

IN THE CIRCUIT COURT IN THE FOURTH  
JUDICIAL CIRCUIT IN AND FOR DUVAL  
COUNTY, FLORIDA

PATRICIA MINCEY, by and through KELLY SIMS,  
her attorney-in-fact,

Plaintiff,

v.

CASE NO: 15CA000377 Div CV-E

AMERICAN HONDA MOTOR CO., INC., a foreign  
corporation; HONDA OF AMERICA MFG., INC., a  
foreign corporation; TAKATA CORPORATION, a  
foreign corporation; TK HOLDINGS, INC., a foreign  
corporation; and DUVAL MOTORS OF  
JACKSONVILLE, LLC, f/k/a DUVAL HONDA, LLC,  
a Florida limited liability company,

Defendants.

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**PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE AMENDED COMPLAINT TO  
ADD CLAIM FOR PUNITIVE DAMAGES**

Plaintiff hereby moves under section 768.72, Florida Statutes, and Florida Rule of Civil Procedure 1.190(f) to amend her Amended Complaint to add a claim for punitive damages against Defendants American Honda Motor Co., Inc., Honda of America Mfg., Inc., Takata Corporation, and TK Holdings, Inc.

**I. INTRODUCTION**

**Accident Facts**

On June 15, 2014, Plaintiff was operating a 2001 Honda Civic. She was involved in a minor motor vehicle collision at or near the intersection of Rampart Road and Collins Road in Jacksonville, Duval County, Florida. During the course of that collision, Plaintiff, Patricia

Mincey's driver's side air bag system deployed. The air bag deployed late and with a violent explosion due to excessive pressurization which significantly injured Plaintiff. The air bag system in the Mincey Honda Vehicle was manufactured by the Takata Defendants and it failed to operate as intended. Rather than preventing injuries, the air bag's late and violent explosion increased or enhanced Plaintiff Mincey's injuries. Four days after the Mincey collision, Honda recalled the air bag within the vehicle which had deployed and injured Plaintiff Mincey.

Plaintiff suffered severe injuries in the accident, resulting in her becoming a C-3 ventilator dependent quadriplegic. At all material times, Plaintiff exercised due care and was properly using the subject vehicle for the use and in the manner for which it was designed, manufactured, and sold. Plaintiff Mincey was properly wearing her seatbelt at the time of the collision.

#### Basis for Punitive Damages

The Takata and Honda Defendants misleadingly promised safety and trust, while at the same time purposely concealed evidence of air bag defects in the air bag systems in vehicles, including Honda vehicles, from the American Public, and hid its own knowledge of an alarming number of incidents of airbag deployments showing excessive force resulting in deaths and injuries.

As early as 2001, the Takata and Honda Defendants knew of the problems with its air bags, when Takata airbags exploded in a 2000 Isuzu Rodeo, a 2001 Isuzu Rodeo, and a 2001 Honda Passport. Recall 01V055 was issued as a result.

As reported by The New York Times, in 2004, the Takata Defendants did a series of “secret tests” after the 2004 incident in attempt to figure out the cause of the subject defect. *See Takata Saw and Hid Risks in Airbags in 2004, Former Workers Say*, New York Times, Nov. 6, 2014. As the Times reported, “two former employees” of Takata, “one of whom was a senior member of its testing lab”, “secretly conducted testing on 50 airbags it retrieved from scrapyards” after a Takata airbag “ruptured and spewed metal debris at a driver in Alabama” in 2004. *See id.* During the secret tests “[t]he steel inflators in two of the airbags cracked..., a condition that can lead to a rupture, the former employees said.” *See id.* According to the article, the Takata employees were startled by the results, and “engineers began designing possible fixes in preparation for a recall”. *See id.* “But instead of alerting federal safety regulators to the possible danger, Takata executives discounted the results and ordered the lab technicians to delete the testing data from their computers and dispose of the airbag inflators in the trash”. *See id.* The Takata Defendants’ “secret tests, which have not been previously disclosed, were performed after normal work hours and on weekends and holidays during summer 2004 at Takata’s American headquarters in Auburn Hills, MI, the former employees said”, and, “were supervised by Al Bernat, then Takata’s vice president for engineering”. *See id.*

Since at least 2004, both the Honda Defendants and the Takata Defendants have had a growing and continuing awareness of the subject defect through consumer complaints, claims, and lawsuits, and of the grave safety dangers associated with the exploding airbags. However, in an effort to conceal the subject defect from the public, including consumers, such as Plaintiff Mincey, the Honda Defendants and Takata Defendants systematically implemented a strategy to

“generally settle quickly” claims and/or lawsuits alleging that an exploding Takata airbag caused property damage, a personal injury, or a wrongful death.” *See Warning: This Air Bag May Contain Shrapnel, Businessweek*, Oct. 30, 2014.

In a further effort to conceal the subject defect, the Honda and Takata Defendants also decided to not report and/or underreport and/or omit material information concerning the subject defect to NHTSA despite being required to do so pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. See 49 C.F.R. 579.21(b).

Several regulations required the Honda and Takata Defendants to fully and promptly report the subject defect to regulatory agencies, such as NHTSA. Such examples include, but are not limited to, the following:

NHTSA requires manufacturers to:

Report each incident in which one or more persons are injured in the United States that is identified in a claim or notice, if the product was identified with minimal specificity and, as to notices, it was alleged or proved that the injury was caused by a possible defect in the product. For these manufacturers, the report would be combined with the reporting of incidents involving fatalities and include the same types of information.

*Reporting of Information and Documents About Potential Defects Retention of Records That Could Indicate Defects*, 67 Fed. Reg. 45822-01, at 45840-41 (July 10, 2002) (to be codified at 45 C.F.R. pt. 579).

Further, 49 U.S.C. § 30166(m)(3)(A)(i)-(ii) requires manufacturers to report to NHTSA on “claims submitted to the manufacturer for serious injuries (including death) . . . from alleged defects in a motor vehicle or in motor vehicle equipment,” and on “customer satisfaction

campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment.”

The TREAD Act requires the Honda and Takata Defendants to provide Early Warning Reporting (“EWR”) information. EWR is one of NHTSA’s essential tools in protecting the public from defective products. Despite those regulations, and in an effort to conceal the subject defect from the public, consumers, such as Plaintiff Mincey, and regulatory agencies, such as NHTSA, the Honda and Takata Defendants violated their reporting requirements.

On December 29, 2014, NHTSA and the Honda Defendants entered into a Consent Order in the United States Department of Transportation National Highway Traffic Safety Administration matter In re: Honda Tread Violations, AQ14-0004 (hereinafter referred to as the “Honda Consent Order”).

The Honda Consent Order, in pertinent part, states that:

- Honda violated the TREAD ACT reporting requirements by failing to submit all early warning information as required in 49 C.F.R. § 579.21.
- Honda failed to report certain death and injury incidents that were required to be reported to NHTSA under 49 C.F.R. § 579.21(b).
- Honda failed to duly report customer satisfaction campaigns, special warranty extensions, and warranty claims that involved good will, third-party vehicle service contracts, or Honda-certified, pre-owned vehicles, as required by NHTSA’s EWR regulations. See 49 C.F.R. § 579.21(c). These violations date back to the inception of the EWR reporting requirements in 2003.
- Honda admits that it violated 49 C.F.R. Part 579, Subpart C by failing to submit early warning reports that comply with the requirements of 49 C.F.R. § 579.21(b).
- Honda further admits that it violated 49 C.F.R. Part 579, Subpart C by failing to submit early warning reports that comply with the requirements of 49 C.F.R. § 579.21(c).

- Honda admits that it failed to report customer satisfaction campaigns, special warranty extensions, and warranty claims that involved good will, third-party vehicle service contracts, and Honda-certified pre-owned vehicles.
- Honda acknowledges that it has systematically failed to report events that are required to be submitted under 49 C.F.R. § 579.21(c) by impermissibly excluding reportable events that involved good will, third-party vehicle service contracts, and Honda-certified pre-owned vehicles.

The Honda Consent Order was signed by Richard Schostek, Executive Vice President of Honda North America, Inc.

On May 18, 2015, NHTSA and the Takata Defendants entered into a Consent Order in the United States Department of Transportation National Highway Traffic Safety Administration matter Air Bag Inflator Rupture, EA15-001 (hereinafter referred to as the “Takata Consent Order”). The Takata Consent Order, in pertinent part, states that “a defect related to motor vehicle safety may arise in some of the air bag inflators that Takata manufactured for certain vehicles sold or registered in the United States.” It continues:

“The propellant wafers in some of the subject inflators may experience an alteration over time, which could potentially lead to overaggressive combustion in the event of an air bag deployment. Depending on the circumstances, this potential condition could create excessive internal pressure when the air bag is deployed, which could result in the body of the inflator rupturing upon deployment. Based upon Takata’s investigation to date, the potential for such ruptures may occur in some of the subject inflators after several years of exposure to persistent conditions of high absolute humidity. In addition, Takata’s test results and investigation indicate that this potential for rupturing may also depend on other factors, including vehicle design factors and manufacturing variability...”

The Takata Consent Order was signed by Shunkichi Shimizu, President of TK Holdings, Inc.

The Honda and Takata Defendants' concealment of the subject defect is further evidenced by how the Defendants have handled recalls due to the subject defect.

From 2008 to 2014, the Defendants' story of the root cause of the subject defect changed as the Honda and Takata Defendants continually attempted to conceal the subject defect, its magnitude, and its cause in an effort to save money, time, and protect its business interests. However, because the subject defect continued to appear, despite Defendants' efforts at concealment, the Defendants reluctantly and incrementally expanded its recalls. After several investigations by the National Highway Transportation Institute, lawsuits, and other inquiries, the true magnitude of the subject defect and the Defendants' concealment was and continues to be revealed.

In 2007, the Honda Defendants notified the Takata Defendants of three airbag explosion incidents that occurred because of the subject defect. These incidents triggered an internal investigation by the Takata Defendants. Thereafter, the Honda Defendants filed a standard report with U.S. safety regulators on the 2004 and 2007 airbag incidents. However, the Honda Defendants did not issue any recalls and never informed safety regulators of the most critical detail of these incidents: that the airbags posed a substantial risk of serious injury or death when deployed.

On or about November 11, 2008, in Recall 08V593, the Honda Defendants began a very limited recall for the subject defect. At that time, the Takata and Honda Defendants stated that the defect was that "the driver's airbag inflator could produce excessive internal pressure." This recall occurred over four years after the first airbag explosive force or punch out incident in a

Honda car. However, the Takata and Honda Defendants concealed the magnitude of the subject defect by stating that the number of potentially affected vehicles was limited to 3,940. At that time, the Honda Defendants told the National Highway Transportation Safety Administration (NHTSA) that the information relating to the defect was provided by the Takata Defendants at a meeting that occurred on October 2, 2008.

The Takata and Honda Defendants, however, concealed the magnitude of the defect, including that Plaintiff's vehicle had the subject defect, because Plaintiff's vehicle, despite suffering from the defect described in the preceding paragraph, was not recalled in Recall 08V593.

In or about June of 2009, the Takata Defendants provided a follow up report to the Honda Defendants on their November 2008 analysis, stating that issues related to propellant production appeared to have caused the improper inflator performance. In or about June of 2009, in Recall 09V259, the Honda Defendants expanded the recall for the subject defect to include 440,000 vehicles. In that recall, the Takata and Honda Defendants changed their story as to the cause of the subject defect, claiming it was related to the process of pressing the propellant into wafers that were later installed into the inflator modules. However, the subject defect was still described as "the driver's airbag inflator could produce excessive internal pressure." Again, the Takata and Honda Defendants concealed the magnitude of the defect by claiming the affected units exhibited properties that were limited to one production process involving one of several high-precision compression presses that were used to form the propellant into wafers.

The Takata and Honda Defendants, however, continued to conceal the magnitude of the defect. On or about September 17, 2009, Defendant Duval Motors, as an authorized Honda dealer, replaced the driver's airbag inflator in the subject vehicle. In or about August 2009, the NHTSA Recall Management Division sent Honda an information request to explain why it did not include 2009 Recall vehicles in the 2008 Recall, and "to evaluate the timeliness of [Honda's] recent defect decision." The NHTSA also wanted to know "the difference between the driver's airbag inflators in those vehicles from the inflators in the 09V-259 vehicles and explain how this distinction, or any other between the two sets of vehicles, convinced [the Honda Defendants] at the time that it did not need to include the latter set in the 08V-593 recall population." The NHTSA Recall Management Division further requested that Honda provide complaints, lawsuits, warranty claims, and field reports, along with an explanation of the "unusual deployments" and Honda's investigative efforts.

In Honda's September 2009 reply to the NHTSA, the automaker said that its information about the "unusual deployments" came from the Takata Defendants: "We understood the causal factors to be related to airbag propellant due to handling of the propellant during airbag inflator module assembly." The Honda Defendants also reported, based on information from the Takata Defendants, the problem with the airbags was isolated to the "production of the airbag propellant prior to assembly of the inflators." Specifically, the cause was "related to the process of pressing the propellant into wafers that were later installed into the inflator modules," and limited to "one production process" involving one high-precision compression press that was used to form the propellant into wafers, the automaker told the NHTSA.

The Honda Defendants also disclosed to NHTSA that it had fielded nine complaints and one lawsuit related to the 2008 and 2009 Recalls. They also, for the first time, told NHTSA about the 2004 incident involving an “unusual deployment” of the vehicle’s airbag, but claimed they “only recently were reminded of this incident,” and that, until recently, the Honda Defendants “had not associated it with the [2008 Recall] campaign.” In their communications with NHTSA, the Takata Defendants continually gave misleading or incorrect information about the airbags they manufactured that were part of the recalls.

On or about November 20, 2009, NHTSA requested information from the Takata Defendants as part of its ongoing investigation into the airbag inflators that triggered the 2009 Recall. The Takata Defendants submitted a partial response to NHTSA on or about December 23, 2009 (“Partial Response”) and then a full response on or about February 19, 2010 (“Full Response”). Both responses provided vague and misleading information about the seriousness of the problem.

In both responses, the Takata Defendants asserted that there were no substantive design differences between the inflators in the airbags at issue in the two recalls. However, in the Full Response, they admit that there were, in fact, differences in the production processes between the lots. In both responses, the Takata Defendants also asserted that the defects only existed in specific lots manufactured between certain dates. They claimed that the inflators involved in the 2008 Recall were manufactured between October 29, 2000 and December 1, 2000. They also claimed that inflators involved in the 2009 Recall were manufactured between August 23, 2000 and February 25, 2001. The Takata Defendants did not provide the dates the inflators were

shipped, as NHTSA requested, because, as they admitted, their records did not have that information. Instead, they gave just the manufacturing dates.

In both the Partial Response to NHTSA on or about December 23, 2009, and the Full Response on or about February 19, 2010, the Takata Defendants stated that: “Takata has not provided any airbag inflators that are the same or substantially similar to the inflators in vehicles covered by the recalls in 2008 and 2009 to any customers other than Honda. The physical characteristics of the inflator housing used in the Honda vehicles subject to these recalls are unique to Honda.” This statement would prove to be untrue. In their Full Response, the Takata Defendants asserted that the defect identified in the 2009 Recall was the result of a single compression press, although Takata recommended to Honda that a small number of other vehicles with propellant processed on a different press be recalled as well.

In their Full Response, the Takata Defendants asserted that the defective parts were all manufactured on a particular press (the “Stokes press”) in a single manufacturing plant. They further asserted that while they did manufacture 2,400 inflators using the same process as the defective inflators, the design was different and “[t]herefore Takata is convinced that the inflators sold [redacted] contain no safety-related defect.” The Takata Defendants wrote in their Full Response that they “believed- [redacted]-that expanding the recall to include all vehicles equipped with inflators manufactured with Stokes propellant produced through and including February 28, 2001 would capture all inflators with tablets that had a risk of producing overly energetic combustion. This recommendation, as well as the analysis that supported it, was presented to Honda on June 12 2009.”

Both the Honda and Takata Defendants represented to the public and the NHTSA that the total number of affected vehicles was quite small. Because the Honda and Takata Defendants concealed the true extent of the subject defect, NHTSA's Office of Defect Investigation ("ODI") closed RQ 0-9004. The ODI accepted the Honda and Takata Defendants' explanations that in 2008 the wrong root cause was identified and that the Honda Defendants relied on the Takata Defendants' representations in making recall decisions.

In or about February 2010, in Recall 10V041, the Honda Defendants expanded the recall for the subject defect again – this time to include approximately 379,000 vehicles. The Honda and Takata Defendants described the defect as “excessive internal pressure” in the “driver’s side airbag inflator.” However, their explanation for the airbag defects changed yet again. They explained that there are two different manufacturing processes utilized in the preparation of an airbag propellant. While one process was within specification, the other was not. The expanded recall reached those vehicles employing airbags that had utilized manufacturing processes not within specification.

The Honda and Takata Defendants, again, however, concealed the magnitude of the defect, including that Plaintiff's vehicle had the subject defect, because Plaintiff's vehicle, despite suffering from the defect described in the preceding paragraph, was not recalled in Recall 10V041.

In or about April 2011, in Recall 11V260, the Honda Defendants expanded the recall to include all 833,277 vehicles that had been previously recalled for the subject defect. The Honda and Takata Defendants stated they could not identify 2,430 bad replacement service part driver's

side airbag modules that might have been installed in models that were covered in prior recall expansions.

On or about May 17, 2011, Honda issued a service bulletin to its dealers, instructing them that a “manufacturing error can produce over-pressurization of some replacement driver’s (front) airbag inflators during airbag deployment.” Honda instructed its dealers to inspect vehicles falling within a certain model and VIN number range, which included the model and VIN number of the subject vehicle, to determine if the vehicle had received a defective replacement airbag inflator, in which case the dealer was to install a new driver’s airbag inflator kit and return the removed inflator to Honda within 48 hours of the repair.

On or about July 18, 2011, Honda issued a notice to its dealers, service management, and personnel advising them of procedures that “MUST be followed when a suspect vehicle arrives at your dealership,” which included checking the vehicle’s VIN number to determine whether it fell within the range specified in the May 2011 service bulletin. Honda also notified its dealers that they could not sell used 2001-2002 Honda Civics until they first inspected the vehicles and, if needed, repaired the vehicles by replacing any defective driver’s airbag inflators.

In or about December 2011, the Honda Defendants informed NHTSA that it was going to expand the recall again to include additional vehicles that may have had suspect driver’s airbag modules installed either as original equipment or as a service part, because the automaker found out about another “energetic driver’s airbag deployment in which the inflator ruptured,” outside of the VIN range in previous recalls, and the inflator module itself was outside of “the suspect range previously identified by the supplier.” In other words, more vehicles than the Honda and

Takata Defendants had previously disclosed suffered from the subject defect. The recall was expanded to an additional 272,779 vehicles that had the subject defect from manufacture and an additional 603,421 vehicles that may have had replacement parts that suffered from the subject defect. The Honda and Takata Defendants described the defect as the driver's airbag "inflator could produce excessive internal pressure." Honda directed its dealers to inspect vehicles for defective air bag inflators and, where identified, to replace the defective inflators.

By 2013, it became clear that the defective airbag issue was far more widespread than the Takata or Honda Defendants initially reported to the NHTSA. According to Honda's 2013 Defect and Noncompliance Report, an exploding airbag in Puerto Rico in October 2011 prompted Honda to ask permission from the NHTSA to collect "healthy" airbag modules to see if "abnormal combustion was possible." The Honda Defendants found that even their so-called "healthy" airbags could abnormally deploy in certain conditions.

On or about February 8, 2013, NHTSA and the Honda Defendants met to discuss the "ongoing investigation" into Honda's defective Takata airbags. The Honda Defendants stated:

A recreation of propellant production using the same methods as were used during 2001-2002 production periods indicated that it was possible for propellant produced during 2001-2002 to be manufactured out of specification without the manufacturing processes correctly identifying and removing the out of specification propellant. Separately, Honda was informed by the supplier of another potential concern related to airbag inflator production that could affect the performance of these airbag modules.

In or about April 2013, in Recall 13V132, the Honda Defendants expanded the recall to defective airbag inflators installed in the passenger side of 561,422 Honda Civics, describing the defect as "the passenger's (frontal) airbag inflator could produce excessive internal pressure."

On or about April 11, 2013, the Takata Defendants filed a Defect Information Report titled “Certain Airbag Inflators Used as Original Equipment” (“Takata DIR”). In that report, the Takata Defendants identified the defective airbags as follows:

Certain airbag inflators installed in frontal passenger-side airbag modules equipped with propellant wafers manufactured at Takata’s Moses Lake, Washington plant during the period from April 13, 2000 (start of production) through September 11, 2002 . . . and certain airbag inflators manufactured at Takata’s Monclova, Mexico plant during the period from October 4, 2001 (start of production) through October 31, 2002 . . . .

It wasn’t until their April 2013 Report that the Takata Defendants finally admitted that their affected inflators were installed as original equipment in vehicles manufactured by car manufacturers other than Honda, including Toyota, Nissan, Mazda, and BMW. The Takata Defendants asserted that they did not know how many inflators were installed in vehicles, as they did not have those records. Even though they did not have the information to estimate the number of vehicles affected, the Takata Defendants still insisted that the total number of installed inflators would be extremely low.

The Takata Defendants described the defect as follows:

Some propellant wafers produced at Takata’s plant in Moses Lake, Washington, between April 13, 2000 and September 11, 2002 may have been produced with an inadequate compaction force. . . . In addition some propellant wafers used in inflators produced at Takata’s plant in Monclova, Mexico between October 4, 2001 and October 31, 2002, may have been exposed to uncontrolled moisture conditions. These wafers could have absorbed moisture beyond the allowable limits . . . . In both cases propellant could potentially deteriorate over time due to environmental factors, which could lead to over aggressive combustion in the event of an airbag deployment. This could create excessive internal pressure within the inflator and the body of the inflator could rupture.

In 2013, the Center for Auto Safety requested that NHTSA seek civil penalties from the Honda Defendants and stated that “Honda’s submissions to NHTSA fail to disclose what it knew and when in dragging out the recall of over three million vehicles through five recalls over three years.” On or about May 20, 2014, at NHTSA’s Office of Defect Investigation’s request, Takata Defendants’ officials met with NHTSA to provide more information about the inflator ruptures not covered by previous recalls.

On or about June 5, 2014, the Takata Defendants and ODI had a conference call in which ODI officials requested the Takata Defendants to support field actions by manufacturers to replace potentially suspect inflators in vehicles originally sold in or currently registered in Florida and Puerto Rico, and other states with similarly high levels of absolute humidity. On or about June 19, 2014, four days after Plaintiff Mincey was rendered a quadriplegic by the subject defect, the Honda Defendants launched three more inflator recalls for the subject defect: Recalls 14V349; 14V351; and 14V359, under the guise of a Safety Improvement Campaign.

In that campaign notice, the Defendants noted that the VIN range supplied by the Takata Defendants might not have covered all affected vehicles. It also noted reports of “energetic” airbag deployments in vehicles in Florida and California. The Honda Defendants described the defect as “the driver’s side (frontal) airbag inflator ... could produce excessive internal pressure.”

Recall 14V351 included the subject motor vehicle. In that campaign notice, the Honda Defendants stated that “[c]ertain Honda and Acura vehicles in areas that are known for high

absolute humidity may contain a driver's (frontal) airbag inflator that could produce excessive internal pressure" and defined those areas to include Puerto Rico and Florida.

Plaintiff's vehicle was subject to recall under 14V351, but not repaired because her crash preceded the recall by four days.

**II. PLAINTIFF SHOULD BE PERMITTED TO AMEND HIS COMPLAINT TO BRING A CLAIM FOR PUNITIVE DAMAGES AGAINST THE TOYOTA DEFENDANTS**

Punitive damages act as a punishment to deter wrongful conduct and "to vindicate wrongs arising from antisocial behavior. The incentive to bring actions for punitive damages is favored because it has been determined to be the most satisfactory way to correct evil-doing in areas not covered by the criminal law." *Johns-Manville Sales Corp. v. Janssens*, 463 So. 2d 242, 247 (Fla. 1st DCA 1984) (citations omitted). Plaintiff seeks to amend his Complaint to state a claim for punitive damages pursuant to section 768.72, Florida Statutes, and Florida Rule of Civil Procedure 1.190(f).

Section 768.72(1) permits a plaintiff to add a claim for punitive damages upon "a reasonable showing by evidence in the record or proffered by the claimant which would allow a reasonable basis for recover of such damages." Plaintiff makes this motion because the evidence and applicable law provides a reasonable basis for the recovery of punitive damages from the Takata and Honda Defendants. There is substantial evidence regarding the Defendants' long-standing knowledge of the dangers and occurrence of air bag excessive deployment incidents, which created an unreasonable risk of serious injury or death, and the Defendants' reckless failures in correcting these dangerous conditions to avoid putting consumers, including Plaintiff,

at significant risk during the use of its vehicles. Based on this evidence, which Plaintiff will proffer, a jury in this case could easily conclude that the Defendants' conduct constitutes "intentional misconduct" and/or "gross negligence," both of which are grounds for the imposition of punitive damages under 768.72. To this end, Plaintiff will submit a detailed proffer and memorandum of law in support of this motion, as well as a proposed amended complaint, in advance of the hearing on Plaintiff's Motion to Amend the Complaint to Add a Claim for Punitive Damages.

WHEREFORE, Plaintiff moves to amend her Complaint to plead an entitlement to punitive damages in this case, and requests the court grant her motion and deem her Amended Complaint filed upon granting of this motion.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of October, 2015, I electronically filed a true and correct copy of the foregoing via the Florida Courts E-Filing Portal with the Clerk of the Court and served upon those listed below via the Florida Courts E-Filing Portal:

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