PROPOSED TENTATIVE

On October 26, 2023, plaintiff Albert Serna (plaintiff) filed a complaint against defendant American Honda Motor Co. (defendant) for three causes of action involving violations of the Song Beverly Song Consumer Warranty Act. Defendant answered on November 29, 2023. On October 31, 2024, a "Notice of Settlement of Entire Case" was filed, indicating the parties had entered a conditional settlement, pursuant to California Rules of Court, rule 3.1385(c)(1). The notice indicated that the settlement agreement conditions contemplated completion of specific terms that were not to be performed within 45 days of the date of the settlement, and a request for the dismissal will be filed no later than January 29, 2025. Pursuant to this rule, all hearings and other matters were taken off calendar. A dismissal was not entered on January 29, 2025.

On August 21, 2025, plaintiff filed a motion to enforce the settlement agreement pursuant to the Code of Civil Procedure section 664.6. Attached to the declaration of the Daniel Gopstein is a copy of the October 20, 2024, signed offer made by defendant pursuant to Code of Civil Procedure section 998.

The court finds that plaintiff and defendant entered into a valid settlement agreement in the form of an accepted offer to compromise by plaintiff pursuant to Code of Civil Procedure[1] section 998 on October 30, 2024. The court, however, cannot grant the motion to enforce pursuant to section 664.6, for strict compliance with the requirements of section 664.6 is a prerequisite to invoking the power of the court to enforce a settlement agreement under this provision. (*Eagle Fire & Water Restoration, Inc. v. City of Dinuba* (2024) 102 Cal.App.5th 448, 458.) Section 664.6, subdivision (a) is clear – if the "parties [or pursuant to subdivision (b)(1)(2), an attorney for the parties] stipulate, in writing signed by the parties [or the attorney] outside the presence of the court . . . for settlement of the case, or party thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. . . ." This statutory language has remained unchanged for all relevant times at issue here.[2] And the statutory language on its face requires the parties to "stipulate in writing signed by the parties outside the presence" to the section 664.6 procedure; if so, the court may enter judgment pursuant to the terms of the settlement. Simply put, the statute requires the parties not only to enter into a settlement agreement, but to stipulate or agree to utilize the section 664.6 summary procedure before a court may enter the settlement as judgment thereunder. As one court has observed, "although section 664.6 provides a valuable

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[1] All further statutory references are to the Code of Civil Procedure unless expressly indicated otherwise.

[2] It is true that Code of Civil Procedure section 664.6 was amended effective January 1, 2025; as noted in Weil and Brown, California Civil Procedure Before Trial (The Rutter Guide: 2025) ¶ 12.952, statutes generally do not have retroactive effect, and it "may be that CCP § 664.6 agreements entered into before 1/1/25 will be enforced under the older versions of the statutes" On this point, the statutory language has remained unchanged for all relevant times frames at issue here.

tool in aid of enforcing settlements, it does not float in the ether to be drawn whenever a party seeks enforcement." (*Hagan Engineering, Inc. v. Mills* (2003) 115 Cal.App.4th 1004, 1008; see also *Machado v. Myers* (2019) 39 Cal.App.5th 779, 792 ["The power of the trial court under Code of Civil Procedure section 664.6 ... is extremely limited."]; see also *Leeman v. Adams Extract & Spice, LLC* (2015) 236 Cal.App.4th 1367, 1375) ["[W]hat the court could not do in considering approval of a settlement under Code of Civil Procedure section 664.6 was to add to or modify an express term of the settlement"].)

Here, the settlement agreement consummated through the section 998 offer makes absolutely ***no*** mention or reference to section 664.6, its summary procedure, or any reference to a motion to enforce the settlement thereunder. This procedure exists to create a summary, expedited procedure to enforce settlement agreement "when certain requirements that decrease the likelihood of misunderstandings are met." Failure to include a reference to the summary procedure exacerbates the misunderstandings – the very thing section 664.6 was codified to prevent. (*Levy v. Superior Court* (1995) 10 Cal.4th 578, 585.) In terms of the statutory language, the parties here (based on the evidence presented) failed to "stipulate" to the summary procedure in section 664.6. This failure is fatal. The court is unaware of any authority that allows a trial court to grant a motion to enforce a settlement agreement pursuant to section 664.6 when the parties have not otherwise stipulated to its use (either in the written agreement or orally). Plaintiff cites no authority for that proposition. The court therefore denies the motion to enforce the settlement.

For the record, plaintiff is not without options. There are ways in which to enforce a settlement agreement, such as "a motion for summary judgment, by a separate suit in equity ***or*** by amendment of the pleadings in this action. " (*Levy, supra, 1*0 Cal.4th 578, 586, fn. 5, emphasis added.; *Robertson v. Chen* (1996) 44 Cal.App.4th 1290, 1293; see *Gauss v. GAF Corp.* (2002) 103 Cal.App.4th 1110, 1122.) The complaint has not been dismissed, meaning plaintiff has some flexibility. The court is not suggesting any path or procedure is better than any other; this recitation is offered merely as a guide for informational purposes only.

The court also denies the request for monetary sanctions under section 128.5, for two reasons.

First, the fact the court is without authority to grant the motion to enforce the settlement under section 664.6 renders the request for sanctions inappropriate at this time.

Second, on the merits, section 128.5 allows a trial court to issue sanctions for "actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay." (*Id.*, subd. (a).) While the statute does not list breaches of a settlement agreement as basis for sanctionable conduct, it is possible to find that the breach meets the statutory criteria of bad faith or intent to delay. For example, in *Levy v. Blum* (2001) 92 Cal.App.4th 625, the parties reached settlement, and after granting a motion to enforce a settlement agreement pursuant to section

664.6, the court imposed sanctions under section 128.5 because a party to the settlement took "a position in 'total disregard' of the clear, unambiguous terms of the in-court settlement agreement," and was thus in bad faith and frivolous. (*Id.* at p. 628.) Their actions "were taken in bad faith, that is, without subjective good faith or honest belief in the propriety of reasonableness of such actions," and as a result, the opposing party had incurred additional fees and costs. (*Id.* at pp. 633-634.) The *Levy* court upheld the award, noting that "a trial court may impose sanctions pursuant to section 128.5 against a party, the party's attorney, or both, for "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay . . . ." A bad faith action or actions is considered frivolous if it is totally and completely without merit or instituted for the sole purpose of harassing an opposing party." There must also be subjective bad faith on the part of the attorney or party to be sanctions. (*Id.* at p. 635; p. 633 [whether an action or tactic is in "bad faith" turns on subjective intent.) "Section 128.5 requires notice and an opportunity to be heard before the imposition of the sanctions, and the court must issue a written order reciting in detail the conduct justifying the sanctions." (*Ibid.*) The appellate court found the record justified the sanctions award under section 128.5, based on the bad-faith arguments made by counsel. In light of the facts in *Levy*, the court concluded sanctions can be imposed for taking a position that is "wholly incredible and without any merit whatsoever" or "in total disregard" of patent obligations – i.e., a frivolous position – and taken without "honest belief in the propriety or reasonableness thereof" – i.e., in subjective bad faith – causing the opposing party to incur additional costs. (See also *In re Marriage of Sahafzadeh- Taeb && Taeb* (2019) 39 Cal.App.5th 124, 136.)

Additionally, in *Harris v. Rudin, Richman & Appel* (2002) 95 Cal.App.4th 1332, which involved a breach of a settlement agreement, there were competing motions for summary judgment. The court found the trial court had erred in granting summary judgment because defendants had raised triable issues of fact as to whether defendants were entitled to rescind the agreement based on mutual mistake of fact or law. However, the appellate court upheld the award of sanctions made per section 128.5 on a "different issue." The trial court awarded sanctions against defendants "for repeatedly arguing a claim the trial court had rejected," including a motion for reconsideration "solely on the ground plaintiff had not established he performed under the contract by providing the release called for in the agreement. . . ." "The following month defendants filed motions to vacate the judgment and for new trial, again arguing only Harris's nonperformance of the contract." Finding "[n]othing I've read in these two motions is any different, legally or factually , from the previous motions,' the trial court denied the motions and imposed sanctions. . . ." The appellate court upheld the sanctions award, for defendants' motions were "totally and completely without merit," and the continued filing of the motions constituted "bad faith." (*Id*. at p. 1344.)

At the same time, courts have indicated that sanctions are inappropriate when a party fails "to increase a settlement offer or to otherwise participate meaningfully" "in settlement negotiations," because such conduct "violates no rule of court and is not a proper basis for an

award of sanctions." (*Vidrio v. Hernandez* (2009) 172 Cal.App.4th 1443, 1460.) In fact, courts seem cautious about injecting themselves into the settlement process and awarding sanctions for cases that amount to nothing more than a breach of contract, particularly when there are avenues plaintiff can pursue following a breach of a settlement, such as summary judgment a separate suit in equity, or an amendment to the pleadings. (See generally *Levy, supra*, 10 Cal.4th at p. 586, fn., 5.)

With this background, plaintiff has failed to provide a sufficiently robust evidentiary foundation to demonstrate defendant's subjective bad faith, a condition precedent to sanctions pursuant to section 128.5. This case is far removed from the situations in *Levy* or *Harris*, detailed above, and seems (as presented) more in line with the spirit (if not the exact facts) of *Vidrio* and progeny. Plaintiff claims through the declaration of Daniel Gopstein that sanctions are appropriate because defendant and counsel waited over seven months past the payment deadline (as contemplated in the settlement agreement) to "receive any information about the Subject Vehicle's surrender and Plaintiff's settlement checks, despite Plaintiff's repeated follow ups," describing defense counsel's actions as "dilatory tactics." The court is certainly troubled by defendant's actions, and directs defendant to appear at the hearing to provide some explanations for the delay. But plaintiff's allegations in the end establish nothing more than what exists in ***every*** breach of settlement agreement (i.e., when a party has agreed to pay following a settlement but does not). The court on this record cannot determine whether defendant's actions were in bad faith or for ***unnecessary*** delay only.[3] Because enforcement of the settlement agreement can proceed with additional litigation, as detailed above, affording plaintiff an opportunity to present evidence that brings this case more in line with *Levy* and *Harris*, and not *Vidrio*, the court denies the request for sanctions without prejudice.

Summary:

- The court denies the motion to enforce the settlement agreement pursuant to section 664.6 because the parties did not "stipulate" to this summary procedure.
- The court denies the request for sanctions under section 128.5 without prejudice, giving plaintiff an opportunity to renew the motion after developing a more robust factual record.

[3] The court is sensitive to the very real danger off injecting into the lemon law settlement calculus the specter of Code of Civil Procedure section 128.5 sanctions, when the litigation environment undoubtedly is already supercharged with adversarial zeitgeist. The attenuated and tenuous nature of the record presented does not allow the court to make such a perilous jump.