.

9 **FOURTH CAUSE OF ACTION**

10 **(Breach of the Implied Warranty of Merchantability**

11 **OHIO REV. CODE ANN. §§ 1302.27 and 1310.19)**

12 202. Plaintiffs incorporate by reference the allegations contained in the preceding  
13 paragraphs of this complaint.

14 203. The Pappases bring this cause of action on their own behalf and on behalf of the  
15 Class, or, alternatively, the members of the Ohio Sub-Class.

16 204. Honda is and was at all relevant times a "merchant" with respect to motor  
17 vehicles under OHIO REV. CODE ANN. §§ 1302.01(5) and 1310.01(A)(20), and a "seller" of  
18 motor vehicles under § 1302.01(4).

19 205. With respect to leases, Honda is and was at all relevant times a "lessor" of motor  
20 vehicles under OHIO REV. CODE ANN. § 1310.01(A)(20).

21 206. The Class Vehicles are and were at all relevant times "goods" within the meaning  
22 of OHIO REV. CODE ANN. §§ 1302.01(8) and 1310.01(A)(8).

23 207. A warranty that the Class Vehicles were in merchantable condition and fit for the  
24 ordinary purpose for which vehicles are used is implied by law under OHIO REV. CODE ANN. §§  
25 1302.27 and 1310.19.

26 208. Honda knew or had reason to know of the specific use for which the Class  
27 Vehicles were purchased or leased. Honda directly sold and marketed vehicles equipped with  
28 the ZF 9HP transmissions to customers through authorized dealers, like those from whom the

1 Pappases and the Ohio Sub-Class Members bought or leased their vehicles, for the intended  
2 purpose of consumers purchasing the vehicles. Honda knew that the Class Vehicles would and  
3 did pass unchanged from the authorized dealers to the Pappases and the Ohio Sub-Class  
4 Members, with no modification to the defective transmissions.

5 209. Honda provided Plaintiffs and Class Members with an implied warranty that the  
6 Class Vehicles and their components and parts are merchantable and fit for the ordinary  
7 purposes for which they were sold.

8 210. This implied warranty included, among other things: (i) a warranty that the Class  
9 Vehicles and their transmissions that were manufactured, supplied, distributed, and/or sold by  
10 Honda were safe and reliable for providing transportation; and (ii) a warranty that the Class  
11 Vehicles and their transmissions would be fit for their intended use while the Class Vehicles  
12 were being operated.

13 211. Contrary to the applicable implied warranties, the Class Vehicles and their  
14 transmissions at the time of sale and thereafter were not fit for their ordinary and intended  
15 purpose of providing Plaintiffs and Class Members with reliable, durable, and safe  
16 transportation. Instead, the Class Vehicles are defective, including, but not limited to, the  
17 defective design or manufacture of their transmissions and the existence of the Transmission  
18 Defect at the time of sale or lease and thereafter. Honda knew of this defect at the time these  
19 sale or lease transactions occurred.

20 212. As a result of Honda's breach of the applicable implied warranties, the Pappases  
21 and the Ohio Sub-Class Members of the Class Vehicles suffered an ascertainable loss of money,  
22 property, and/or value of their Class Vehicles. Additionally, as a result of the Transmission  
23 Defect, the Pappases and the Ohio Sub-Class Members were harmed and suffered actual  
24 damages in that the Class Vehicles' transmission components are substantially certain to fail  
25 before their expected useful life has run.

26 213. Honda's actions, as complained of herein, breached the implied warranty that the  
27 Class Vehicles were of merchantable quality and fit for such use in violation of OHIO REV.  
28 CODE ANN. §§ 1302.27 and 1310.19.



1           222. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits “[u]nfair,  
2 unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce,”  
3 including: “(c) Representing that goods or services have . . . characteristics . . . that they do not  
4 have;” “(e) Representing that goods or services are of a particular standard . . . if they are of  
5 another;” “(s) Failing to reveal a material fact, the omission of which tends to mislead or  
6 deceive the consumer, and which fact could not reasonably be known by the consumer;” “(bb)  
7 Making a representation of fact or statement of fact material to the transaction such that a person  
8 reasonably believes the represented or suggested state of affairs to be other than it actually is;”  
9 and “(cc) Failing to reveal facts that are material to the transaction in light of representations of  
10 fact made in a positive manner.” MICH. COMP. LAWS § 445.903(1).

11           223. Honda participated in misleading, false, or deceptive acts that violated the  
12 Michigan CPA as described below and alleged throughout the Complaint. By failing to disclose  
13 the Transmission Defect, by concealing the Transmission Defect, by marketing its vehicles as  
14 safe, reliable, easily operable, efficient, and of high quality, and by presenting itself as a  
15 reputable manufacturer that valued safety, cleanliness, performance and efficiency, and stood  
16 behind its vehicles after they were sold, Honda knowingly and intentionally misrepresented and  
17 omitted material facts in connection with the sale or lease of the Class Vehicles. Honda  
18 systematically misrepresented, concealed, suppressed, or omitted material facts relating to the  
19 Class Vehicles and Transmission Defect in the course of its business.

20           224. Honda also engaged in unlawful trade practices by employing deception,  
21 deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission  
22 of any material fact with intent that others rely upon such concealment, suppression or omission,  
23 in connection with the sale of the Class Vehicles.

24           225. Honda’s unfair and deceptive acts or practices occurred repeatedly in Honda’s  
25 trade or business, were capable of deceiving a substantial portion of the purchasing public and  
26 imposed a serious safety risk on the public.

27           226. Honda knew that the Class Vehicles and their transmissions suffered from an  
28 inherent defect, were defectively designed or manufactured, and were not suitable for their

1 intended use.

2 227. Honda knew or should have known that its conduct violated the Michigan CPA.

3 228. The Wescotts and the Michigan Sub-Class Members reasonably relied on  
4 Honda's misrepresentations and omissions of material facts in its advertisements of the Class  
5 Vehicles and in the purchase of the Class Vehicles.

6 229. Had the Wescotts and the Michigan Sub-Class Members known that the Class  
7 Vehicles would exhibit the Transmission Defect, they would not have purchased or leased the  
8 Class Vehicles or would have paid less for them. Plaintiffs did not receive the benefit of their  
9 bargain as a result of Honda's misconduct.

10 230. Honda owed the Wescotts and the Michigan Sub-Class Members a duty to  
11 disclose the truth about the Transmission Defect because Honda: (a) possessed exclusive  
12 knowledge of the Class Vehicles and the Transmission Defect; (b) intentionally concealed the  
13 foregoing from the Wescotts and the Michigan Sub-Class Members; and/or (c) made  
14 incomplete representations regarding the quality and durability of the Class Vehicles, while  
15 purposefully withholding material facts from the Wescotts and the Michigan Sub-Class  
16 Members that contradicted these representations.

17 231. Due to Honda's specific and superior knowledge that the transmissions in the  
18 Class Vehicles will fail due to the Transmission Defect, its false representations regarding the  
19 increased durability of the Class Vehicles, and reliance by the Wescotts and the Michigan Sub-  
20 Class Members on these material representations, Honda had a duty to disclose to Class  
21 members that the ZF 9HP transmissions will cause failure in Class Vehicles, that Class Vehicles  
22 do not have the expected durability, reliability, and/or safety over other vehicles or of their  
23 predecessor transmissions, that failure of the ZF 9HP transmissions will cause damage to Class  
24 Vehicle engines and engine systems, and that Class members would be required to bear the cost  
25 of the damage to their vehicles. Having volunteered to provide information to the Wescotts and  
26 the Michigan Sub-Class Members, Honda had the duty to disclose not just the partial truth, but  
27 the entire truth. These omitted and concealed facts were material because they directly impact  
28 the value of the Class Vehicles purchased or leased by the Wescotts and the Michigan Sub-Class

1 Members and could not reasonably be known by the consumer. Longevity, durability,  
2 performance, and safety are material concerns to Honda consumers. Honda represented to the  
3 Wescotts and the Michigan Sub-Class Members that they were purchasing or leasing vehicles  
4 that were durable, reliable, safe, efficient, of high quality, and containing transmissions of  
5 advanced and superior characteristics and technology as alleged throughout this Complaint,  
6 when in fact it is only a matter of time before the transmissions fail due to the Transmission  
7 Defect.

8           232. The Wescotts and the Michigan Sub-Class Members suffered injury in fact to a  
9 legally protected interest. As a result of Honda's conduct, The Wescotts and the Michigan Sub-  
10 Class Members were harmed and suffered actual damages in the form of the diminished value of  
11 their vehicles.

12           233. As a result of Honda's conduct, the Wescotts and the Michigan Sub-Class  
13 Members were harmed and suffered actual damages as a result of Honda's misrepresentations  
14 and omissions with regard to their Class Vehicles' transmissions because they purchased  
15 vehicles which do not perform as advertised.

16           234. As a direct and proximate result of Honda's unfair or deceptive acts or practices,  
17 The Wescotts and the Michigan Sub-Class Members suffered and will continue to suffer injury  
18 in fact and/or actual damages.

19           235. Defendants' violations present a continuing risk to the Wescotts and the  
20 Michigan Sub-Class Members as well as to the general public. Defendants' unlawful acts and  
21 practices complained of herein affect the public interest.

22           236. The Wescotts and the Michigan Sub-Class Members seek monetary relief  
23 measured as the greater of (a) actual damages in an amount to be determined at trial and (b)  
24 statutory damages in the amount of \$250 per each Plaintiff; and reasonable attorneys' fees; and  
25 any other just and proper relief available under Mich. Comp. Laws MICH. COMP. LAWS damages  
26 against Honda because it carried out despicable conduct with willful and conscious disregard of  
27 the rights and safety of others. Honda's conduct constitutes malice, oppression, and fraud  
28 warranting punitive damages.



**SIXTH CAUSE OF ACTION**

**(Breach of Express Warranty**

**MICH. COMP. LAWS §§ 440.2313 and 440.2860)**

1  
2  
3  
4 237. Plaintiffs incorporate by reference the allegations contained in the preceding  
5 paragraphs of this complaint.

6 238. The Wescotts bring this cause of action on their own behalf and on behalf of the  
7 Class, or, alternatively, the members of the Michigan Sub-Class against Honda.

8 239. Honda is and was at all relevant times a “merchant” with respect to motor  
9 vehicles under MICH. COMP. LAWS §§ 440.2104(1) and a “seller” of motor vehicles under §  
10 440.2103(1)(c).

11 240. With respect to leases, Honda is and was at all relevant times a “lessor” of motor  
12 vehicles under MICH. COMP. LAWS § 440.2803(1)(p).

13 241. The Class Vehicles are and were at all relevant times “goods” within the meaning  
14 of MICH. COMP. LAWS §§ 440.2105(1) and 440.2803(1)(h).

15 242. Honda provided all purchasers and lessees of the Class Vehicles with an express  
16 warranty described *infra*, which became a material part of the bargain. Accordingly, AHMC’s  
17 express warranty is an express warranty under Michigan law.

18 243. Honda provided all purchasers and lessees of Class Vehicles with two warranties,  
19 a Basic Warranty and a Powertrain Warranty.

20 244. Under the Warranties, Honda expressly warranted the following: “This warranty  
21 covers repairs and adjustments needed to correct defects in materials or workmanship of any  
22 part supplied by Honda.” Likewise, Honda’s Powertrain Warranty provides in relevant part that  
23 “This warranty covers repairs needed to correct defects in materials or workmanship of any  
24 component listed below and in the next column and supplied by Honda.” The “transmission and  
25 transaxle” are among the parts covered by the Powertrain Warranty.”

26 245. According to Honda, the Basic Warranty coverage for Honda models “is for 36  
27 months or 36,000 miles, whichever occurs first...” The Powertrain warranty coverage “is for 60  
28 months or 60,000 miles, whichever occurs first.”

1           246. Under the Warranties, Honda expressly warranted the following: This warranty  
2 covers repairs and adjustments needed to correct defects in materials or workmanship of any  
3 part supplied by Honda.” Likewise, Honda’s Powertrain Warranty provides in relevant part that  
4 “This warranty covers repairs needed to correct defects in materials or workmanship of any  
5 component listed below and in the next column and supplied by Honda.” The “transmission and  
6 transaxle” are among the parts covered by the Powertrain Warranty.”

7           247. According to Honda, the Basic Warranty coverage for Honda models “is for 36  
8 months or 36,000 miles, whichever occurs first...” The Powertrain warranty coverage “is for 60  
9 months or 60,000 miles, whichever occurs first.”

10           248. Honda manufactured and/or installed the ZF 9HP transmissions and the  
11 transmissions’ component parts in the Class Vehicles, and the ZF 9HP transmissions and their  
12 component parts are covered by the express Warranties.

13           249. The Transmission Defect at issue in this litigation was present at the time the  
14 Class Vehicles were sold or leased to the Wescotts and the Michigan Sub-Class Members.

15           250. Plaintiffs relied on Honda’s express warranties, which were a material part of the  
16 bargain, when purchasing or leasing their Class Vehicles.

17           251. Under the express Warranties, Honda was obligated to correct the Transmission  
18 Defect in the vehicles owned or leased by the Wescotts and the Michigan Sub-Class Members.

19           252. Although Honda was obligated to correct the Transmission Defect, none of the  
20 attempted fixes to the transmissions are adequate under the terms of the Warranties, as they did  
21 not cure the defect.

22           253. Honda breached the express Warranties by performing illusory repairs. Rather  
23 than repairing the vehicles pursuant to the express Warranties, Honda falsely informed  
24 Michigan Sub-Class Members that there was no problem with their Class Vehicles, performed  
25 ineffective procedures including software updates, and/or replaced defective components in the  
26 ZF 9HP transmissions with equally defective components, without actually repairing the Class  
27 Vehicles.  
28

1           254. Honda and its agent dealers have failed and refused to conform the ZF 9HP  
2 transmissions to the express Warranties. Honda's conduct, as discussed throughout this  
3 Complaint, has voided any attempt on its part to disclaim liability for its actions.

4           255. Moreover, Honda's attempt to disclaim or limit these express Warranties vis-à-  
5 vis consumers is unconscionable and unenforceable under the circumstances here. Specifically,  
6 Honda's warranty limitation is unenforceable because it knowingly sold a defective product  
7 without informing consumers about the defect.

8           256. The time limits contained in Honda's warranty period were also unconscionable  
9 and inadequate to protect the Wescotts and the Michigan Sub-Class Members. Among other  
10 things, the Wescotts and the Michigan Sub-Class Members had no meaningful choice in  
11 determining these time limitations, the terms of which unreasonably favored Honda. A gross  
12 disparity in bargaining power existed between Honda and the Class members, and Honda knew  
13 or should have known that the Class Vehicles were defective at the time of sale.

14           257. The Wescotts and the Michigan Sub-Class Members have complied with all  
15 obligations under the Warranties, or otherwise have been excused from performance of said  
16 obligations as a result of Honda's conduct described herein.

17           258. The Wescotts and the Michigan Sub-Class Members were not required to notify  
18 Honda of the breach because affording Honda a reasonable opportunity to cure its breach of  
19 written warranty would have been futile. Honda was also on notice of the Transmission Defect  
20 from the complaints and service requests it received from Plaintiffs and the Class Members,  
21 from repairs and/or replacements of the transmissions or components thereof, and through other  
22 internal and external sources.

23           259. Because Honda, through its conduct and exemplified by its own service bulletins,  
24 has covered repairs of the Transmission Defect if Honda determines the repairs are  
25 appropriately covered under the Warranties, Honda cannot now deny that the Warranties cover  
26 the Transmission Defect.

27           260. Because Honda has not been able to remedy the Transmission Defect, any  
28 limitation on remedies included in the Warranties causes the Warranties to fail their essential

1 purposes, rendering them null and void.

2 261. As a direct and proximate cause of Honda’s breach, the Wescotts and the  
3 Michigan Sub-Class Members suffered damages and continue to suffer damages, including  
4 economic damages at the point of sale or lease and diminution of value of their Class Vehicles.  
5 Additionally, the Wescotts and the Michigan Sub-Class Members have incurred or will incur  
6 economic damages at the point of repair in the form of the cost of repair.

7 262. As a direct and proximate result of Honda’s breach of express warranties, the  
8 Wescotts and the Michigan Sub-Class Members have been damaged in an amount to be  
9 determined at trial.

10 **SEVENTH CAUSE OF ACTION**

11 **(Breach of the Implied Warranty of Merchantability**

12 **MICH. COMP. LAWS §§ 440.2314 and 440.2860)**

13 263. Plaintiffs incorporate by reference the allegations contained in the preceding  
14 paragraphs of this complaint.

15 264. The Wescotts bring this cause of action on their own behalf and on behalf of the  
16 Class, or, alternatively, the members of the Michigan Sub-Class.

17 265. Honda is and was at all relevant times a “merchant” with respect to motor  
18 vehicles under MICH. COMP. LAWS §§ 440.2104(1) and a “seller” of motor vehicles under §  
19 440.2103(1)(c).

20 266. With respect to leases, Honda is and was at all relevant times a “lessor” of motor  
21 vehicles under MICH. COMP. LAWS § 440.2803(1)(p).

22 267. The Class Vehicles are and were at all relevant times “goods” within the meaning  
23 of MICH. COMP. LAWS §§ 440.2105(1) and 440.2803(1)(h).

24 268. A warranty that the Class Vehicles were in merchantable condition and fit for the  
25 ordinary purpose for which vehicles are used is implied by law under MICH. COMP. LAWS §§  
26 440.2314 and 440.2862.

27 269. Honda knew or had reason to know of the specific use for which the Class  
28 Vehicles were purchased or leased. Honda directly sold and marketed vehicles equipped with

1 the ZF 9HP transmissions to customers through authorized dealers, like those from whom the  
2 Wescotts and the Michigan Sub-Class Members bought or leased their vehicles, for the intended  
3 purpose of consumers purchasing the vehicles. Honda knew that the Class Vehicles would and  
4 did pass unchanged from the authorized dealers to the Wescotts and the Michigan Sub-Class  
5 Members, with no modification to the defective transmissions.

6 270. Honda provided Plaintiffs and Class Members with an implied warranty that the  
7 Class Vehicles and their components and parts are merchantable and fit for the ordinary  
8 purposes for which they were sold.

9 271. This implied warranty included, among other things: (i) a warranty that the Class  
10 Vehicles and their transmissions that were manufactured, supplied, distributed, and/or sold by  
11 Honda were safe and reliable for providing transportation; and (ii) a warranty that the Class  
12 Vehicles and their transmissions would be fit for their intended use while the Class Vehicles  
13 were being operated.

14 272. Contrary to the applicable implied warranties, the Class Vehicles and their  
15 transmissions at the time of sale and thereafter were not fit for their ordinary and intended  
16 purpose of providing Plaintiffs and Class Members with reliable, durable, and safe  
17 transportation. Instead, the Class Vehicles are defective, including, but not limited to, the  
18 defective design or manufacture of their transmissions and the existence of the Transmission  
19 Defect at the time of sale or lease and thereafter. Honda knew of this defect at the time these  
20 sale or lease transactions occurred.

21 273. As a result of Honda's breach of the applicable implied warranties, the Wescotts  
22 and the Michigan Sub-Class Members of the Class Vehicles suffered an ascertainable loss of  
23 money, property, and/or value of their Class Vehicles. Additionally, as a result of the  
24 Transmission Defect, the Wescotts and the Michigan Sub-Class Members were harmed and  
25 suffered actual damages in that the Class Vehicles' transmission components are substantially  
26 certain to fail before their expected useful life has run.

27 274. Honda's actions, as complained of herein, breached the implied warranty that the  
28 Class Vehicles were of merchantable quality and fit for such use in violation of MICH. COMP.

1 LAWS §§ 440.2314 and 440.2862.

2 275. The Wescotts and the Michigan Sub-Class Members have complied with all  
3 obligations under the warranty, or otherwise have been excused from performance of said  
4 obligations as a result of Honda's conduct described herein.

5 276. The Wescotts and the Michigan Sub-Class Members were not required to notify  
6 Honda of the breach because affording Honda a reasonable opportunity to cure its breach of  
7 written warranty would have been futile. Honda was also on notice of the Transmission Defect  
8 from the complaints and service requests it received from Plaintiffs and the Class Members,  
9 from repairs and/or replacements of the transmissions or components thereof, and through other  
10 internal sources.

11 277. As a direct and proximate cause of Honda's breach, the Wescotts and the  
12 Michigan Sub-Class Members suffered damages and continue to suffer damages, including  
13 economic damages at the point of sale or lease and diminution of value of their Class Vehicles.  
14 Additionally, the Wescotts and the Michigan Sub-Class Members have incurred or will incur  
15 economic damages at the point of repair in the form of the cost of repair.

16 278. As a direct and proximate result of Honda's breach of the implied warranty of  
17 merchantability, the Wescotts and the Michigan Sub-Class Members have been damaged in an  
18 amount to be proven at trial.

19 **EIGHTH CAUSE OF ACTION**

20 **(Violation of the South Carolina Regulation of Manufacturers, Distributors, and Dealers**  
21 **Act, S.C. Code Ann. § 56-15-10, et seq.)**

22 279. Plaintiffs incorporate by reference the allegations contained in the preceding  
23 paragraphs of this Complaint.

24 280. Plaintiff Boatwright brings this cause of action on behalf of himself and the  
25 Class, or, alternatively, the members of the South Carolina Sub-Class.

26 281. Defendants are "manufacturers," "dealers," and "distributors" within the  
27 meaning of the South Carolina Manufacturers, Distributors and Dealers Act (the "Dealers Act"),  
28 S.C. Code Ann. § 56-15-10, et seq.

1           282. The Dealers Act prohibits a manufacturer from engaging “in any action which is  
2 arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the  
3 public.” S.C. Code Ann. § 56-15-40(1). The Dealers Act also declares unlawful any  
4 “misrepresentation in any manner, whether intentionally false or due to gross negligence, of a  
5 material fact; a promise or representation not made honestly and in good faith; and an  
6 intentional failure to disclose a material fact.” S.C. Code Ann. § 56-15-10(m).

7           283. Defendants committed unfair or deceptive acts or practices that violated the  
8 Dealers Act by engaging in acts which were arbitrary, in bad faith, unconscionable, and which  
9 caused damage to Plaintiff Boatwright, the South Carolina Sub-Class, and the public.

10           284. Defendants’ bad faith and unconscionable actions include, but are not limited to:  
11 1) representing that Class Vehicles have characteristics, uses, benefits, and qualities which they  
12 do not have; 2) representing that Class Vehicles are of a particular standard, quality, and grade  
13 when they are not; 3) advertising Class Vehicles with the intent not to sell them as advertised; 4)  
14 representing that a transaction involving Class Vehicles confers or involves rights, remedies,  
15 and obligations which it does not; and 5) representing that the subject of a transaction involving  
16 Class Vehicles has been supplied in accordance with a previous representation when it has not.

17           285. In violation of the Dealers Act, Defendants engaged in deception, fraud, false  
18 pretense false premise, misrepresentation, knowing concealment, suppression, and/or omission  
19 of material facts concerning the existence of the Transmission Defect in Class Vehicles in  
20 connection with the sale and/or advertisement of Class Vehicles to Plaintiff Boatwright and  
21 members of the South Carolina Sub-Class.

22           286. Pursuant to S.C. Code Ann. § 56-15-110(2), Plaintiff Boatwright brings this  
23 action on behalf of himself and the members of the South Carolina Sub-Class, as the action is  
24 one of common or general interest to many persons and the parties are too numerous to bring  
25 them all before the court.

26           287. As a result of Defendants’ acts in violation of the Dealers Act, Plaintiff  
27 Boatwright and members of the South Carolina Sub-Class have suffered actual damages,  
28 including costs of repair and the loss of the bargain they struck when they purchased and/or

1 leased their vehicles.

2 288. Plaintiff Boatwright provided notice of his claims under the Dealers Act by letter  
3 dated July 2, 2020.

4 289. Plaintiff Boatwright and the South Carolina Sub-Class are entitled to double their  
5 actual damages, the cost of the suit, and attorney’s fees pursuant to S.C. Code Ann. § 56-15-  
6 110. Plaintiff Boatwright also seeks injunctive relief under S.C. Code Ann. § 56-15-110.  
7 Plaintiff Boatwright further seeks treble damages because Defendants acted maliciously.

8 **NINTH CAUSE OF ACTION**

9 (Breach of Express Warranty,  
10 S.C. Code Ann. § 36-2-313)

11 290. Plaintiffs incorporate by reference the allegations contained in the preceding  
12 paragraphs of this Complaint.

13 291. Plaintiff Boatwright brings this cause of action on behalf of himself and the  
14 Class, or, alternatively, the members of the South Carolina Sub-Class against Defendants.

15 292. Defendants are and were at all relevant times “merchants” with respect to the  
16 Class Vehicles under S.C. Code Ann. §§ 36-2-104(a) and 36-2A-103(1)(t); and “sellers” of the  
17 Class Vehicles under S.C. Code Ann. § 36-2-103(1)(d).

18 293. With respect to leases, the Defendants are and were at all relevant times “lessors”  
19 of motor vehicles under S.C. Code § 36-2A-103(1)(p).

20 294. The Class Vehicles are and were at all relevant times “goods” within the meaning  
21 of S.C. Code Ann. §§ 36-2-105(1) and 36-2A-104(1)(h).

22 295. Defendants provided all purchasers and lessees of the Class Vehicles with an  
23 express warranty described *infra*, which became a material part of the bargain. Accordingly,  
24 AHMC’s express warranty is an express warranty under South Carolina law.

25 296. Honda provided all purchasers and lessees of Class Vehicles with two warranties,  
26 a Basic Warranty and a Powertrain Warranty.

27 297. Under the Warranties, Honda expressly warranted the following: “This warranty  
28 covers repairs and adjustments needed to correct defects in materials or workmanship of any



1 part supplied by Honda.” Likewise, Honda’s Powertrain Warranty provides in relevant part that  
2 “This warranty covers repairs needed to correct defects in materials or workmanship of any  
3 component listed below and in the next column and supplied by Honda.” The “transmission and  
4 transaxle” are among the parts covered by the Powertrain Warranty.”

5 298. According to Honda, the Basic Warranty coverage for Honda models “is for 36  
6 months or 36,000 miles, whichever occurs first...” The Powertrain warranty coverage “is for 60  
7 months or 60,000 miles, whichever occurs first.”

8 299. Honda manufactured and/or installed the ZF 9HP transmissions and the  
9 transmissions’ component parts in the Class Vehicles, and the ZF 9HP transmissions and their  
10 component parts are covered by the express Warranties.

11 300. The Transmission Defect at issue in this litigation was present at the time the  
12 Class Vehicles were sold or leased to Plaintiff Boatwright and South Carolina Sub-Class  
13 Members.

14 301. Plaintiffs relied on Honda’s express warranties, which were a material part of the  
15 bargain, when purchasing or leasing their Class Vehicles.

16 302. Under the express Warranties, Honda was obligated to correct the Transmission  
17 Defect in the vehicles owned or leased by Plaintiff Boatwright and South Carolina Sub-Class  
18 Members.

19 303. Although Honda was obligated to correct the Transmission Defect, none of the  
20 attempted fixes to the transmissions are adequate under the terms of the Warranties, as they did  
21 not cure the defect.

22 304. Honda breached the express Warranties by performing illusory repairs. Rather  
23 than repairing the vehicles pursuant to the express Warranties, Honda falsely informed Plaintiff  
24 Boatwright and South Carolina Sub-Class Members that there was no problem with their Class  
25 Vehicles, performed ineffective procedures including software updates, and/or replaced  
26 defective components in the ZF 9HP transmissions with equally defective components, without  
27 actually repairing the Class Vehicles.  
28

1           305. Honda and its agent dealers have failed and refused to conform the ZF 9HP  
2 transmissions to the express Warranties. Honda's conduct, as discussed throughout this  
3 Complaint, has voided any attempt on its part to disclaim liability for its actions.

4           306. Moreover, Honda's attempt to disclaim or limit these express Warranties vis-à-  
5 vis consumers is unconscionable and unenforceable under the circumstances here. Specifically,  
6 Honda's warranty limitation is unenforceable because it knowingly sold a defective product  
7 without informing consumers about the defect.

8           307. The time limits contained in Honda's warranty period were also unconscionable  
9 and inadequate to protect Plaintiff Boatwright and South Carolina Sub-Class Members. Among  
10 other things, Plaintiff Boatwright and South Carolina Sub-Class Members had no meaningful  
11 choice in determining these time limitations, the terms of which unreasonably favored Honda. A  
12 gross disparity in bargaining power existed between Honda and the Class members, Honda  
13 provided the warranties on a take or leave it basis, and Honda knew or should have known that  
14 the Class Vehicles were defective at the time of sale.

15           308. Plaintiff Boatwright and South Carolina Sub-Class Members have complied with  
16 all obligations under the Warranties, or otherwise have been excused from performance of said  
17 obligations as a result of Honda's conduct described herein.

18           309. Plaintiff Boatwright and South Carolina Sub-Class Members were not required to  
19 notify Honda of the breach because affording Honda a reasonable opportunity to cure its breach  
20 of written warranty would have been futile. Honda was also on notice of the Transmission  
21 Defect from the complaints and service requests it received from Plaintiff Boatwright and the  
22 Class Members, from repairs and/or replacements of the transmissions or components thereof,  
23 and through other internal and external sources.

24           310. Plaintiff Boatwright also provided notice to AHMC of his claims by letter dated  
25 July 2, 2020, and also when he called the customer service line.

26           311. Because Honda, through its conduct and exemplified by its own service bulletins,  
27 has covered repairs of the Transmission Defect if Honda determines the repairs are  
28 appropriately covered under the Warranties, Honda cannot now deny that the Warranties cover

1 the Transmission Defect.

2 312. Because Honda has not been able to remedy the Transmission Defect, any  
3 limitation on remedies included in the Warranties causes the Warranties to fail their essential  
4 purposes, rendering them null and void.

5 313. As a direct and proximate cause of Honda's breach, Plaintiff Boatwright and  
6 South Carolina Sub-Class Members suffered damages and continue to suffer damages, including  
7 economic damages at the point of sale or lease and diminution of value of their Class Vehicles.  
8 Additionally, Plaintiff Boatwright and South Carolina Sub-Class Members have incurred or will  
9 incur economic damages at the point of repair in the form of the cost of repair.

10 314. As a direct and proximate result of Honda's breach of express warranties,  
11 Plaintiff Boatwright and South Carolina Sub-Class Members have been damaged in an amount  
12 to be determined at trial.

13 **TENTH CAUSE OF ACTION**

14 **(Breach of Implied Warranty,**

15 **S.C. Code Ann. §§ 36-2-314 and 36-2A-212)**

16 315. Plaintiffs incorporate by reference the allegations contained in the preceding  
17 paragraphs of this Complaint.

18 316. Plaintiff Boatwright brings this cause of action on behalf of himself and the  
19 members of the Class, or, alternatively, the South Carolina Sub-Class against Defendants.

20 317. Defendants are and were at all relevant times "merchants" with respect to the  
21 Class Vehicles under S.C. Code Ann. §§ 36-2-104(a) and 36-2A-103(1)(t); and "sellers" of the  
22 Class Vehicles under S.C. Code Ann. § 36-2-103(1)(d).

23 318. With respect to leases, the Defendants are and were at all relevant times "lessors"  
24 of motor vehicles under S.C. Code § 36-2A-103(1)(p).

25 319. The Class Vehicles are and were at all relevant times "goods" within the meaning  
26 of S.C. Code Ann. §§ 36-2-105(1) and 36-2A-104(1)(h).

27 320. A warranty that the Class Vehicles were in merchantable condition and fit for  
28 their ordinary purpose is implied by law pursuant to S.C. Code Ann. §§ 36-2-314 and 36-2A-

1 212.

2 321. The Class Vehicles, when sold or leased to Plaintiff Boatwright and the members  
3 of the South Carolina Sub-Class, and at all times thereafter, were not in merchantable condition  
4 and are not fit for the ordinary purpose of providing safe and reliable transportation. The Class  
5 Vehicles contain an inherent defect, the Transmission Defect, and present an undisclosed safety  
6 risk to drivers and occupants. Thus, Defendants breached their implied warranty of  
7 merchantability.

8 322. Defendants cannot disclaim their implied warranties as they knowingly sold or  
9 leased a defective product.

10 323. Defendants were provided notice of the Transmission Defect by numerous  
11 consumer complaints made to their authorized dealers nationwide, complaints made to NHTSA,  
12 and through their own testing. Affording Defendants a reasonable opportunity to cure their  
13 breach of implied warranties would be unnecessary and futile here because Defendants have  
14 known of and concealed the Transmission Defect and, on information and belief, have refused  
15 to repair or replace the defective transmissions free of charge within or outside of the warranty  
16 periods despite the Transmission Defect's existence at the time of sale or lease of the Class  
17 Vehicles.

18 324. Defendants were further provided notice by Plaintiff Boatwright when he took  
19 his vehicle to an authorized Honda dealership for repairs, when he filed a NHTSA complaint  
20 regarding the transmission on January 11, 2019, and by letter dated July 2, 2020.

21 325. Any attempt by Defendants to disclaim or limit the implied warranty of  
22 merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically,  
23 Defendants' warranty limitation is unenforceable because they knowingly sold or leased a  
24 defective product without information consumers about the Transmission Defect. The time  
25 limits contained in Defendants' warranty periods were also unconscionable and inadequate to  
26 protect Plaintiff Boatwright and members of the South Carolina Sub-Class. Among other things,  
27 Plaintiff Boatwright and members of the South Carolina Sub-Class did not determine these time  
28 limitations, the terms of which unreasonable favored Defendants. A gross disparity in

1 bargaining power existed between Defendants and members of the South Carolina Sub-Class,  
2 and Defendants provided warranties on a take or leave it basis. Further, Defendants knew or  
3 should have known that the Class Vehicles were defective at the time of sale or lease and that  
4 the Transmission Defect posed a safety risk during the applicable warranty periods.

5 326. As manufacturers of consumer goods, Defendants are precluded from excluding  
6 or modifying an implied warranty of merchantability or limiting consumer remedies for breakc  
7 of this warranty.

8 327. Plaintiff Boatwright and members of the South Carolina Sub-Class have  
9 complied with all obligations under the warranty, or otherwise have been excused from  
10 performance of said obligations as a result of Defendants' conduct described herein.

11 328. The Class Vehicles are not safe and reliable and owners and lessees of these  
12 vehicles have lost confidence in the ability of Class Vehicles to perform the function of safe,  
13 reliable transportation without the likelihood of jerking, lurching, hesitation, clunking into gear,  
14 unexpected downshifting, and the other problems as a result of the Transmission Defect.  
15 Defendants are estopped by their conduct, as alleged herein, from disclaiming any and all  
16 warranties with respect to the transmissions in Class Vehicles.

17 329. The applicable statute of limitations for the implied warranty claim has been  
18 tolled by the discovery rule, fraudulent concealment, and the terms of the express warranty.

19 As a direct and proximate result of Defendant's breach of implied warranty of  
20 merchantability, Plaintiff Boatwright and members of the South Carolina Sub-Class have been  
21 damaged in an amount to be proven at trial.

22 **ELEVENTH CAUSE OF ACTION**

23 **(Texas Deceptive Trade Practices-Consumer Protection Act**

24 **TEX. BUS. & COM. CODE § 17.41, *et seq.*)**

25 330. Plaintiffs incorporate by reference the allegations contained in the preceding  
26 paragraphs of this complaint.

27 331. Plaintiff Yong brings this cause of action on his own behalf and on behalf of the  
28 Class, or, alternatively, the members of the Texas Sub-Class.

1           332. Honda’s business acts and practices alleged herein constitute unfair,  
2 unconscionable and/or deceptive methods, acts or practices under the Texas Deceptive Trade  
3 Practices-Consumer Protection Act (“TDTPCPA”), Tex. Bus. & Com. Code § 17.41, *et seq.*

4           333. At all relevant times, Plaintiff Yong and the Texas Sub-Class Members were and  
5 are individuals, partnerships or corporations with assets of less than \$25 million (or are  
6 controlled by corporations or entities with less than \$25 million in assets), *see* Tex. Bus. &  
7 Com. Code § 17.41 and are therefore “consumers” pursuant to Tex. Bus. & Com. Code §  
8 17.45(4).

9           334. Honda was and is a “person” within the meaning of Tex. Bus. & Com. Code §  
10 17.45(3).

11           335. Honda’s conduct, as set forth herein, occurred in the conduct of “trade or  
12 commerce” within the meaning of Tex. Bus. & Com. Code § 17.46(a).

13           336. The practices of Honda, described above, violate the TDTPCPA for, *inter alia*,  
14 one or more of the following reasons:

- 15           (j) Honda represented that goods or services have sponsorship, approval,  
16 characteristics, uses, and benefits that they do not have;
- 17           (k) Honda provided, disseminated, marketed, and otherwise distributed  
18 uniform false and misleading advertisements, technical data and other  
19 information to consumers regarding the performance, reliability, quality  
20 and nature of the ZF 9HP transmissions, with intent not to sell them as  
21 advertised;
- 22           (l) Honda represented that goods or services were of a particular standard,  
23 quality, or grade, when they were of another;
- 24           (m) Honda knowingly making false or misleading statements of fact  
25 concerning the need for parts, replacement, or repair service regarding the  
26 ZF 9HP transmissions;
- 27           (n) Honda engaged in unconscionable commercial practices in failing to  
28 reveal material facts and information about the ZF 9HP transmissions,

1 which did, or tended to, mislead Plaintiff Yong and the Texas Sub-Class  
2 Members about facts that could not reasonably be known by the  
3 consumer;

4 (o) Honda failed to reveal facts that were material to the transactions in light  
5 of representations of fact made in a positive manner;

6 (p) Honda failed to reveal material facts to Plaintiff Yong and the Texas  
7 Class with the intent that Plaintiff Yong and the Texas Sub-Class  
8 Members rely upon the omission;

9 (q) Honda made material representations and statements of fact to Plaintiff  
10 Yong and the Texas Sub-Class Members that resulted in Plaintiff Yong  
11 and the Texas Sub-Class Members reasonably believing the represented  
12 or suggested state of affairs to be other than what they actually were;

13 (r) Honda intended that Plaintiff Yong and the Texas Sub-Class Members  
14 rely on their misrepresentations and omissions, so that Plaintiff Yong and  
15 the Texas Sub-Class Members would purchase vehicles equipped with the  
16 ZF 9HP transmissions.

17 337. Honda's actions impact the public interest because Plaintiff Yong and the Texas  
18 Sub-Class Members were injured in exactly the same way as thousands of others purchasing  
19 and/or leasing the vehicles with ZF 9HP transmissions as a result of and pursuant to Honda's  
20 generalized course of deception.

21 338. Had Plaintiff Yong and the Texas Sub-Class Members known of the defective  
22 nature of the ZF 9HP transmissions, they would not have purchased or leased vehicles equipped  
23 with the ZF 9HP transmissions or would have paid less for them.

24 339. As a direct and proximate result of Honda's unfair or deceptive acts or practices,  
25 Plaintiff Yong and the Texas Sub-Class Members suffered and will continue to suffer injury in  
26 fact and/or actual damages.

27 340. Honda's violations present a continuing risk to Plaintiff Yong and the Texas Sub-  
28 Class Members as well as to the general public. Honda's unlawful acts and practices complained

1 of herein affect the public interest.

2 341. Pursuant to Tex. Bus. & Com. Code § 17.50, Plaintiff Yong and the Texas Sub-  
3 Class Members seek an order enjoining Honda unfair and/or deceptive acts or practices,  
4 damages, multiple damages for knowing and intentional violations, pursuant to § 17.50(b)(1),  
5 punitive damages, and attorneys’ fees, costs, and any other just and proper relief available under  
6 the TDTPCPA.

7 342. By letter dated December 12, 2020, Plaintiff Yong provided notice to Honda  
8 pursuant to Tex. Bus. & Com. Code § 17.505(a). Because Honda failed to remedy its unlawful  
9 conduct within the requisite time period, Plaintiff Yong and the Texas Sub-Class Members seek  
10 all damages and relief to which they are entitled.

11 **TWELFTH CAUSE OF ACTION**

12 **(Breach of Express Warranty,**

13 **TEX. BUS. & COM CODE §§ 2.313 AND 2A.210)**

14 343. Plaintiffs incorporate by reference the allegations contained in the preceding  
15 paragraphs of this complaint

16 344. Plaintiff Yong brings this cause of action on his own behalf and on behalf of the  
17 Class, or, alternatively, the members of the Texas Sub-Class against Honda.

18 345. Honda is and was at all relevant times a “merchant” with respect to motor  
19 vehicles under TEXAS BUS. & COM. CODE 2.104(1) and 2A.103(a)(20), and a “seller” of motor  
20 vehicles under § 2.103(a)(4).

21 346. With respect to leases, Honda is and was at all relevant times a “lessor” of motor  
22 vehicles under TEXAS BUS. & COM. CODE § 2A.103(a)(16).

23 347. The Class Vehicles are and were at all relevant times “goods” within the meaning  
24 of TEXAS BUS. & COM. CODE §§ 2.105(a) and 2A.103(a)(8).

25 348. Honda provided all purchasers and lessees of the Class Vehicles with an express  
26 warranty described *infra*, which became a material part of the bargain. Accordingly, AHMC’s  
27 express warranty is an express warranty under Texas law.

28 349. Honda provided all purchasers and lessees of Class Vehicles with two warranties,



1 a Basic Warranty and a Powertrain Warranty.

2 350. Under the Warranties, Honda expressly warranted the following: “This warranty  
3 covers repairs and adjustments needed to correct defects in materials or workmanship of any  
4 part supplied by Honda.” Likewise, Honda’s Powertrain Warranty provides in relevant part that  
5 “This warranty covers repairs needed to correct defects in materials or workmanship of any  
6 component listed below and in the next column and supplied by Honda.” The “transmission and  
7 transaxle” are among the parts covered by the Powertrain Warranty.”

8 351. According to Honda, the Basic Warranty coverage for Honda models “is for 36  
9 months or 36,000 miles, whichever occurs first...” The Powertrain warranty coverage “is for 60  
10 months or 60,000 miles, whichever occurs first.”

11 352. Under the Warranties, Honda expressly warranted the following: This warranty  
12 covers repairs and adjustments needed to correct defects in materials or workmanship of any  
13 part supplied by Honda.” Likewise, Honda’s Powertrain Warranty provides in relevant part that  
14 “This warranty covers repairs needed to correct defects in materials or workmanship of any  
15 component listed below and in the next column and supplied by Honda.” The “transmission and  
16 transaxle” are among the parts covered by the Powertrain Warranty.”

17 353. According to Honda, the New Vehicle Limited Warranty coverage for Honda  
18 models “is for 3 years or 36,000 miles, whichever occurs first...” The Powertrain warranty  
19 coverage “is for 5 years or 60,000 miles, whichever occurs first.”

20 354. Honda manufactured and/or installed the ZF 9HP transmissions and the  
21 transmissions’ component parts in the Class Vehicles, and the ZF 9HP transmissions and their  
22 component parts are covered by the express Warranties.

23 355. The Transmission Defect at issue in this litigation was present at the time the  
24 Class Vehicles were sold or leased to Plaintiff Yong and the Texas Sub-Class Members.

25 356. Plaintiffs relied on Honda’s express warranties, which were a material part of the  
26 bargain, when purchasing or leasing their Class Vehicles.

27 357. Under the express Warranties, Honda was obligated to correct the Transmission  
28 Defect in the vehicles owned or leased by Plaintiff Yong and the Texas Sub-Class Members.

1           358. Although Honda was obligated to correct the Transmission Defect, none of the  
2 attempted fixes to the transmissions are adequate under the terms of the Warranties, as they did  
3 not cure the defect.

4           359. Honda breached the express Warranties by performing illusory repairs. Rather  
5 than repairing the vehicles pursuant to the express Warranties, Honda falsely informed Texas  
6 Sub-Class Members that there was no problem with their Class Vehicles, performed ineffective  
7 procedures including software updates, and/or replaced defective components in the ZF 9HP  
8 transmissions with equally defective components, without actually repairing the Class Vehicles.

9           360. Honda and its agent dealers have failed and refused to conform the ZF 9HP  
10 transmissions to the express Warranties. Honda's conduct, as discussed throughout this  
11 Complaint, has voided any attempt on its part to disclaim liability for its actions.

12           361. Moreover, Honda's attempt to disclaim or limit these express Warranties vis-à-  
13 vis consumers is unconscionable and unenforceable under the circumstances here. Specifically,  
14 Honda's warranty limitation is unenforceable because it knowingly sold a defective product  
15 without informing consumers about the defect.

16           362. The time limits contained in Honda's warranty period were also unconscionable  
17 and inadequate to protect Plaintiff Yong and the Texas Sub-Class Members. Among other  
18 things, Plaintiff Yong and the Texas Sub-Class Members had no meaningful choice in  
19 determining these time limitations, the terms of which unreasonably favored Honda. A gross  
20 disparity in bargaining power existed between Honda and the Class members, and Honda knew  
21 or should have known that the Class Vehicles were defective at the time of sale.

22           363. Plaintiff Yong and the Texas Sub-Class Members have complied with all  
23 obligations under the Warranties, or otherwise have been excused from performance of said  
24 obligations as a result of Honda's conduct described herein.

25           364. Plaintiff Yong and the Texas Sub-Class Members were not required to notify  
26 Honda of the breach because affording Honda a reasonable opportunity to cure its breach of  
27 written warranty would have been futile. Honda was also on notice of the Transmission Defect  
28 from the complaints and service requests it received from Plaintiffs and the Class Members,

1 from repairs and/or replacements of the transmissions or components thereof, and through other  
2 internal and external sources.

3 365. Because Honda, through its conduct and exemplified by its own service bulletins,  
4 has covered repairs of the Transmission Defect if Honda determines the repairs are  
5 appropriately covered under the Warranties, Honda cannot now deny that the Warranties cover  
6 the Transmission Defect.

7 366. Because Honda has not been able to remedy the Transmission Defect, any  
8 limitation on remedies included in the Warranties causes the Warranties to fail their essential  
9 purposes, rendering them null and void.

10 367. As a direct and proximate cause of Honda's breach, Plaintiff Yong and the Texas  
11 Sub-Class Members suffered damages and continue to suffer damages, including economic  
12 damages at the point of sale or lease and diminution of value of their Class Vehicles.  
13 Additionally, Plaintiff Yong and the Texas Sub-Class Members have incurred or will incur  
14 economic damages at the point of repair in the form of the cost of repair.

15 368. As a direct and proximate result of Honda's breach of express warranties,  
16 Plaintiff Yong and the Texas Sub-Class Members have been damaged in an amount to be  
17 determined at trial.

18 **THIRTEENTH CAUSE OF ACTION**

19 **(Breach of Implied Warranty,**

20 **TEX. BUS. & COM. CODE §§ 2.314 and 2A.212)**

21 369. Plaintiffs incorporate by reference the allegations contained in the preceding  
22 paragraphs of this complaint.

23 370. Plaintiff Yong brings this cause of action on her own behalf and on behalf of the  
24 Class, or, alternatively, the members of the Texas Sub-Class against Honda.

25 371. Honda is and was at all relevant times a "merchant" with respect to motor  
26 vehicles under Texas Bus. & Com. Code §§ 2.104(1) and 2A.103(a)(20), and a "seller" of motor  
27 vehicles under § 2.103(a)(4).

28 372. With respect to leases, Honda is and was at all relevant times a "lessor" of motor

1 vehicles under Texas Bus. & Com. Code § 2A.103(a)(16).

2 373. The Class Vehicles are and were at all relevant times “goods” within the meaning  
3 of Texas Bus. & Com. Code §§ 2.105(a) and 2A.103(a)(8).

4 374. A warranty that the Class Vehicles were in merchantable condition and fit for the  
5 ordinary purpose for which vehicles are used is implied by law under Texas Bus. & Com. Code  
6 §§ 2.314 and 2A.212.

7 375. Honda knew or had reason to know of the specific use for which the Class  
8 Vehicles were purchased or leased. Honda directly sold and marketed vehicles equipped with  
9 the ZF 9HP transmissions to customers through authorized dealers, like those from whom  
10 Plaintiff Yong and the Texas Sub-Class Members bought or leased their vehicles, for the  
11 intended purpose of consumers purchasing the vehicles. Honda knew that the Class Vehicles  
12 would and did pass unchanged from the authorized dealers to Plaintiff Yong and the Texas Sub-  
13 Class Members, with no modification to the defective transmissions.

14 376. Honda provided Plaintiffs and Class Members with an implied warranty that the  
15 Class Vehicles and their components and parts are merchantable and fit for the ordinary  
16 purposes for which they were sold.

17 377. This implied warranty included, among other things: (i) a warranty that the Class  
18 Vehicles and their transmissions that were manufactured, supplied, distributed, and/or sold by  
19 Honda were safe and reliable for providing transportation; and (ii) a warranty that the Class  
20 Vehicles and their transmissions would be fit for their intended use while the Class Vehicles  
21 were being operated.

22 378. Contrary to the applicable implied warranties, the Class Vehicles and their  
23 transmissions at the time of sale and thereafter were not fit for their ordinary and intended  
24 purpose of providing Plaintiffs and Class Members with reliable, durable, and safe  
25 transportation. Instead, the Class Vehicles are defective, including, but not limited to, the  
26 defective design or manufacture of their transmissions and the existence of the Transmission  
27 Defect at the time of sale or lease and thereafter. Honda knew of this defect at the time these  
28 sale or lease transactions occurred.

1           379. As a result of Honda's breach of the applicable implied warranties, Plaintiff  
2 Yong and the Texas Sub-Class Members of the Class Vehicles suffered an ascertainable loss of  
3 money, property, and/or value of their Class Vehicles. Additionally, as a result of the  
4 Transmission Defect, Plaintiff Yong and the Texas Sub-Class Members were harmed and  
5 suffered actual damages in that the Class Vehicles' transmission components are substantially  
6 certain to fail before their expected useful life has run.

7           380. Honda's actions, as complained of herein, breached the implied warranty that the  
8 Class Vehicles were of merchantable quality and fit for such use in violation of Texas Bus. &  
9 Com. Code §§ 2.314 and 2A.212.

10           381. Plaintiff Yong and the Texas Sub-Class Members have complied with all  
11 obligations under the warranty, or otherwise have been excused from performance of said  
12 obligations as a result of Honda's conduct described herein.

13           382. Plaintiff Yong and the Texas Sub-Class Members were not required to notify  
14 Honda of the breach because affording Honda a reasonable opportunity to cure its breach of  
15 written warranty would have been futile. Honda was also on notice of the Transmission Defect  
16 from the complaints and service requests it received from Plaintiffs and the Class Members,  
17 from repairs and/or replacements of the transmissions or components thereof, and through other  
18 internal sources.

19           383. As a direct and proximate cause of Honda's breach, Plaintiff Yong and the Texas  
20 Sub-Class Members suffered damages and continue to suffer damages, including economic  
21 damages at the point of sale or lease and diminution of value of their Class Vehicles.  
22 Additionally, Plaintiff Yong and the Texas Sub-Class Members have incurred or will incur  
23 economic damages at the point of repair in the form of the cost of repair.

24           384. As a direct and proximate result of Honda's breach of the implied warranty of  
25 merchantability, Plaintiff Yong and the Texas Sub-Class Members have been damaged in an  
26 amount to be proven at trial.

27  
28

**FOURTEENTH CAUSE OF ACTION**

**(Violation of California’s Consumers Legal Remedies Act,  
California Civil Code §§ 1750, et seq.)**

1  
2  
3  
4 385. Plaintiffs incorporate by reference the allegations contained in the preceding  
5 sections of the complaint.

6 386. Plaintiff Daniel Pina brings this cause of action on behalf of himself and the  
7 Class, or, alternatively, the CLRA Sub-Class.

8 387. Defendants are “persons” as defined by California Civil Code § 1761(c).

9 388. Plaintiff Pina and CLRA Sub-class Members are “consumers” within the  
10 meaning of California Civil Code § 1761(d), because they purchased their Class Vehicles  
11 primarily for personal, family, or household use.

12 389. By failing to disclose and concealing the defective nature of the ZF 9HP  
13 Automatic Transmissions from Plaintiff Pina and prospective Class Members, Honda violated  
14 California Civil Code § 1770(a), as it represented that the Class Vehicles and their ZF 9HP  
15 Automatic Transmissions had characteristics and benefits that they do not have and represented  
16 that the Class Vehicles and their ZF 9HP Automatic Transmissions were of a particular  
17 standard, quality, or grade when they were of another. See Cal. Civ. Code §§ 1770(a)(5) & (7).

18 390. Honda’s unfair and deceptive acts or practices occurred repeatedly in Honda’s  
19 trade or business, were capable of deceiving a substantial portion of the purchasing public and  
20 imposed a serious safety risk on the public.

21 391. Honda knew that the Class Vehicles and their ZF 9HP Automatic Transmissions  
22 suffered from an inherent defect, were defectively designed, and were not suitable for their  
23 intended use.

24 392. Because of their reliance on Honda’s omissions, owners and/or lessees of the  
25 Class Vehicles, including Plaintiff Pina, suffered an ascertainable loss of money, property,  
26 and/or value of their Class Vehicles. Additionally, because of the Transmission Defect, Plaintiff  
27 Pina and Class Members were harmed and suffered actual damages in that the Class Vehicles’  
28 ZF 9HP Automatic Transmissions are substantially certain to fail before their expected useful

1 life has run.

2 393. Honda was under a duty to Plaintiff Pina and Class Members to disclose the  
3 defective nature of the ZF 9HP Automatic Transmissions and/or the associated repair costs  
4 because:

5 (a) Honda was in a superior position to know the true state of facts about  
6 the safety defect in the Class Vehicles' ZF 9HP Automatic  
7 Transmissions;

8 (b) Plaintiff Pina and Class Members could not reasonably have been  
9 expected to learn or discover that their ZF 9HP Automatic  
10 Transmissions had a dangerous safety defect until it manifested; and

11 (c) Honda knew that Plaintiff Pina and Class Members could not reasonably  
12 have been expected to learn of or discover the safety defect.

13 394. In failing to disclose the defective nature of ZF 9HP Automatic Transmissions,  
14 Honda knowingly and intentionally concealed material facts and breached its duty not to do  
15 so.

16 395. The facts Honda concealed from or failed to disclose to Plaintiff Pina and Class  
17 Members are material in that a reasonable consumer would have considered them to be  
18 important in deciding whether to purchase or lease the Class Vehicles or pay less. Had  
19 Plaintiff Pina and Class Members known that the Class Vehicles' ZF 9HP Automatic  
20 Transmissions were defective, they would not have purchased or leased the Class Vehicles or  
21 would have paid less for them.

22 396. Plaintiff Pina and Class Members are reasonable consumers who do not expect  
23 the ZF 9HP Automatic Transmissions installed in their vehicles to exhibit problems such as  
24 the 8AT Transmission Defect. This is the reasonable and objective consumer expectation  
25 relating to a vehicle's ZF 9HP Automatic Transmissions.

26 397. Because of Honda's conduct, Plaintiff Pina and Class Members were harmed  
27 and suffered actual damages in that, on information and belief, the Class Vehicles experienced  
28 and will continue to experience problems such as the 8AT Transmission Defect.





1 not suitable for their intended use.

2 406. In failing to disclose the defects with the transmission, Defendants have  
3 knowingly concealed material facts and breached their duty not to do so.

4 407. Defendants were under a duty to Plaintiffs and Class Members to disclose the  
5 defective nature of the Class Vehicles and their transmissions:

- 6 (l) Defendants were in a superior position to know the true state of facts  
7 about the safety defect in the Class Vehicles' transmissions;
- 8 (m) Defendants made partial disclosures about the quality of the Class  
9 Vehicles without revealing the defective nature of the Class Vehicles and  
10 their transmissions; and
- 11 (n) Defendants actively concealed the defective nature of the Class Vehicles  
12 and their transmissions from Plaintiffs and the Class.

13 408. The facts regarding the Transmission Defect that the Defendants concealed from,  
14 or failed to disclose to, Plaintiffs and Class Members are material in that a reasonable person  
15 would have considered them to be important in deciding whether to purchase or lease Class  
16 Vehicles. Had they known that the Class Vehicles' ZF 9HP Automatic Transmissions were  
17 defective and posed a safety hazard, then Plaintiffs and Class Members would not have  
18 purchased or leased Class Vehicles equipped with ZF 9HP Automatic Transmissions or would  
19 have paid less for them.

20 409. Defendants continued to conceal the defective nature of the Class Vehicles and  
21 their transmissions even after Class Members began to report problems. Indeed, Defendants  
22 continues to cover up and conceal the true nature of the problem.

23 410. Defendants' conduct was and is likely to deceive consumers.

24 411. Defendants' acts, conduct and practices were unlawful, in that they constituted:

- 25 (a) Violations of the California Consumers Legal Remedies Act;
- 26 (b) Violations of the Song-Beverly Consumer Warranty Act;
- 27 (c) Breach of Express Warranty

28



1 warranty that the Class Vehicles and their transmissions manufactured, supplied, distributed,  
2 and/or sold by Honda were safe and reliable for providing transportation; and (ii) a warranty  
3 that the Class Vehicles and their transmissions would be fit for their intended use while the  
4 Class Vehicles were being operated.

5 421. Contrary to the applicable implied warranties, the Class Vehicles and their  
6 transmissions at the time of sale and thereafter were not fit for their ordinary and intended  
7 purpose of providing Plaintiff and Class Members with reliable, durable, and safe  
8 transportation. Instead, the Class Vehicles exhibit the Transmission Defect.

9 422. As a result of Honda breach of the applicable implied warranties, owners and/or  
10 lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value  
11 of their Class Vehicles. Additionally, as a result of the Transmission Defect, Plaintiff and  
12 Class Members were harmed and suffered actual damages in that the Class Vehicles’  
13 transmission components are substantially certain to fail or require replacement or repair,  
14 before their expected useful life has run.

15 423. Honda actions, as complained of herein, breached the implied warranty that the  
16 Class Vehicles were of merchantable quality and fit for such use in violation of California  
17 Civil Code §§ 1792 and 1791.1.

18 **SEVENTEENTH CAUSE OF ACTION**

19 **(For Breach of Express Warranty under California Law)**

20 424. Plaintiffs incorporate by reference the allegations contained in the preceding  
21 paragraphs of this complaint.

22 425. Plaintiff Daniel Pina brings this cause of action on behalf of himself and on  
23 behalf of the Class, or, alternatively the California Sub-class, against Honda.

24 426. Honda provided all purchasers and lessees of the Class Vehicles with an express  
25 warranty described *infra*, which became a material part of the bargain. Accordingly, Honda’s  
26 express warranty is an express warranty under California law.

27 427. The ZF 9HP Transmissions were manufactured and/or installed in the Class  
28 Vehicles by Honda and are covered by the express warranty.

1           428. In a section entitled “What is Covered,” Honda’s express warranty provides in  
2 relevant part that “This warranty covers repairs and adjustments needed to correct defects in  
3 materials or workmanship of any part supplied by Honda.” Likewise, Honda’s Powertrain  
4 Warranty provides in relevant part that “This warranty covers repairs needed to correct defects  
5 in materials or workmanship of any component listed below and in the next column and  
6 supplied by Honda.” The “transmission and transaxle” are among the parts covered by the  
7 Powertrain Warranty.

8           429. According to Honda, the Basic Warranty coverage for Honda models “is for 36  
9 months or 36,000 miles, whichever occurs first...” The Powertrain warranty coverage “is for 60  
10 months or 60,000 miles, whichever occurs first.” Further, the Basic Warranty coverage for  
11 Lexus models “is for 48 months or 50,000 miles, whichever occurs first...” The Powertrain  
12 warranty coverage “is for 72 months or 70,000 miles, whichever occurs first.”

13           430. Honda breached the express warranties by selling and leasing Class Vehicles  
14 with ZF 9HP Automatic Transmissions that were defective, requiring repair or replacement  
15 within the warranty period, and refusing to honor the express warranty by repairing or replacing,  
16 free of charge, the ZF 9HP Transmissions. In addition, when Honda did agree to pay a portion  
17 of the costs, Honda nevertheless breached the express warranty by simply replacing defective  
18 ZF 9HP Transmissions with similarly defective ZF 9HP Transmissions, thus failing to “repair”  
19 the defect.

20           431. Plaintiff Pina was not required to notify Honda of the breach or were not required  
21 to do so, because affording Honda a reasonable opportunity to cure its breach of written  
22 warranty would have been futile. Honda was also on notice of the defect from complaints and  
23 service requests it received from Class Members, from repairs and/or replacements of the ZF  
24 9HP Transmissions, and from other internal sources.

25           432. As a direct and proximate cause of Honda’s breach, Plaintiff Pina and the other  
26 Class Members have suffered, and continue to suffer, damages, including economic damages at  
27 the point of sale or lease. Additionally, Plaintiff Pina and the other Class Members have  
28 incurred or will incur economic damages at the point of repair in the form of the cost of repair.



- 1 Class Members about the defective nature of the ZF 9HP Automatic  
2 Transmission, including the need for periodic maintenance;
- 3 (c) An injunction:
- 4 (d) Ordering Defendants to disclose the Transmission Defect adequately with  
5 respect to Class Vehicles;
- 6 (e) Ordering Defendants to recall the Class Vehicles pursuant to state law;
- 7 (f) Ordering Defendants to repair the Class Vehicles by repairing and/or  
8 replacing the Class Vehicles' ZF 9HP Automatic Transmissions with  
9 suitable alternative product(s) that do not contain the defects alleged  
10 herein;
- 11 (g) Ordering Honda to reform its warranty, in a manner deemed to be  
12 appropriate by the Court, to cover the injury alleged and to notify all  
13 Class Members that such warranty has been reformed;
- 14 (h) A declaration requiring Defendants to comply with the various provisions  
15 of the Song-Beverly Act alleged herein and to make all the required  
16 disclosures;
- 17 (i) An award to Plaintiffs and the Class for compensatory, exemplary, and  
18 statutory damages, including interest, in an amount to be proven at trial;
- 19 (j) Any and all remedies provided pursuant to the Song-Beverly Act,  
20 including California Civil Code section 1794 and for breach of the  
21 implied warranty merchantability under the laws of the states of Florida,  
22 Ohio, Michigan, South Carolina, Texas, and California;
- 23 (k) Any and all remedies provided pursuant to the consumer protection  
24 statutes of the states of Florida, Ohio, Michigan, South Carolina, Texas,  
25 and California alleged *supra*;
- 26 (l) A declaration that Defendants must disgorge, for the benefit of the Class,  
27 all or part of the ill-gotten profits it received from the sale or lease of its  
28 Class Vehicles, or make full restitution to Plaintiffs and Class Members;

- 1 (m) An award of attorneys' fees and costs, as allowed by law;
- 2 (n) An award of attorneys' fees and costs pursuant to California Code of
- 3 Civil Procedure § 1021.5;
- 4 (o) An award of pre-judgment and post-judgment interest, as provided by
- 5 law;
- 6 (p) Leave to amend the Complaint to conform to the evidence produced at
- 7 trial; and
- 8 (q) Such other relief as may be appropriate under the circumstances.

9 **DEMAND FOR JURY TRIAL**

10 441. Plaintiffs demand a trial by jury of any and all issues in this action so triable.

11  
12 Dated: December 15, 2020

Respectfully submitted,

13 Capstone Law APC

14 By: /s/ Cody R. Padgett

15 Steven R. Weinmann  
16 Tarek H. Zohdy  
Cody R. Padgett

17 Russell D. Paul  
18 (*pro hac vice*)  
Amey J. Park  
19 (*pro hac vice*)  
Abigail J. Gertner  
20 (*pro hac vice*)

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