

1 Plaintiffs Martin Daniel and Robert Rawlings, on behalf of themselves and all others similarly
2 situated, and for members of the general public as private attorneys general under California
3 Business and Professions Code § 17204, allege on information and belief as follows:

4
5 **PARTIES**
6

7 1. Martin Daniel is a resident of Lake Arrowhead, California, who owns a 2003 Honda
8 Element.

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10 2. Robert Rawlings is a resident of Seattle, Washington, who owns a 2004 Honda
11 Element.

12
13 3. American Honda Motor Company, Inc. ("American Honda") is a California corporation
14 with principal executive offices in Torrance, California. American Honda is a wholly-owned
15 subsidiary of Honda Motor Company, Ltd. of Japan, and markets Honda's products in the United
16 States through a sales network of approximately 1,260 independent local automobile dealers.

17
18 4. Honda North America, Inc. ("Honda North America") is a California corporation with
19 principal executive offices in Torrance, California. Honda North America is responsible for
20 coordinating the operations of all Honda subsidiaries in North America. Unless stated otherwise,
21 Defendants American Honda and Honda North America will be referred to collectively as "Honda."
22

23 5. Plaintiffs do not know the true names or capacities of the persons sued as Defendants
24 Does 1 through 100, and therefore sue those Defendants by fictitious names. Plaintiffs believe that
25 each of the Doe Defendants was in some manner legally responsible for the wrongdoing alleged in this
26 Complaint. Plaintiffs will amend this Complaint to set forth the true names and capacities of these
27 Defendants when they have been ascertained, along with appropriate additional allegations as may be
28 required.

1 cracked while the vehicle was sitting in a parking lot, and Plaintiff Robert Rawling's new Element
2 developed its crack while parked overnight at his home. Other Class Members have reported that the
3 slightest impact will cause the Element windshield to crack.

4
5 10. Plaintiffs are informed and believe that Honda's response to Class Members'
6 complaints has been equally consistent: Honda denies the existence of any cracking defect. It also
7 refuses to fix the cracked windshields under warranty. One reason provided for this position is that
8 road debris or impact caused the crack and Honda's new-car warranty does not cover damage caused
9 by road debris or impact. To purportedly support this position, Honda has its dealers use what is
10 referred to as the "pen test" to claim the windshield cracks are caused by road debris.

11
12 11. Plaintiffs are informed and believe that the "pen test" (which involves tracing the
13 crack with a pen) is a ploy: It is relied upon even when a crack occurs without cause by debris or
14 impact, and dealers reportedly routinely blame Element windshield cracks on so-called "impact
15 points" that are invisible or nearly invisible (*e.g.*, smaller than a pinhole.) Honda's refusal to cover
16 the cost of repair under warranty causes the Class Members (or their insurance companies) to bear
17 the expense of replacing their windshields, which can cost more than \$500 (a significant percentage
18 of the Element's approximately \$16,100 base retail sales price). And because the cracking defect is
19 a design flaw, Class Members have replaced, and will continue to replace, their windshields more
20 than once.

21
22 12. Plaintiffs are informed and believe that Honda's refusal to acknowledge the existence
23 of the cracking defect and replace cracked windshields under warranty is due, in part, to (a) its
24 unwillingness to tarnish the image of one of its more popular vehicles, and (b) the way Honda
25 accounts for warranty expenses. According to Honda Motor Company, Ltd. of Japan's annual report
26 to shareholders, Honda has concluded that the accounting estimate related to warranty reserves is a
27 "critical accounting estimate," because changes in it can materially affect net income. To the extent
28 that a design defect, such as the one at issue in this lawsuit, creates a spike in warranty claims, it will

1 have a direct, negative impact on Honda's net income — unless Honda refuses to honor the warranty
2 claims, as it has done here.

3
4 13. Plaintiffs are informed and believe that, as the number of complaints increased, and
5 Class Members grew dissatisfied with the Element's cracked windshields, Honda was forced to
6 acknowledge that at least some Elements are affected by a design defect. Yet, Honda claimed,
7 incorrectly, that the cracking defect is limited to a small number of Elements whose vehicle
8 identification numbers fall within a specific range.

9
10 14. In May 2003, Honda provided its dealers with a Technical Service Bulletin ("TSB"),
11 in which Honda concedes that certain Elements have windshields that are prone to cracking. (A
12 copy of the TSB is attached to this Complaint as Exhibit 1.) The TSB attributes the cause of the
13 windshield cracks to an uneven flange surface.

14
15 15. To fix the cracking defect, the TSB advises dealers to take a hammer to the high spots
16 on the windshield flange (to flatten them out) and to replace the windshield. Although Honda's
17 new-car warranty does not normally cover cracked windshields, the TSB directs dealers to submit
18 the repair order through "normal warranty." The TSB also instructs dealers that "[a]ny repair
19 performed after warranty expiration may be eligible for goodwill consideration", meaning that
20 Honda has also extended the terms of its new-car warranty to cover windshields that crack after that
21 warranty has expired.

22
23 16. By extending its new-car warranty to cover the replacement of certain cracked
24 windshields (and by doing so even if that warranty has expired), Honda has expanded or extended
25 the consumer's warranty beyond its stated limit. Honda has also offered to pay for "the cost of
26 repairing any condition that may substantially affect vehicle durability, reliability, or performance."
27 Honda is, therefore, obligated to comply with the provisions of the California Secret Warranty Law,
28 which is codified at California Civil Code §§ 1795.90-1795.93.

1 17. The term “secret warranty” is used to describe the practice by which an automaker
2 establishes a policy to pay for the repair of that defect without making the defect or the policy known
3 to the public at large. A secret warranty is usually created when the automaker realizes that a large
4 number of its customers are experiencing a defect not covered by a factory warranty, and decides to
5 offer warranty coverage to individual customers only if, for example, the customer complains about
6 the problem first.

7
8 18. The warranty is considered “secret” because not all consumers are notified of it.
9 Instead, the automaker usually issues a service bulletin to its regional offices and/or dealers on how
10 to deal with the defect. Because consumers are kept in the dark about the cost-free repair, the
11 automaker only has to reimburse those consumers who complain loudly enough; the quiet consumer
12 pays to fix the defect him/herself. California outlawed secret warranties when it enacted the Secret
13 Warranty Law.

14
15 19. Plaintiffs are informed and believe that Honda did not comply with its obligations
16 under the Secret Warranty Law. Instead of providing Class Members with the notice the Secret
17 Warranty Law requires, Honda left it up to them to discover for themselves the information set forth
18 in the Element TSB. Those who did not make that discovery had to pay to replace their Class
19 Vehicles’ cracked windshields themselves.

20
21 20. Plaintiffs are informed and believe that even those Class Members who manage to
22 find out about the information contained in the TSB are not assured of getting a free windshield
23 replacement. The TSB is limited to a small number of 2003 model-year Class Vehicles whose
24 vehicle identification numbers fall within a narrow range. Moreover, Honda employs the “pen test”
25 to defeat claims by owners of these vehicles. Consequently, the vast majority of Class Members bear
26 the cost of replacing the windshields themselves.

1 d. persons who have pursued a claim against, and reached a verdict against or
2 settled with and validly released Honda from individual claims substantially similar to those alleged in
3 this Complaint.

4
5 25. A subclass of Class Members pursuing claims under the CLRA is defined as follows:
6 All Class Members who are “consumers,” as that term is defined at California Civil Code § 1760(d).

7
8 26. Plaintiffs are informed and believe that the proposed class comprises thousands of
9 persons throughout the country who own or lease, or have owned or leased, one or more Class
10 Vehicles. The class is, therefore, so numerous and geographically dispersed that joinder of all
11 members in one action is impracticable.

12
13 27. Honda has acted with respect to Plaintiffs and the Class Members in a manner generally
14 applicable to each of them. There is a well-defined community of interest in the questions of law and
15 fact involved, which affect all Class Members. The questions of law and fact common to the class
16 predominate over the questions that may affect individual Class Members, including but not limited to
17 the following:

18
19 a. whether Class Vehicles’ windshields have an inordinately high propensity to
20 crack;

21
22 b. whether these cracks are the result of a design defect;

23
24 c. whether Honda knew or reasonably should have known of the cracking defect
25 in Class Vehicles before it sold them to the consuming public;

26
27 d. whether Honda knew or reasonably should have known that the cracking defect
28 is a potential safety hazard;

1 e. whether Honda wrongfully profited from causing the distribution and sale or
2 lease of Class Vehicles under false pretenses, by failing to inform the consuming public about the
3 cracking defect;

4
5 f. whether Honda's conduct, as alleged in this Complaint, constitutes a violation
6 of the Secret Warranty Law;

7
8 g. whether Honda's conduct, as alleged in this Complaint, constitutes violations of
9 the CLRA;

10
11 h. whether Honda's conduct, as alleged in this Complaint, has violated the UCL;

12
13 i. whether each Class Vehicle should be recalled and retrofitted in a manner that
14 will correct the cracking defect;

15
16 j. whether Honda should be required to provide an extended warranty to cover the
17 cracking defect on all affected Class Vehicles; and

18
19 k. whether Honda should be required to reimburse those Class Members who have
20 paid to repair the cracking defect at their own expense.

21
22 28. Because they each purchased a Class Vehicle with the cracking defect, Plaintiffs are
23 asserting claims that are typical of the claims of the entire class.

24
25 29. Plaintiffs will fairly and adequately represent and protect the interests of the class, in
26 that they have no interests that are antagonistic to or in conflict with those they seek to represent.

1 30. Plaintiffs have retained counsel who have considerable experience and success in the
2 prosecution of class actions and other forms of complex litigation.

3
4 31. In view of the complexity of the issues and the expense that an individual Class
5 Member would incur if he or she attempted to obtain relief from a large corporation such as Honda, the
6 claims of individual Class Members do not involve monetary amounts that are sufficient to support
7 separate actions. Because of the size of the individual Class Members' claims, few, if any, Class
8 Members could afford to seek legal redress for the wrongs complained of in this Complaint.

9
10 32. The class is readily definable, and prosecution as a class action will eliminate the
11 possibility of repetitious litigation and will provide redress for claims too small to support the expense
12 of individual, complex litigation. Absent a class action, the Class Members will continue to suffer
13 losses, Honda's violations of law will be allowed to proceed without remedy, and Honda will retain
14 revenue as a result of its wrongdoing. In addition, without a class action, Class Vehicles will remain
15 on the road in their dangerously defective and unsafe condition. A class action therefore provides a fair
16 and efficient method for adjudicating this controversy.

17
18 33. The prosecution of separate claims by individual Class Members would create a risk of
19 inconsistent or varying adjudications with respect to at least thousands of individual Class Members,
20 which would, as a practical matter, dispose of the interests of the Class Members not parties to those
21 separate actions or would substantially impair or impede their ability to protect their interests and
22 enforce their rights.

23
24 34. The proposed class fulfills the certification criteria of California Code of Civil
25 Procedure § 382 and California Civil Code § 1781. Accordingly, certification is appropriate pursuant
26 to both of those statutory provisions.

1 **FIRST CAUSE OF ACTION**

2 **(Deceptive Practices in Violation of the CLRA)**

3
4 35. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the
5 preceding paragraphs of this Complaint.

6
7 36. The acts and practices described in this Complaint were intended to result in the sale of
8 motor vehicles to the consuming public. Honda's acts and practices violated, and continue to violate,
9 the CLRA in at least the following respects:

10
11 a. representing that Class Vehicles have characteristics, uses or benefits that they
12 do not have, in violation of § 1770(a)(5) of the CLRA;

13
14 b. representing that Class Vehicles are of a particular standard, quality or grade
15 when they are of another, in violation of § 1770(a)(7) of the CLRA; and

16
17 c. advertising goods with the intent not to sell them as advertised, in violation of §
18 1770(a)(9) of the CLRA.

19
20 37. Plaintiffs seek and are entitled to equitable relief on behalf of the members of the
21 CLRA subclass in the form of an order (a) enjoining Honda from continuing to engage in the practices
22 described in this Complaint; (b) requiring Honda to make full restitution of all monies wrongfully
23 obtained as a result of the conduct described in this Complaint; (c) requiring Honda to disgorge all ill-
24 gotten gains flowing from the conduct described in this Complaint; (d) requiring Honda to provide
25 public notice of the true nature and scope of the cracking defect; and (e) requiring Honda to recall and
26 retrofit all Class Vehicles in a manner that will correct the cracking defect or, in the alternative, to
27 provide warranty coverage for the cracking defect in all Class Vehicles.

1 cost of repairing, any condition that may substantially affect vehicle durability, reliability, or
2 performance[.]” Plaintiffs are informed and believe that Honda has not complied with this
3 requirement.

4
5 41. The Secret Warranty Law also requires automakers to provide the New Motor
6 Vehicle Board with a copy of a notice containing information about the true nature and scope of the
7 cracking defect, and their entitlement to warranty coverage. Plaintiffs are informed and believe that
8 Honda has not complied with this requirement.

9
10 42. In addition, the Secret Warranty Law requires automakers to advise their dealers, in
11 writing, of the terms and conditions of any warranty extension, adjustment, or reimbursement
12 program. Plaintiffs are informed and believe that Honda has not complied with this requirement.

13
14 43. The Secret Warranty Law requires automakers to “implement procedures to assure
15 reimbursement of each consumer eligible under an adjustment program who incurs expenses for
16 repair of a condition subject to the program prior to acquiring knowledge of the program.” Again,
17 Plaintiffs are informed and believe that Honda has not complied with this requirement.

18
19 44. Plaintiffs seek an order of this Court pursuant to § 17203 of the UCL, as follows: (a)
20 enjoining Honda from continuing to engage in the unlawful, unfair and fraudulent business practices
21 described in this Complaint; (b) requiring Honda to make full restitution of all monies wrongfully
22 obtained as a result of the conduct described in this Complaint; (c) requiring Honda to disgorge all ill-
23 gotten gains flowing from the conduct described in this Complaint; (d) requiring Honda to provide
24 public notice of the true nature and scope of the cracking defect; (e) requiring Honda to recall and
25 retrofit all Class Vehicles in a manner that will correct the cracking defect or, in the alternative, to
26 provide warranty coverage for the cracking defect in all Class Vehicles; and (f) requiring Honda to
27 comply with its obligations under the Secret Warranty Law.

1 **PRAYER FOR RELIEF**

2
3 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, and for
4 members of the general public as private attorneys general under California Business and
5 Professions Code § 17204, pray for relief, jointly and severally, pursuant to each cause of action set
6 forth in this Complaint as follows:

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8 1. For an order certifying that the action may be maintained as a class action.

9
10 2. For an award of equitable relief pursuant to the CLRA and the UCL as follows: (a)
11 enjoining Honda from continuing to engage in the unlawful, unfair and fraudulent business practices
12 described in this Complaint; (b) requiring Honda to make full restitution of all monies wrongfully
13 obtained as a result of the conduct described in this Complaint; (c) requiring Honda to disgorge all ill-
14 gotten gains flowing from the conduct described in this Complaint; (d) requiring Honda to provide
15 public notice of the true nature and scope of the cracking defect; (e) requiring Honda to recall and
16 retrofit all Class Vehicles in a manner that will correct the cracking defect or, in the alternative, to
17 provide warranty coverage for the cracking defect in all Class Vehicles; and (f) requiring Honda to
18 comply with its obligations under the Secret Warranty Law.

19
20 3. For an award of attorney fees pursuant to, *inter alia*, § 1780(d) of the CLRA and Code
21 of Civil Procedure § 1021.5.

22
23 4. For an award of costs.

24
25 5. For pre- and post-judgment interest on any amounts awarded.

26
27 6. For such other relief as the Court deems just and proper.

1 DATED: July 31, 2004

FAZIO & MICHELETTI LLP

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3
4 by  _____
Dina E. Micheletti

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6 Attorneys for Plaintiffs
7 Martin Daniel and Robert Rawlings,
8 on behalf of themselves and all others similarly situated
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EXHIBIT 1



Applies To: 2003 Element 2WD – From VIN 5J6YH1...3L000001 thru 5J6YH1...3L009372
2003 Element 4WD – From VIN 5J6YH2...3L000001 thru 5J6YH2...3L022888

May 6, 2003

2003 Element: Windshield Is Cracked at the Lower Corners

SYMPTOM

Cracks in the windshield at the lower corner(s).

PROBABLE CAUSE

The windshield flange surface is uneven.

CORRECTIVE ACTION

Remove the high spots on the windshield flange, and replace the windshield.

PARTS INFORMATION

Windshield:

P/N 73111-SCV-A00, H/C 7285471

Windshield Moldings:

P/N 73150-SCV-A01, H/C 7285505

Rubber Dam Set:

P/N 04731-SCV-A00, H/C 7310774

WARRANTY CLAIM INFORMATION

In warranty: The normal warranty applies.

Operation Number: 831120

Flat Rate Time: 1.7 hours

Failed Part: P/N 73111-SCV-A00
H/C 7285471

Defect Code: 017

Contention Code: A99

Template ID: 03-028A

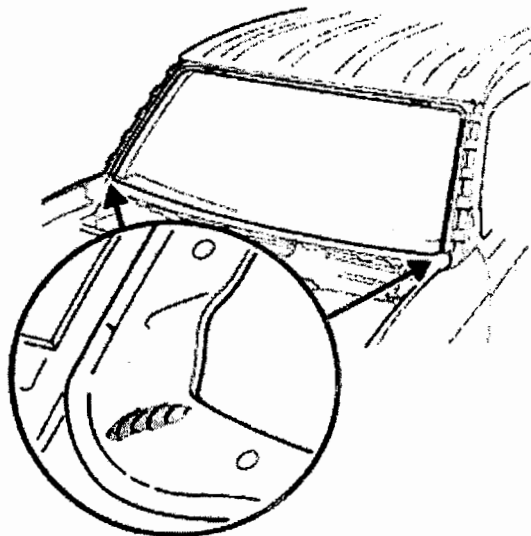
Skill Level: Repair Technician

Out of warranty: Any repair performed after warranty expiration may be eligible for goodwill consideration by the District Parts and Service Manager or your Zone Office. You must request consideration, and get a decision, before starting work.

REPAIR PROCEDURE

1. Remove the windshield (see page 20-37 in the 2003 Element Service Manual).
2. Inspect the mounting flange for any high spots, especially at the base of the A-pillar where the dashboard attaches.

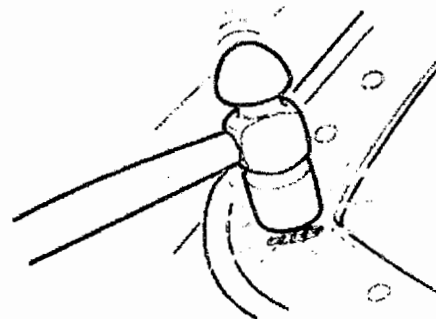
NOTE: You may need to remove some of the sealer to inspect the area.



NOTICE

To prevent damage to the A-pillar or the surrounding area, avoid using excessive force.

3. Using a hammer, carefully flatten the high spots so they are even with the rest of the area. If necessary, apply touch-up paint.



4. Install the new windshield (see page 20-37 in the service manual).

