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28 UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

23 UNITED STATES OF AMERICA,

24 Plaintiff,

25 v.

26 AMERICAN HONDA FINANCE
27 CORPORATION,

28 Defendant.

CIVIL ACTION NO. CV 15-05264

NOTICE OF LODGING
CONSENT ORDER

1 Plaintiff United States of America hereby lodges the Consent Order.
2
3
4

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6 Attorney General

7 /s/
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23 UNITED STATES OF AMERICA,

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25 v.

26 AMERICAN HONDA FINANCE
27 CORPORATION,

28 Defendant.

CIVIL ACTION NO. CV 15-05264

CONSENT ORDER

1 **I. INTRODUCTION**

2 This Consent Order is submitted jointly by the parties for the approval of and
3 entry by the Court. The Consent Order resolves the claims of the United States, based
4 on a joint investigation by the United States through the Civil Rights Division of the
5 Department of Justice (“DOJ”) and the Consumer Financial Protection Bureau
6 (“Bureau”), that American Honda Finance Corporation (“Honda”) allegedly engaged in a
7 pattern or practice of conduct in violation of the Equal Credit Opportunity Act
8 (“ECOA”), 15 U.S.C. §§ 1691-1691f, by permitting dealers to charge higher interest
9 rates to consumer auto loan borrowers on the basis of race and national origin.

10 There has been no factual finding or adjudication with respect to any matter
11 alleged by the United States. The parties have entered into this Consent Order to avoid
12 the risks, expense, and burdens of litigation and to resolve voluntarily the claims in the
13 United States’ Complaint of Honda’s alleged violation of ECOA.

14 **II. BACKGROUND**

15 Honda is the fourth largest captive auto finance company in the United States.
16 Honda holds a 2.10 percent share of the overall auto loan market based on originations,
17 making it the ninth largest auto lender overall.

18 On April 25, 2013, the DOJ and the Bureau initiated a joint investigation under
19 ECOA of Honda’s pricing of automobile loans or retail installment contracts. In its
20 Complaint, the United States alleges that between January 1, 2011 and the present,
21 Honda engaged in a pattern or practice of discrimination on the basis of race and national
22 origin in violation of ECOA based on permitting the interest rate “dealer markup”—the
23 difference between Honda’s buy rate and the contract rate—paid by African-American,
24 Hispanic, and Asian and/or Pacific Islander borrowers who received automobile loans
25 funded by Honda.

26 The United States sets forth in its Complaint the allegations and claims of a
27 pattern or practice of discrimination in violation of ECOA. Under the provisions of this
28

1 Consent Order, Honda agrees to implement policies and procedures designed to ensure
2 that the dealer markup on automobile retail installment contracts is negotiated in a
3 nondiscriminatory manner consistent with ECOA and the Compliance Plan. In addition,
4 Honda will compensate certain African-American, Hispanic, and Asian and/or Pacific
5 Islander borrowers.

6 **III. HONDA'S STATEMENT**

7 Honda asserts that throughout the period of time at issue in this proceeding and to
8 the present, it has treated all of its customers fairly and without regard to impermissible
9 factors such as race or national origin. Honda enters this settlement solely for the
10 purpose of avoiding contested litigation with the Department of Justice, and instead to
11 devote its resources to providing fair and industry-leading services to its customers.

12 The United States' allegations relate to amounts added to Honda's risk-based buy
13 rate, referred to in this Consent Order as "dealer markup," which compensates auto
14 dealers for originating automobile loans. Honda does not originate automobile loans;
15 instead, it purchases loans originated by dealers. Honda does not determine the amount
16 of, or receive economic benefit from, the dealer mark up.

17 Honda affirmatively asserts that it has treated all of its customers without regard to
18 race or national origin, and that its business practices have promoted and achieved
19 fairness across all customer groups. Furthermore, Honda has not been informed that the
20 United States contends Honda or any of its employees engaged in any intentional
21 discrimination or disparate treatment of minorities.

22 **IV. DEFINITIONS**

23 The following definitions apply to this Consent Order:

24 a. "Affected Consumers" include African-American, Hispanic, or Asian
25 and/or Pacific Islander consumers who entered into a non-subvented retail installment
26 contract with Honda during the Relevant Period (as defined in paragraph i below).

27 b. "Board" means Honda's duly-elected and acting Board of Directors.

1 c. "Compliance Committee" means Honda's Compliance Committee as it may
2 be constituted, namely by the individuals holding the following titles: (1) Senior Vice
3 President, Financial Services, (2) Assistant Vice President, Risk Compliance and
4 Business Processes, (3) General Counsel, Honda North America, Inc., and (4) Deputy
5 General Counsel, Honda North America, Inc. The Compliance Committee shall consist
6 of four (4) members, at least one of whom shall be a member of the Board, and shall
7 report directly to the Board. Within twenty (20) days of the Effective Date, the Board
8 shall provide in writing to DOJ and the Fair Lending Director (as defined in paragraph g
9 below) the name of each member of the Compliance Committee. In the event of any
10 change of membership, the Board shall submit the name of any new member in writing
11 to DOJ and the Fair Lending Director (as defined in paragraph g below).

12 d. "Dealer Discretion" means the entire range of dealer deviation from
13 Honda's risk-based buy rate, whether exercised by increasing or decreasing the buy rate,
14 such as by altering the interest rate or buying down the rate. "Dealer Discretion" does
15 not include Honda's discretion to modify the buy rate. "Dealer Discretion" does not
16 include a dealer's buying down of the buy rate with respect to all consumers to the extent
17 such special offers are clearly advertised to all consumers.

18 e. "Effective Date" means the date on which the Consent Order is issued.

19 f. "Executive Officers" means collectively the senior management of
20 American Honda Finance Corporation, including but not limited to its Principal
21 Executive Officer(s), Principal Financial Officer(s), Principal Accounting Officer(s),
22 Treasurer(s), President(s), Vice President(s), and Chief Compliance Officer(s).

23 g. "Fair Lending Director" means the Assistant Director of the Office of Fair
24 Lending and Equal Opportunity for the Bureau, or his/her delegee.

25 h. "Related Consumer Action" means a private action by or on behalf of one
26 or more consumers or an enforcement action by another governmental agency brought
27 against Honda based on substantially the same facts as described in the Complaint.

28

1 i. "Relevant Period" means the period from January 1, 2011 through July 14,
2 2015.

3 j. "Defendant" means American Honda Finance Corporation, and its
4 successors and assigns.

5 **V. INJUNCTIVE RELIEF**

6 1. Consistent with this Consent Order, Defendant and its officers, agents,
7 servants, employees, and attorneys who have actual notice of this Consent Order,
8 whether acting directly or indirectly, are enjoined from engaging in any act or practice
9 that discriminates on the basis of race or national origin in any aspect of Dealer
10 Discretion in the pricing of automobile loans in violation of ECOA, 15 U.S.C. §
11 1691(a)(1), and Regulation B, 12 C.F.R. Part 1002.

12 **A. Dealer Compensation Policy**

13 2. Honda shall implement a dealer compensation policy conforming with one
14 (1) of the three (3) options detailed below, within one hundred twenty (120) days after
15 the Effective Date or within thirty (30) days of obtaining any required non-objections of
16 the DOJ and the Fair Lending Director. In the event the DOJ or the Fair Lending
17 Director object to any proposed action by Honda, the DOJ and the Fair Lending Director
18 shall direct Honda to make revisions and Honda shall make the revisions and resubmit
19 the proposed action within thirty (30) days. Honda shall not implement any revised
20 dealer compensation policy until obtaining all non-objections of the DOJ and the Fair
21 Lending Director required by the chosen option.

22 **Option One:**

23 a. Honda will limit Dealer Discretion in setting the contract rate to one
24 hundred and twenty-five (125) basis points for retail installment contracts with terms of
25 sixty (60) months or less, and one hundred (100) basis points for retail installment
26 contracts with terms greater than sixty (60) months. Honda is not precluded from
27 including in its compensation policies an additional nondiscretionary component of
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1 dealer compensation consistent with applicable laws and subject to the non-objection of
2 the DOJ and the Fair Lending Director. Honda may provide entirely nondiscretionary
3 dealer compensation to some dealers (consistent with subparagraph j of Option Three,
4 described below) while it provides discretionary compensation to other dealers
5 consistent with Option One, so long as all loans purchased from a particular dealer are
6 compensated using only one of the two compensation systems.¹

7 b. Honda will maintain general compliance management systems reasonably
8 designed to assure compliance with all relevant federal consumer financial laws,
9 including ECOA. With respect to monitoring Dealer Discretion for compliance with
10 ECOA, Honda must, at a minimum:

- 11 i. Send regular notices to all dealers explaining ECOA, stating Honda's expectation
12 with respect to ECOA compliance, and articulating the dealer's obligation to price
13 retail installment contracts in a non-discriminatory manner.
14 ii. Monitor for compliance with Dealer Discretion limits.

15 c. Honda shall submit data on its non-subvented indirect auto lending portfolio
16 to the DOJ and the Fair Lending Director, at their request, semiannually for analysis and
17 monitoring. Honda shall submit data on its subvented indirect auto lending portfolio to
18 the DOJ and the Fair Lending Director, at their request, semiannually for analysis and
19

20 ¹ Consistent with the definition of "Dealer Discretion," Defendant is not
21 precluded from maintaining policies to reduce its risk-based buy rate based on standard,
22 non-discretionary factors (*e.g.*, pursuant to a customer loyalty program, based on the
23 down payment, or based on the percentage of the purchase price financed). Any such
24 modifications, or "standard modifiers," based on such policies must be documented and
25 applied to all qualifying consumers. Dealers may retain the discretion to mark up the
26 modified buy rate, subject to the caps set forth in subparagraph (a) of this Option.
27 Similarly, Defendant is not precluded from maintaining policies to reduce its risk-based
28 buy rate based on competitive offers (*e.g.*, a valid, dealer documented, competitive offer
from another financing source) when it is necessary to retain the customer's transaction.
Any such modifications, or "competitive modifiers," based on such policies shall (1) not
result in reduction in the risk-based buy rate exceeding limits set forth in Honda's
established policies and procedures; (2) eliminate Dealer Discretion in the transaction;
and (3) be documented by identifying within Defendant's systems, the institution
offering the competitive rate and the rate offered.

1 monitoring if Honda modifies its policies to permit Dealer Discretion on subvented
2 loans.

3 **Option Two:**

4 d. Honda will limit Dealer Discretion in setting the contract rate to one
5 hundred and twenty-five (125) basis points for retail installment contracts with terms of
6 sixty (60) months or less, and one hundred (100) basis points for retail installment
7 contracts with terms greater than sixty (60) months. Honda is not precluded from
8 including in its compensation policies an additional nondiscretionary component of
9 dealer compensation consistent with applicable laws and subject to the non-objection of
10 the DOJ and the Fair Lending Director. Honda may provide
11 entirely nondiscretionary dealer compensation to some dealers (consistent with
12 subparagraph j of Option Three, described below) while it provides discretionary
13 compensation to other dealers consistent with Option Two, so long as all loans
14 purchased from a particular dealer are compensated using only one of the two
15 compensation systems.

16 i. Honda shall establish a pre-set rate of dealer participation (*i.e.*,
17 additional interest above the risk-based buy rate) that Honda will require dealers to
18 include in all credit offers that the dealer extends to customers (“Standard Dealer
19 Participation Rate”), such that:

- 20 A. The Standard Dealer Participation Rate cannot exceed one
21 hundred and twenty-five (125) basis points for retail installment
22 contracts with terms of sixty (60) months or less, and one hundred
23 (100) basis points for retail installment contracts with terms
24 greater than sixty (60) months.
- 25 B. Honda may allow dealers to include a single, set lower dealer
26 participation rate than the Standard Dealer Participation Rate for
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1 particular loan types and/or channels or for all loans purchased
2 from a particular dealership.

3 C. Honda may allow dealers to include a lower dealer participation
4 rate than the Standard Dealer Participation Rate based on a lawful
5 exception pursuant to the fair lending policies and procedures as
6 set forth below, and subject to the dealer's agreement to abide by
7 the policies and maintain required documentation.

8 ii. To the extent Honda allows exceptions to the Standard Dealer
9 Participation Rate, to ensure consistency with the requirements of ECOA, Honda shall
10 establish policies and procedures for those exceptions subject to the non-objection of the
11 DOJ and the Fair Lending Director. The DOJ and the Bureau recommend that the
12 policies and procedures for such exceptions include the following elements:

- 13 A. Granting Exceptions: Policies and procedures that specifically
14 define the circumstances when Honda allows downward
15 departures from the Standard Dealer Participation Rate.
- 16 B. Documenting Exceptions: Policies and procedures that require
17 on a loan-by-loan basis, documentation appropriate for each
18 specific exception that is, at a minimum, sufficient to
19 effectively monitor compliance with the exceptions policies.
20 Such documentation should be sufficient not only to explain
21 the basis for granting any exception to the Standard Dealer
22 Participation Rate, but also to provide details and/or
23 documentation of the particular circumstances of the exception.
- 24 C. Record Retention: Policies and procedures for documentation
25 retention requirements that, at a minimum, comply with the
26 requirements of Regulation B.

1 e. Honda will develop and maintain a compliance management system to
2 monitor dealer compliance with setting contracts at the Standard Dealer Participation
3 Rate and any exceptions thereto to ensure they comply with the conditions for exceptions
4 to the Standard Dealer Participation Rate. This will include:

5 A. Training dealers on Honda's exceptions policies and procedures;

6 B. Regular monitoring of dealers' exceptions to the Standard Dealer
7 Participation Rate, including documentation of those exceptions;

8 C. Periodic audits for compliance with all policies and procedures
9 relevant to granting exceptions to the Standard Dealer Participation Rate and to test for
10 and identify fair lending risk; and

11 D. Appropriate corrective action for a dealer's noncompliance with
12 Honda's exceptions policies and procedures, culminating in the restriction or elimination
13 of dealers' ability to exercise discretion in setting a consumer's contract rate or exclusion
14 of dealers from future transactions with Honda.

15 f. Honda will maintain general compliance management systems reasonably
16 designed to assure compliance with all relevant federal consumer financial laws,
17 including ECOA. With respect to monitoring Dealer Discretion for compliance with
18 ECOA, Honda, in addition to the monitoring set forth in paragraph (e)(iv) above, must,
19 at a minimum:

20 i. Send regular notices to all dealers explaining ECOA, stating Honda's expectation
21 with respect to ECOA compliance, and articulating the dealer's obligation to price retail
22 installment contracts in a non-discriminatory manner.

23 ii. Monitor for compliance with Dealer Discretion limits.

24 g. Honda shall submit data on its non-subvented indirect auto lending portfolio
25 to the DOJ and the Fair Lending Director, at their request, semiannually for analysis and
26 monitoring. Honda shall submit data on its subvented indirect auto lending portfolio to
27 the DOJ and the Fair Lending Director, at their request, semiannually for analysis and
28

1 monitoring if Honda modifies its policies to permit Dealer Discretion on subvented
2 loans.

3 **Option Three:**

4 h. Honda will maintain policies that do not allow dealers any discretion to set
5 the contract rate subject to the non-objection of the DOJ and the Fair Lending Director.

6 i. Honda will maintain general compliance management systems reasonably
7 designed to assure compliance with all relevant federal consumer financial laws,
8 including ECOA. This will include Honda sending regular notices to all dealers
9 explaining ECOA, stating Honda's expectation with respect to ECOA compliance, and
10 articulating the dealer's obligation to price retail installment contracts in a non-
11 discriminatory manner.

12 j. Honda will not have to review or remunerate for prohibited basis disparities
13 in dealer markup resulting from Dealer Discretion in setting the contract rate, because
14 there is no such discretion. Honda will not have to maintain a compliance management
15 system to monitor dealer exceptions because dealers do not have such discretion.

16 **VI. ROLE OF THE COMPLIANCE COMMITTEE**

17 3. The Compliance Committee must review all submissions (including plans,
18 reports, programs, policies, and procedures) required by this Consent Order prior to
19 submission to the DOJ and the Fair Lending Director.

20 4. Although this Consent Order requires Honda to submit certain documents
21 for review or non-objection by the DOJ and the Fair Lending Director, the Board will
22 have the ultimate responsibility for proper and sound oversight of Honda and for
23 ensuring that Honda complies with Federal consumer financial law and this Consent
24 Order.

25 5. In each instance in this Consent Order that requires the Compliance
26 Committee to ensure adherence to, or perform certain obligations of Honda, the
27 Compliance Committee must:

1 a. Authorize and adopt whatever actions are necessary for Honda to fully
2 comply with this Consent Order;

3 b. Require timely reporting by management to the Board on the status of
4 compliance obligations; and

5 c. Require timely and appropriate corrective action to remedy any failure to
6 comply with Board directives related to this Section.

7 **VII. MONETARY PROVISIONS**

8 **A. Settlement Fund**

9 6. Within thirty (30) days of the Effective Date, Honda shall deposit into an
10 interest-bearing escrow account twenty-four million dollars (\$24,000,000.00), for the
11 purpose of providing redress to Affected Consumers who were overcharged as required
12 by this Section. This will constitute the Settlement Fund. Honda shall provide written
13 verification of the deposit to the DOJ and the Bureau within five (5) business days of
14 depositing the funds described in this paragraph. Any interest that accrues will become
15 part of the Settlement Fund and will be utilized and disposed of as set forth herein. Any
16 taxes, costs, or other fees incurred by the Settlement Fund shall be paid by Honda.

17 7. Within sixty (60) days of the Effective Date, Honda shall create a plan
18 (“Redress Plan”) to provide for the administration of consumer remuneration by
19 American Honda Motor (“Administrator”). Pursuant to the Redress Plan, the
20 Administrator shall conduct the activities set forth in paragraphs 9 through 17. The
21 terms of the Redress Plan shall be subject to the non-objection of the DOJ and the Fair
22 Lending Director. Honda shall bear all costs and expenses of implementing the Redress
23 Plan. The Redress Plan shall require the Administrator to comply with the provisions of
24 this Consent Order as applicable to the Administrator. The Redress Plan shall require
25 the Administrator to work cooperatively with Honda, the DOJ, and the Bureau in the
26 conduct of its activities, including reporting regularly to and providing all reasonably
27 requested information to the DOJ and the Fair Lending Director. The Redress Plan shall
28

1 require the Administrator to comply with all confidentiality and privacy restrictions
2 applicable to the party who supplied the information and data to the Administrator.

3 8. In the event that the DOJ or the Fair Lending Director have reason to
4 believe that the Administrator is not materially complying with the terms of the Redress
5 Plan, they shall provide written notice to Respondent detailing the noncompliance.
6 Within fourteen (14) days, Honda shall present for review and determination of non-
7 objection a course of action to effectuate the Administrator's material compliance with
8 the Redress Plan. The DOJ and the Fair Lending Director shall make a determination of
9 non-objection to the course of action or direct Honda to revise it. In the event that the
10 DOJ and the Fair Lending Director direct revisions, Honda shall make the revisions and
11 resubmit the course of action to the DOJ and the Fair Lending Director within thirty (30)
12 days. Upon notification that the DOJ and the Fair Lending Director have made a
13 determination of non-objection, Honda shall implement the course of action.

14 9. The Redress Plan shall require the Administrator, as part of its operations,
15 to establish cost-free means for Affected Consumers to contact it, including an email
16 address, a website, a toll-free telephone number, and means for persons with disabilities
17 to communicate effectively. The Redress Plan shall require the Administrator to make
18 all reasonable efforts to provide effective translation services to Affected Consumers,
19 including but not limited to providing live English and foreign-language-speaking
20 operators to speak to Affected Consumers who call the toll-free telephone number and
21 request a live operator, and providing foreign language interpretations and translations
22 for communications with Affected Consumers.

23 10. The DOJ and the Fair Lending Director shall request from Honda
24 information and data the DOJ and the Fair Lending Director reasonably believe will
25 assist in identifying Affected Consumers and determining any monetary and other
26 damages, including but not limited to a database of all non-subservent retail installment
27 contracts booked by Honda during the Relevant Period and all data variables the Bureau
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1 obtained during its investigation. Within ninety (90) days of the Effective Date, Honda
2 shall supply the requested information and data.

3 11. The DOJ and the Fair Lending Director shall jointly provide to the
4 Administrator and Honda a list of retail installment contracts with consumers that the
5 DOJ and the Fair Lending Director have determined are eligible to receive monetary
6 relief pursuant to this Consent Order after receipt of all the information and data they
7 requested pursuant to paragraph 10. The total amount of the Settlement Fund shall not
8 be altered based on the number of listed retail installment contracts.

9 12. Within thirty (30) days after the date the DOJ and the Fair Lending Director
10 provide the list of retail installment contracts referenced in paragraph 11, Honda will
11 provide to the DOJ, the Fair Lending Director, and the Administrator the name, most
12 recent mailing address in its servicing records, Social Security number, and other
13 information as requested for the primary borrower and each co-borrower (if any) on each
14 listed retail installment contract ("Identified Borrowers"). Such information and data
15 shall be used by the DOJ, the Bureau, and the Administrator only for the law
16 enforcement purposes of implementing the Consent Order. The total amount of the
17 Settlement Fund shall not be altered based on the number of Identified Borrowers.

18 13. After receipt of all the information required to be provided by paragraph 12,
19 the DOJ and the Fair Lending Director shall provide Honda and the Administrator with
20 the initial estimate of the amount each Identified Borrower will receive from the
21 Settlement Fund. No individual, agency, or entity may request that any court, the DOJ,
22 the Bureau, Honda, or the Administrator review the selection of Identified Borrowers or
23 the amount to be received. The total amount of the Settlement Fund shall not be altered
24 based on the amounts that Identified Borrowers receive.

25 14. The Redress Plan shall require the Administrator to adopt effective
26 methods, as requested by the DOJ and the Fair Lending Director; to confirm the
27 identities and eligibility of Identified Borrowers and provide to the DOJ and the Fair
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1 Lending Director a list of Identified Borrowers whose identities and eligibility have
2 been confirmed ("Confirmed Borrowers") within two hundred and seventy (270) days
3 from the date the DOJ and the Fair Lending Director provide the information described
4 in paragraph 13.

5 15. Within sixty (60) days after the date the Administrator provides to the DOJ
6 and the Fair Lending Director the list of Confirmed Borrowers, the DOJ and the Fair
7 Lending Director shall provide to the Administrator a list containing the final payment
8 amount for each Confirmed Borrower. The total amount of the Settlement Fund shall
9 not be altered based on the number of Confirmed Borrowers or the amounts they receive.
10 No individual, agency, or entity may request that any court, the DOJ, the Bureau, Honda,
11 or the Administrator review the final payment amounts.

12 16. The Redress Plan shall require the Administrator to deliver payment to each
13 Confirmed Borrower in the amount determined by the DOJ and the Fair Lending
14 Director as described in paragraph 15 within forty-five (45) days. The Redress Plan
15 shall also require the Administrator to further conduct a reasonable search for a current
16 address and redeliver any payment that is returned to the Administrator as undeliverable,
17 or not deposited within six (6) months.

18 17. The Redress Plan shall require the Administrator to maintain the cost-free
19 means for consumers to contact it described in paragraph 9 and finalize distribution of
20 the final payments described in paragraphs 15 and 16 within twelve (12) months from
21 the date the DOJ and the Fair Lending Director provide the list of final payment amounts
22 to the Administrator in accordance with paragraph 15. Confirmed Borrowers shall have
23 until that date to request reissuance of payments that have not been deposited.

24 18. The details regarding administration of the Settlement Fund set forth in
25 paragraphs 7 through 17 can be modified by agreement of the DOJ, the Fair Lending
26 Director, and Honda. Payments from the Settlement Fund to Confirmed Borrowers
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1 collectively shall not exceed the amount of the Settlement Fund, including accrued
2 interest.

3 19. Honda will not be entitled to a set-off, or any other reduction, of the amount
4 of final payments to Confirmed Borrowers because of any debts owed by the Confirmed
5 Borrowers. Honda also will not refuse to make a payment based on a release of legal
6 claims or account modification previously signed by any Confirmed Borrowers.

7 20. All money in the Settlement Fund not distributed to Confirmed Borrowers
8 shall be distributed by the Administrator to one or more organizations that provide
9 services, including credit counseling, financial literacy, and other related programs,
10 targeted to African-American, Hispanic, or Asian and/or Pacific Islander borrowers
11 (“Qualified Organization”). Before selecting the Qualified Organization(s), Honda will
12 (1) obtain proposals from the Organization(s) on how the funds will be used consistent
13 with the above-stated purpose, and (2) submit selected proposals from the
14 Organization(s), and the proposed amount of funds each Organization would receive, to
15 the DOJ and the Bureau within thirty (30) days of the date that the Administrator
16 completes the delivery of the payments under paragraph 16. The DOJ shall consult with
17 the Bureau in providing its non-objection to Honda’s proposal and shall respond to
18 Honda’s proposal within thirty (30) days of the submission. Honda and the DOJ, in
19 consultation with the Bureau, may request modification of an Organization’s proposal
20 before approving the Organization(s). Qualified Organization(s) must not be affiliated
21 with Honda, Honda’s parent, or any affiliated entity of Honda’s parent.

22 21. The parties shall obtain the Court’s approval of the selection of the
23 Qualified Organization(s) and the amount to be distributed to each Qualified
24 Organization prior to distribution as provided by paragraph 20. Within fifteen (15) days
25 after the DOJ’s non-objection to the Qualified Organization(s), the parties shall move the
26 Court to authorize the distribution of the funds. The parties shall provide the Court with
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1 information regarding how the Qualified Organization(s) meet the requirements set forth
2 in paragraph 20.

3 22. Within one year after the funds are distributed and every year thereafter
4 until the funds are exhausted, Honda shall require each Qualified Organization to submit
5 to Honda a report detailing that funds are utilized for the purposes identified in
6 paragraph 21. Honda shall submit those reports to the DOJ and the Bureau within thirty
7 (30) days of receiving them. For any Qualified Organization that does not provide such
8 a report, Honda shall require that the funds be returned to the Administrator for
9 redistribution to the other Organization(s) approved to receive funds.

10 **B. Additional Monetary Provisions**

11 23. Within thirty (30) days of the Effective Date, Honda shall submit to the
12 DOJ a proposal for the distribution of one million dollars (\$1,000,000.00) toward the
13 administration and operation of a consumer financial education program or programs.
14 Each program proposed shall have a nexus to the violations identified in this Consent
15 Order in that it will be designed to benefit African-American, Hispanic, and Asian and/or
16 Pacific Islander populations and be addressed to consumer auto finance. Honda's
17 proposal, including selection of provider(s) and the anticipated program content, shall be
18 subject to the review and non-objection of the DOJ. The parties shall obtain the Court's
19 approval prior to distribution.

20 24. In the event of any default on Honda's obligations to make payment under
21 this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue
22 on any outstanding amounts not paid from the date of default to the date of payment, and
23 will immediately become due and payable.

24 25. Honda must relinquish all dominion, control, and title to the funds paid to
25 the fullest extent permitted by law and no part of the funds may be returned to Honda.

26 26. Under 31 U.S.C. § 7701, Honda, unless it already has done so, must furnish
27 to the DOJ and the Fair Lending Director its taxpayer identifying numbers, which may
28

1 be used for purposes of collecting and reporting on any delinquent amount arising out of
2 this Consent Order.

3 27. Within thirty (30) days of the entry of a final judgment, consent order, or
4 settlement in a Related Consumer Action, Honda must notify the DOJ and the Fair
5 Lending Director of the final judgment, consent order, or settlement in writing. That
6 notification must indicate the amount of redress, if any, that Honda paid or is required to
7 pay to consumers and describe the consumers or classes of consumers to whom that
8 redress has been or will be paid.

9 **VIII. ADMINISTRATIVE PROVISIONS**

10 **A. Reporting Requirements**

11 28. Honda must notify the DOJ and the Bureau of any development that may
12 affect compliance obligations arising under this Consent Order, including but not limited
13 to, a dissolution, assignment, sale, merger, or other action that would result in the
14 emergence of a successor company; the creation or dissolution of a subsidiary, parent, or
15 affiliate that engages in any acts or practices subject to this Consent Order; the filing of
16 any bankruptcy or insolvency proceeding by or against Honda; or a change in Honda's
17 name or address. Honda must provide this notice as soon as practicable after the
18 learning about the development, but in any case at least 30 days before the development
19 is finalized.

20 29. Within ten (10) business days of the Effective Date, Honda must:

21 a. Designate at least one telephone number and email, physical, and postal
22 address as points of contact, which the DOJ and the Bureau may use to communicate
23 with Honda;

24 b. Identify all businesses for which Honda is the majority owner, or that
25 Honda directly or indirectly controls, by all of their names, telephone numbers, and
26 physical, postal, email, and Internet addresses;

1 c. Describe the activities of each such business, including the products and
2 services offered, and the means of advertising, marketing, and sales.

3 d. Honda must report any change in the information required to be submitted
4 under this Section (paragraphs 28 to 30) as soon as practicable, but in any case at least
5 thirty (30) days before the change.

6 30. Within one hundred and eighty (180) days of the Effective Date, and every
7 one hundred and eighty (180) days thereafter until the termination of this Consent Order,
8 Respondent must submit to the DOJ and the Fair Lending Director an accurate written
9 Compliance Progress Report, which has been approved by the Board. Each Report shall
10 provide a complete account of Respondent's actions to comply with each requirement of
11 the Consent Order during the previous six (6) months, an objective assessment of the
12 extent to which each quantifiable obligation was met, an explanation of why any
13 particular component fell short of meeting its goal for the previous six (6) months, and
14 any recommendation for additional actions to achieve the goals of the Consent Order.

15 **B. Order Distribution and Acknowledgment**

16 31. Within thirty (30) days of the Effective Date, Honda must deliver a copy of
17 this Consent Order to each of its Board members and Executive Officers.

18 32. Until the termination of this Consent Order, Honda must deliver a copy of
19 this Consent Order to any business entity resulting from any change in structure referred
20 to in Section A and any future Board Members and Executive Officers before they
21 assume their responsibilities.

22 33. Honda must secure a signed and dated statement acknowledging receipt of a
23 copy of this Consent Order, ensuring that any electronic signatures comply with the
24 requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within thirty (30) days of
25 delivery, from all persons receiving a copy of this Consent Order pursuant to this
26 Section.

1 **C. Recordkeeping**

2 34. Honda must create and/or retain for at least five (5) years from the Effective
3 Date the following business records:

4 a. All documents and records necessary to demonstrate full compliance with
5 each provision of this Consent Order, including but not limited to, reports submitted to
6 the DOJ and the Fair Lending Director and all documents and records pertaining to
7 redress, as set forth in Section VI above;

8 b. All documents and records pertaining to the Redress Plan, described in
9 Section VII above; and

10 c. All written consumer complaints related to Honda's retail installment
11 contracts alleging discrimination by Honda (whether received directly or indirectly, such
12 as through a third party), and any responses to those written complaints or requests.

13 35. All business records created or retained pursuant to this Section shall be
14 retained at least until the termination of this Consent Order, and shall be made available
15 upon the DOJ's or the Fair Lending Director's request to DOJ representatives or Bureau
16 representatives, respectively, within sixty (60) days of a request.

17 **D. Modifications to Non-Material Requirements**

18 36. Honda may seek a modification to non-material requirements of this
19 Consent Order (*e.g.*, reasonable extensions of time and changes to reporting
20 requirements) by submitting a written request to the DOJ and the Fair Lending Director.

21 37. The DOJ may, in its discretion, modify any non-material requirements of
22 this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting
23 requirements) if the DOJ determines good cause justifies the modification. Any such
24 modification by the DOJ must be in writing.
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26
27
28

1 **E. Notices**

2 38. Unless otherwise directed in writing by a DOJ or a Bureau representative,
3 all submissions, requests, communications, consents, or other documents relating to this
4 Consent Order shall be in writing and sent as follows:

5 To the DOJ:

6 Chief

7 Housing and Civil Enforcement Section

8 Civil Rights Division

9 U.S. Department of Justice

10 1800 G Street NW, Suite 7002

11 Washington, DC 20006

12 Attn: DJ 188-12C-45, *United States v. American Honda Finance Corporation*

13
14 By contemporaneous email to marta.campos@usdoj.gov

15
16
17 To the Fair Lending Director:

18
19 By overnight courier (not the U.S. Postal Service), as follows:

20 Fair Lending Director

21 Consumer Financial Protection Bureau

22 ATTENTION: Jane Peterson

23 1625 Eye Street, N.W.

24 Washington, DC 20006

25 The subject line shall begin:

26 *In re American Honda Finance Corporation*, dated July 14, 2015; or
27
28

1 By first-class mail to the below address and contemporaneously by email to
2 Jane.Peterson@cfpb.gov

3
4
5 Fair Lending Director
6 Consumer Financial Protection Bureau
7 ATTENTION: Jane Peterson
8 1700 G Street, N.W.
9 Washington, DC 20552

10
11 The subject line shall begin:

12 *In re American Honda Finance Corporation*, dated July 14, 2015

13
14 To Defendant:

15 Kirk D. Jensen

16 Partner

17 BuckleySandler LLP

18 1250 24th Street, N.W.

19 Washington, DC 20037

20 Tel.: (202) 349-8000

21 Fax: (202) 349-8080

22 kjensen@bucklesandler.com

23
24 John C. Redding

25 Partner

26 BuckleySandler LLP

27 100 Wilshire Blvd., Ste. 1000

28

1 Santa Monica, CA 90401
2 Tel.: (310) 424-3916
3 Fax: (310) 424-3961
4 jredding@buckleysandler.com
5

6 **F. Other Provisions**

7 39. Except as provided in paragraph 40, the provisions of this Consent Order do
8 not bar, estop, or otherwise prevent the DOJ, or any other governmental agency, from
9 taking any other action against Honda.

10 40. The DOJ releases and discharges Honda from all potential liability for all
11 ECOA claims of the United States Attorney General for discriminating on the basis of
12 race or national origin that have been or might have been asserted by the United States
13 Attorney General based on the practices described in the Complaint, to the extent such
14 practices occurred prior to the Effective Date, and are known to the DOJ as of the
15 Effective Date. Notwithstanding the foregoing, the practices alleged in the Complaint
16 may be utilized by the DOJ in future enforcement actions against Honda and its
17 affiliates, including without limitation, to establish a pattern or practice of violations or
18 the continuation of a pattern or practice of violations. This release shall not preclude or
19 affect any right of the DOJ to determine and ensure compliance with the terms and
20 provisions of this Consent Order, or to seek penalties for any violations thereof.

21 41. Honda may request to modify the compliance management program
22 required by this Consent Order (as described in the Options set forth in Section VII)
23 when the modification is based upon a change in circumstances that has arisen during the
24 pendency of this Consent Order, including but not limited to any amendment to the
25 statutory or regulatory regime applicable to dealer markup and compensation policies, or
26 the adoption of a materially different dealer compensation policy by lenders comprising
27 a majority of the auto loan market. Any such request to modify the compliance plan is
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1 subject to the DOJ's and the Fair Lending Director's review and determination that the
2 modified compliance management program eliminates or substantially reduces Dealer
3 Discretion, and determination of non-objection.

4 42. This Consent Order will terminate five (5) years from the Effective Date.
5 The Consent Order will remain effective and enforceable until such time, except to the
6 extent that any provisions of this Consent Order have been amended, suspended, waived,
7 or terminated in writing by the DOJ. The DOJ will not pursue any potential violations of
8 ECOA against, or seek consumer remuneration from, Honda for conduct undertaken
9 with respect to Dealer Discretion that is both pursuant to and consistent with this
10 Consent Order during the term of the Consent Order.

11 43. Calculation of time limitations will run from the Effective Date and be
12 based on calendar days, unless otherwise noted.

13 44. This Consent Order is enforceable only by the parties. No person or entity
14 is intended to be a third party beneficiary of the provisions of this Consent Order for
15 purposes of any civil, criminal, or administrative action, and accordingly, no person or
16 entity may assert a claim or right as a beneficiary or protected class under this Consent
17 Order.

18 45. Each party to this Consent Order shall bear its own costs and attorney's fees
19 associated with this litigation.

20 46. The DOJ and Honda agree that, as of the Effective Date, litigation is not
21 "reasonably foreseeable" concerning the matters described above. To the extent that the
22 DOJ or Honda previously implemented a litigation hold to preserve documents,
23 electronically stored information, or things related to the matters described above, it is no
24 longer required to maintain such litigation hold. Nothing in this paragraph relieves the
25 DOJ or Defendant of any other obligations imposed by this Consent Order.

26 47. To the extent that a specific action by Honda is required both by this
27 Consent Order and any Consent Order issued by the Bureau in the administrative
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1 proceeding styled *In the Matter of American Honda Finance Corporation*, filed on or
2 about July 14, 2015, action by Honda that satisfies a requirement under any such consent
3 order will satisfy that same requirement under this Consent Order.

4 48. The Court shall retain jurisdiction for the duration of this Consent Order to
5 enforce its terms, after which time the case shall be dismissed with prejudice.

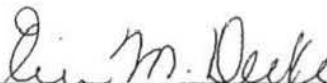
6 SO ORDERED, this ___ day of _____, ____.

7
8 UNITED STATES DISTRICT JUDGE
9

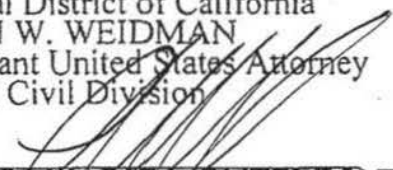
10 The undersigned hereby apply for and consent to the entry of the Order:

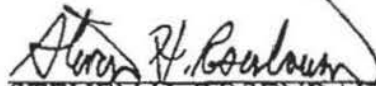
11 For the United States:

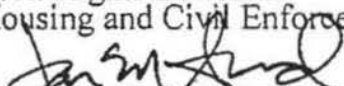
12 LORETTA LYNCH
13 Attorney General

14 
EILEEN M. DECKER
United States Attorney
Central District of California
15 LEON W. WEIDMAN
Assistant United States Attorney
16 Chief, Civil Division

17 VANITA GUPTA
18 Principal Deputy Assistant Attorney General
19 Civil Rights Division

20 
ROBYN MARIE MONTELEONE
Assistant United States Attorney
21 Assistant Division Chief
22 Civil Rights Unit Chief, Civil Division
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25 Chief
26 Civil Rights Division
27 Housing and Civil Enforcement Section

28 
JON M. SEWARD
Deputy Chief


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2

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