

IN THE CIRCUIT COURT OF MADISON COUNTY, ARKANSAS
CIVIL DIVISION

KENNY HARP and DEBBIE NEAL,

Plaintiffs,

v.

RAINBOW CYCLE AND MARINE, INC.
d/b/a RAINBOW HONDA, AMERICAN
HONDA MOTOR CO., INC., HONDA OF
SOUTH CAROLINA MANUFACTURING,
INC., HONDA POWER EQUIPMENT
MANUFACTURING, INC. and HONDA
MOTOR COMPANY, LTD.,

Defendants.

FILED FOR RECORD
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OCT 11 2019

JUDY FOSTER
CLERK AND RECORDER
MADISON COUNTY, ARKANSAS

Case No. 44CV-19-126

COMPLAINT AND DEMAND FOR JURY TRIAL

For their Complaint, **PLAINTIFF KENNY HARP** and **PLAINTIFF DEBBIE NEAL**,
by and through their attorneys, **JOHNSON BECKER, PLLC** and **KEITH, MILLER, BUTLER,**
SCHNEIDER & PAWLIK, PLLC, allege as follows:

NATURE OF THE CASE

1. This is a product liability action seeking recovery for substantial personal injuries and damages suffered by **PLAINTIFF KENNY HARP** (hereafter referred to as "Plaintiff Harp") and **PLAINTIFF DEBBIE NEAL** (hereafter referred to as "Plaintiff Neal") involving a 2016 Honda Pioneer 1000 side-by-side utility task vehicle, Model No. SXS10M5 (hereafter referred to as the "Subject Honda Pioneer"), after the Subject Honda Pioneer's throttle became stuck and caused the Subject Honda Pioneer to crash.

2. The Subject Honda Pioneer was supplied, marketed, sold, and distributed by **DEFENDANT RAINBOW CYCLE AND MARINE, INC. d/b/a RAINBOW HONDA** (hereafter referred to as “Defendant Rainbow Honda”) and by and through its officers, employees and agents. The Subject Honda Pioneer was designed, manufactured, marketed, distributed and sold by **DEFENDANT AMERICAN HONDA MOTOR CO., INC.** (hereafter referred to as “Defendant American Honda”), **DEFENDANT HONDA OF SOUTH CAROLINA MANUFACTURING, INC.** (hereafter referred to as “Defendant Honda of South Carolina”), **HONDA POWER EQUIPMENT MANUFACTURING, INC.** (hereafter referred to as “Defendant Honda Power Equipment”) and **DEFENDANT HONDA MOTOR COMPANY, LTD.** (hereafter referred to as “Defendant Honda Motor Co.”) (collectively referred to as “Defendants”).

3. On June 13, 2019 Defendant American Honda issued a recall of all 82,000 units of its 2016-2019 Honda Pioneer 1000 side-by-side recreational off-highway vehicles due to a crash and injury hazard resulting from a throttle defect that can cause the throttle to stay stuck in the open position during the vehicle’s operation.¹

4. The Subject Honda Pioneer was one such recalled vehicle.

5. On October 15, 2016, Plaintiff Harp and Plaintiff Neal were catastrophically and permanently injured as the direct and proximate result of the above-referenced throttle defect, which caused the Subject Honda Pioneer to crash and resulted in serious and permanent bodily injuries, medical expenses, physical pain, mental anguish, diminished enjoyment of life, lost wages, loss of future earning capacity and other damages.

¹ See <https://cpsc.gov/Recalls/2019/American-Honda-Recalls-Recreational-Off-Highway-Vehicles-Due-to-Crash-and-Injury-Hazards-Recall-Alert> (last accessed October 7, 2019). A copy of the Consumer Product Safety Commission’s recall notice is attached hereto as “Exhibit A” and is incorporated herein by reference.

PARTIES, JURISDICTION & VENUE

6. At all times relevant, Plaintiff Harp was and is a citizen and resident of the City of Pettigrew, County of Madison, State of Arkansas. Plaintiff Harp is Plaintiff Neal's significant other.

7. At all times relevant, Plaintiff Neal was and is a citizen and resident of the City of Pettigrew, County of Madison, State of Arkansas. Plaintiff Neal is Plaintiff Harp's significant other.

8. Defendant Rainbow Honda is a corporation organized and existing under the laws of Arkansas, with its principal place of business located in the State of Arkansas at 1100 W. Hudson Road, Rogers, Arkansas 72756.

9. Defendant Rainbow Honda is engaged in the business of supplying, selling and distributing, *inter alia*, motorcycles, all-terrain vehicles ("ATVs") and utility task vehicles ("UTVs"), including the Subject Honda Pioneer.

10. Defendant Rainbow Honda is a resident of the State of Arkansas, and general personal jurisdiction is proper under Ark. Code Ann. § 16-4-101, as well as the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

11. Defendant Honda Power Equipment is a corporation organized and existing under the laws of North Carolina, with a principal place of business located in the State of North Carolina at 3721 NC Highway 119, Swepsonville, North Carolina 27359. Upon information and belief, Defendant Honda Power Equipment is a wholly-owned subsidiary of Defendant Honda of South Carolina.

12. Upon information and belief, Defendant Honda Power Equipment is engaged in the business of supplying, selling and distributing, *inter alia*, motorcycles, ATVs and UTVs, including the Subject Honda Pioneer. In addition, Defendant Honda Power Equipment has conducted substantial, ongoing business in Arkansas and has extensive, ongoing, and specific contacts with Arkansas by marketing, certifying, supplying, selling, importing and distributing goods, including but not limited to the Subject Honda Pioneer, with the actual knowledge and/or reasonable expectation that those goods will be used in this county and which are in fact sold, distributed, retailed and used in this county.

13. Therefore, at all times relevant herein, Defendant Honda Power Equipment has purposefully availed itself of the privilege of conducting business in the State of Arkansas, transacted business in the State of Arkansas, contracted to distribute and supply its products in the State of Arkansas, and regularly caused its products to be sold in the State of Arkansas. This action arises out of business transacted in, and tortious actions and/or omissions committed, in whole or in part, in Arkansas by Defendant Honda Power Equipment, which resulted in injuries to Plaintiff Harp and Plaintiff Neal in Arkansas. Specific personal jurisdiction over Defendant Honda Power Equipment is proper under Ark. Code Ann. § 16-4-101, as well as the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

14. Defendant American Honda is a corporation organized and existing under the laws of California, with a principal place of business located in the State of California at 1919 Torrance Boulevard, Torrance, California 90501. Upon information and belief, Defendant American Honda is wholly-owned subsidiary of Defendant Honda Motor Co.

15. Defendant American Honda is engaged in the business of supplying, selling and distributing, *inter alia*, motorcycles, ATVs and UTVs, including the Subject Honda Pioneer. In

addition, Defendant American Honda has conducted substantial, ongoing business in Arkansas and has extensive, ongoing, and specific contacts with Arkansas by marketing, certifying, supplying, selling, importing and distributing goods, including but not limited to the Subject Honda Pioneer, with the actual knowledge and/or reasonable expectation that those goods will be used in this county and which are in fact sold, distributed, retailed and used in this county.

16. Therefore, at all times relevant herein, Defendant American Honda has purposefully availed itself of the privilege of conducting business in the State of Arkansas, transacted business in the State of Arkansas, contracted to distribute and supply its products in the State of Arkansas, and regularly caused its products to be sold in the State of Arkansas. This action arises out of business transacted in, and tortious actions and/or omissions committed, in whole or in part, in Arkansas by Defendant American Honda, which resulted in injuries to Plaintiff Harp and Plaintiff Neal in Arkansas. Specific personal jurisdiction over Defendant American Honda is proper under Ark. Code Ann. § 16-4-101, as well as the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

17. Defendant Honda of South Carolina is a corporation organized and existing under the laws of South Carolina, with a principal place of business located in the State of South Carolina at 1111 Honda Way, Timmonsville, South Carolina 29161. Upon information and belief, Defendant Honda of South Carolina is a wholly-owned subsidiary of Defendant American Honda.

18. Defendant Honda of South Carolina is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing, *inter alia*, motorcycles, ATVs and UTVs, including the Subject Honda Pioneer. In addition, Defendant Honda of South Carolina has conducted substantial, ongoing business in Arkansas and has extensive, ongoing, and specific contacts with Arkansas by manufacturing, designing, testing,

marketing, certifying, supplying, selling, importing and distributing goods, including but not limited to the Subject Honda Pioneer, with the actual knowledge and/or reasonable expectation that they will be used in this county and which are in fact sold, distributed, retailed and used in this county.

19. Therefore, at all times relevant herein, Defendant Honda of South Carolina has purposefully availed itself of the privilege of conducting business in the State of Arkansas, transacted business in the State of Arkansas, contracted to distribute and supply its products in the State of Arkansas, and regularly caused its products to be sold in the State of Arkansas. This action arises out of business transacted in, and tortious actions and/or omissions committed, in whole or in part, in Arkansas by Defendant Honda of South Carolina, which resulted in injuries to Plaintiff Harp and Plaintiff Neal in Arkansas. Specific personal jurisdiction over Defendant Honda of South Carolina is proper under Ark. Code Ann. § 16-4-101, as well as the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

20. Defendant Honda Motor Co. is a foreign company organized and existing under the laws of the Federal Republic of Japan with its principal place of business at 2-1-1 Minami-Aoyama, Minato-ku, Tokyo, 107-8556, Japan. Defendant Honda Motor Co. may be served via the *Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters* ("Hague Convention"). Upon information and belief, Defendant Honda Motor Co. is the parent company of Defendant American Honda.

21. Defendant Honda Motor Co. is engaged in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, importing and distributing, *inter alia*, motorcycles, ATVs and UTVs, including the Subject Honda Pioneer. In addition, Defendant Honda Motor Co. has conducted substantial, ongoing business in Arkansas and has extensive,

ongoing, and specific contacts with Arkansas by manufacturing designing, testing, marketing, certifying, supplying, selling, importing and distributing goods, including but not limited to the Subject Honda Pioneer, with the actual knowledge and/or reasonable expectation that they will be used in this county and which are in fact sold, distributed, retailed and used in this county.

22. Therefore, at all times relevant herein, Defendant Honda Motor Co. has purposefully availed itself of the privilege of conducting business in the State of Arkansas, transacted business in the State of Arkansas, contracted to distribute and supply its products in the State of Arkansas, and regularly caused its products to be sold in the State of Arkansas. This action arises out of business transacted in, and tortious actions and/or omissions committed, in whole or in part, in Arkansas by Defendant Honda Motor Co., which resulted in injuries to Plaintiff Harp and Plaintiff Neal in Arkansas. Specific personal jurisdiction over Defendant Honda Motor Co. is proper under Ark. Code Ann. § 16-4-101, as well as the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

23. Venue in this Circuit Court is proper pursuant to Ark. Code Ann. § 16-60-101 because a substantial part of the events or omissions giving rise to this action occurred in Madison County.

FACTUAL BACKGROUND

24. There is potential for confusion about the throttle defect in this case because Defendants' Honda Pioneer 1000 side-by-side recreational off-highway vehicles have had two separate throttle recalls.

25. On November 8, 2018, Defendants issued a fire hazard throttle recall for all model year 2016 through 2017, and some model year 2018 Honda Pioneer 1000 vehicles.² This recall

² See <https://www.cpsc.gov/Recalls/2018/american-honda-recalls-recreational-off-highway-vehicles-due-to-fire-and-burn-hazards> (last accessed October 2, 2019).

involved an incorrectly installed throttle body that could ignite, posing fire and burn hazards to users and consumers.

26. At the time of the November 8, 2018 fire hazard throttle recall, there had been five reports of the throttle body igniting.³ This fire hazard throttle recall covered 56,000 units, including the Subject Honda Pioneer. The fire hazard throttle recall work had not been done on the Subject Honda Pioneer by the time of the crash involved in this case because the crash occurred more than two years before the fire hazard throttle recall was issued.

27. On June 13, 2019, less than a year after the fire hazard throttle recall was issued, Defendants issued a stuck throttle crash hazard recall that covered all 82,000 units of the 2016-2019 Honda Pioneer 1000, including the Subject Honda Pioneer. The stuck throttle crash hazard recall was due to a defect in the throttle that could cause it to stay stuck in the open position during the vehicle's operation.⁴ The recall work for the stuck throttle crash hazard recall also had not been done on the Subject Honda Pioneer by the time of the crash involved in this case because the crash occurred more than two and one-half years before the stuck throttle crash hazard recall was issued.

28. Upon information and belief, the stuck throttle crash hazard recall issue manifests itself because the throttle defect allows corrosion to occur within the throttle pedal pivot, causing the throttle pedal to become stuck and not return to the closed position.⁵ If a throttle pedal does not return to the closed position, it can result in the loss of vehicle control, as it did in this case.

³ *Id.*

⁴ See June 13, 2019 Recall at Exhibit A.

⁵ See, e.g. <https://opexshare.doe.gov/lesson.cfm/2019/4/25/26951/Honda-Off-Road-Vehicle-Recall-2016-2019-PIONEER-1000-1000-5-THROTTLE-PEDAL-STUCK-IN-OPEN-POSITION> (last accessed October 4, 2019).

29. The stuck throttle crash hazard recall was issued after the Defendants received at least 15 reports of sticking throttles, including six reported crashes, and a report of a user suffering a concussion and broken nose.⁶

30. The vehicles covered by the stuck throttle crash hazard recall were sold in various colors including red, blue, green, gray and yellow, with the name Honda on the front, sides and rear of the vehicle and the model name Pioneer 1000 printed on a label located on both sides of the vehicle.⁷ The following model numbers were included in the recall:⁸

- a. 2016 / SXS10M3
- b. 2016 / SXS10M5
- c. 2017 / SXS10M3
- d. 2017 / SXS10M5
- e. 2018 / SXS10M3
- f. 2018 / SXS10M5
- g. 2019 / SXS10M3
- h. 2019 / SXS10M5

31. The Honda Pioneers were sold at authorized Honda Powersports dealers across the nation from August 2015 to March 2019.⁹ At the time, they retailed for \$14,000 to \$22,000.

32. The Subject Honda Pioneer was one such recalled vehicle.

33. On or about October 24, 2015, the Subject Honda Pioneer, a 2016 Model SXS10M5, was purchased from Defendant Rainbow Honda in Rogers, Arkansas. The Subject Honda Pioneer was purchased brand-new and had not been previously used.

⁶ *I See* June 13, 2019 Recall at Exhibit A

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

34. After its purchase but prior to the crash, the Subject Honda Pioneer was kept at Plaintiff Harp's property in Pettigrew, Arkansas.

35. After its purchase but prior to the crash, the Subject Honda Pioneer was used for recreational and off-road riding at Plaintiff Harp's property in Pettigrew, Arkansas.

36. On or about October 15, 2016, Plaintiff Harp and Plaintiff Neal were hosting a football game party at their home in Pettigrew, Arkansas.

37. At half-time of the football game, Plaintiff Harp and Plaintiff Neal took their three guests for a ride in the Subject Honda Pioneer to feed Plaintiff Harp's horses, which were on property he leased for that purpose.

38. Plaintiff Harp was the driver of the Subject Honda Pioneer, with one of the guests seated in the front passenger seat. Plaintiff Neal was seated in the middle of the rear bench passenger seat, with the two other guests to her left and right.

39. Plaintiff Harp drove the Subject Honda Pioneer south on Madison County Road 4685 toward the property where his horses were located.

40. There is an incline on Madison County Road 4685 on the way to the property where the horses were located. Plaintiff Harp pushed on the Subject Honda Pioneer's throttle pedal to maintain power up the incline.

41. The throttle pedal of the Subject Honda Pioneer stuck and would not release as the vehicle approached the top of the incline. There is a curve to the right at the top of the incline, and Plaintiff Neal became concerned about the vehicle's speed. She yelled to Plaintiff Harp to slow down. He yelled back that he couldn't, and that the vehicle was out of control.

42. Near the top of the incline where the road curved to the right, the Subject Honda Pioneer went off the roadway with its left wheels in the ditch on the left-hand side of the road.

43. The Subject Honda Pioneer violently struck an embankment, causing the vehicle to become airborne and crash into a tree.

44. Plaintiff Neal was thrown from the Subject Honda Pioneer and lost consciousness.

45. Plaintiff Harp was trapped inside the Subject Honda Pioneer and lost consciousness.

46. One of Plaintiffs' guests was able to retrieve Plaintiff Neal's cell phone from the wreckage and contact a neighbor, who drove to the scene of the crash. The neighbor then called 911, and police and medical personnel were called to the scene.

47. Plaintiff Neal was taken via ambulance to the Post Office in Pettigrew, where she was subsequently medevacked to Mercy Hospital in Springfield, Missouri.

48. After being extracted from the Subject Honda Pioneer, Plaintiff Harp was taken via ambulance to the Post Office in Pettigrew, where he was subsequently medevacked to Washington Regional Hospital in Fayetteville, Arkansas.

49. At all times relevant hereto, the Subject Honda Pioneer was in a dangerous and defective condition in that, *inter alia*, its throttle could become stuck in the open position during the vehicle's operation, causing the operator to lose control and crash.

50. Economic, safer alternative designs were available that could have prevented the throttle from becoming stuck in the open position during the vehicle's operation.

51. Defendants knew or should have known that Honda Pioneers, including the Subject Honda Pioneer, possessed the afore-mentioned stuck throttle defect, and that they posed a serious safety risk to the Plaintiffs and the public.

52. Plaintiffs used the Subject Honda Pioneer for its intended purpose of recreational and off-road riding and did so in a manner that was reasonable and foreseeable by the Defendants.

53. Prior to and at the time of the crash at issue in this lawsuit, the Subject Honda Pioneer was not materially changed from the condition in which was manufactured.

54. As the direct and proximate result of the Defendants' collective conduct, Plaintiffs suffered catastrophic injuries for which they seek recovery here, including, but not limited to, serious and permanent bodily injuries, medical expenses, lost wages, physical pain, mental anguish and diminished enjoyment of life.

CLAIMS FOR RELIEF

COUNT I AGAINST ALL DEFENDANTS STRICT PRODUCTS LIABILITY

55. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

56. At all times material to the allegations in this Complaint, Defendants were in the business of manufacturing designing, testing, marketing, certifying, supplying, selling, importing and distributing the Subject Honda Pioneer, which was defective and unreasonably dangerous for use by foreseeable users and consumers, including the Plaintiffs.

57. Plaintiffs used the Subject Honda Pioneer for its intended purpose of recreational and off-road riding and did so in a manner that was reasonable and foreseeable by the Defendants.

58. Prior to and at the time of the crash at issue in this lawsuit, the Subject Honda Pioneer was not materially changed from the condition in which it was manufactured.

59. The Subject Honda Pioneer did not perform as safely as an ordinary consumer would have expected it to perform when used in a reasonably foreseeable way.

60. The Subject Honda Pioneer was defective and unreasonably dangerous due to a defective throttle that caused the throttle to stay stuck in the open position during the vehicle's operation, creating a crash hazard.

61. The risks inherent in the Subject Honda Pioneer outweighed any utility or benefit derived from the product, particularly considering the availability of safe alternative designs for the Subject Honda Pioneer.

62. Defendants' actions and omissions were the direct and proximate cause of the Plaintiffs' injuries and damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages, together with interest, costs of suit, and all such other relief as the Court deems proper.

COUNT II AGAINST ALL DEFENDANTS
NEGLIGENCE

63. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

64. Defendants had a duty of reasonable care to design, manufacture, market, and sell non-defective products that are reasonably safe for their intended uses by users and consumers, such as Plaintiffs.

65. Defendants failed to exercise ordinary care in the manufacture, sale, warnings, quality assurance, quality control, distribution, advertising, promotion, sale and marketing of Honda Pioneers, including the Subject Honda Pioneer, in that Defendants knew or should have known that said Honda Pioneers created a high risk of unreasonable harm to the Plaintiffs and other users and consumers.

66. Defendants were negligent in the design, manufacture, advertising, warning, marketing and sale of Honda Pioneers, including the Subject Honda Pioneer, in that, among other things, they:

- a. Failed to use due care in designing, manufacturing, testing and distributing the Honda Pioneers to avoid the aforementioned risks to individuals;

- b. Placed an unsafe product into the stream of commerce; and
- c. Were otherwise careless or negligent.

67. Despite the fact that Defendants knew or should have known that the throttle could stay stuck in the open position during the vehicle's operation and create a crash hazard, Defendants continued to market and sell Honda Pioneers to the general public.

68. Defendants' actions and omissions were the direct and proximate cause of the Plaintiffs' injuries and damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages, together with interest, costs of suit, and all such other relief as the Court deems proper.

**COUNT III AGAINST ALL DEFENDANTS
NEGLIGENT MANUFACTURING DEFECT**

69. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

70. At all times material to the allegations in this Complaint, Defendants were in the business of manufacturing designing, testing, marketing, certifying, supplying, selling, and distributing the Subject Honda Pioneer, which was negligently manufactured.

71. Defendants failed to exercise reasonable care in designing, developing, manufacturing, inspecting, testing, packaging, selling, distributing, labeling, marketing, and promoting the Honda Pioneers, which were defective and presented an unreasonable risk of harm to users and consumers, such as the Plaintiffs.

72. Upon information and belief, the Subject Honda Pioneer contained defects in its manufacturing process, which rendered it unreasonably dangerous to users and consumers, such as the Plaintiffs, when used as intended or as reasonably foreseeable to Defendants. The defect in the manufacturing process allowed corrosion to occur within the throttle pedal pivot, causing the

throttle pedal to become stuck and not return to the closed position while in operation, creating a crash hazard.

73. After the purchase of the Subject Honda Pioneer but prior to the crash, the vehicle was regularly used for recreational and off-road riding at Plaintiff Harp's property in Pettigrew, Arkansas.

74. Prior to and at the time of the crash at issue in this lawsuit, the Subject Honda Pioneer was not materially changed from the condition in which was manufactured.

75. Despite the fact that Defendants knew or should have known that the throttle could stay stuck in the open position during the vehicle's operation and create a crash hazard, Defendants continued to market and sell Honda Pioneers to the general public.

76. Defendants' actions and omissions were the direct and proximate cause of the Plaintiffs' injuries and damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages, together with interest, costs of suit, and all such other relief as the Court deems proper.

COUNT IV AGAINST ALL DEFENDANTS
NEGLIGENT DESIGN DEFECT

77. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

78. At all times material to the allegations in this Complaint, Defendants were in the business of manufacturing, designing, testing, marketing, certifying, supplying, selling, and distributing the Subject Honda Pioneer, which was negligently designed.

79. Defendants failed to exercise reasonable care in designing, developing, manufacturing, inspecting, testing, packaging, selling, distributing, labeling, marketing, and

promoting the Honda Pioneers, which were defective and presented an unreasonable risk of harm to users and consumers, such as the Plaintiffs.

80. The Subject Honda Pioneer contained defects in its design, which rendered it unreasonably dangerous to users and consumers, such as the Plaintiffs, when used as intended or as reasonably foreseeable to Defendants. The defect in its design allowed corrosion to occur within the throttle pedal pivot, causing the throttle pedal to become stuck and not return to the closed position while in operation, creating a crash hazard.

81. Prior to and at the time of the crash at issue in this lawsuit, the Subject Honda Pioneer was not materially changed from the condition in which was manufactured.

82. Despite the fact that Defendants knew or should have known that the throttle could stay stuck in the open position during the vehicle's operation and create a crash hazard, Defendants continued to market and sell Honda Pioneers to the general public.

83. Defendants' actions and omissions were the direct and proximate cause of the Plaintiffs' injuries and damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages, together with interest, costs of suit, and all such other relief as the Court deems proper.

COUNT V AGAINST ALL DEFENDANTS
NEGLIGENT INFORMATION DEFECT

84. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

85. At all times material to the allegations in this Complaint, Defendants knew or had reason to know that Honda Pioneers, including the Subject Honda Pioneer, were dangerous and created an unreasonable risk of harm to users and consumers, including the Plaintiffs.

86. Defendants had a duty to exercise reasonable care to warn users and consumers of the dangerous conditions or the facts that made Honda Pioneers likely to be dangerous.

87. Defendants failed to exercise reasonable care to warn users and consumers of the dangerous condition of the throttle, and the dangerous condition created because the throttle pedal could become stuck and not return to the closed position while in operation, creating a crash hazard.

88. Prior to and at the time of the crash at issue in this lawsuit, the Subject Honda Pioneer was not materially changed from the condition in which was manufactured.

89. Despite the fact that Defendants knew or should have known that the throttle could stay stuck in the open position during the vehicle's operation and create a crash hazard, Defendants continued to market and sell Honda Pioneers to the general public.

90. Defendants' actions and omissions were the direct and proximate cause of the Plaintiffs' injuries and damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages, together with interest, costs of suit, and all such other relief as the Court deems proper.

COUNT VI AGAINST ALL DEFENDANTS
BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

91. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

92. Defendants manufactured, supplied, and sold Honda Pioneers with an implied warranty that the vehicles were fit for the particular purpose of recreational and off-road riding.

93. Members of the consuming public, including users and consumers such as the Plaintiffs, were the intended third-party beneficiaries of the warranty.

94. Defendants' Honda Pioneers were not fit for the particular purpose of recreational and off-road riding due to the unreasonable risks of bodily injury associated with their use because the throttle could stay stuck in the open position during the vehicle's operation and create a crash hazard.

95. The Subject Honda Pioneer was purchased with the reasonable expectation that it was properly designed and manufactured, free from defects of any kind, and that it was safe for the particular purpose of recreational and off-road riding.

96. The Plaintiffs reasonably relied on Defendants' implied warranty that Honda Pioneers were a safe means of recreational and off-road riding.

97. Defendants' breach of implied warranty was the direct and proximate cause of the Plaintiffs' injuries and damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages, together with interest, costs of suit, and all such other relief as the Court deems proper.

COUNT VII AGAINST ALL DEFENDANTS
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

98. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

99. Defendants manufactured, supplied, and sold Honda Pioneers with an implied warranty that the vehicles were merchantable and fit for the ordinary purposes for which they were intended.

100. Members of the consuming public, including users and consumers such as the Plaintiffs, were the intended third-party beneficiaries of the warranty.

101. Defendants' Honda Pioneers were not merchantable and fit for the ordinary purposes for which they were intended, as a safe means of recreational and off-road riding, due to

the unreasonable risks of bodily injury associated with their use because the throttle could stay stuck in the open position during the vehicle's operation and create a crash hazard.

102. The Subject Honda Pioneer was purchased with the reasonable expectation that it was properly designed and manufactured, free from defects of any kind, and that it was safe for its intended use of recreational and off-road riding.

103. Defendants' breach of implied warranty was the direct and proximate cause of the Plaintiffs' injuries and damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages, together with interest, costs of suit, and all such other relief as the Court deems proper.

COUNT VIII AGAINST ALL DEFENDANTS
BREACH OF ARKANSAS DECEPTIVE TRADE PRACTICE ACTS
(Ark. Code § 4-88-101, et seq.)

104. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

105. Each of the Defendants is a "person" for purposes of the Arkansas Deceptive Trade Practices Act pursuant to Ark. Code Ann. § 4-88-102(5).

106. The Subject Honda Pioneer constitutes a "good" within the meaning of Ark. Code Ann. § 4-88-102(4).

107. Pursuant to Ark. Code Ann. §4-88-108, it is unlawful for any person to use deception, fraud, or false pretense in, or to conceal, suppress, or omit material facts in connection with the sale or advertisement of goods, such as the Subject Honda Pioneer.

108. Pursuant to Ark. Code Ann. section 4-88-107(a)(1), it is unlawful in Arkansas to "Knowingly [make] a false representation as to the characteristics ... of goods ... or as to whether goods are ... of a particular standard [or] quality[.]" Pursuant to Ark. Code Ann. section 4-88-

107(a)(10), it is also unlawful in Arkansas to engage in an “unconscionable, false, or deceptive act or practice in business, commerce, or trade.” Further, pursuant to Ark. Code Ann. section 4-88-107(b), “[t]he deceptive and unconscionable trade practices listed in this section are in addition to and do not limit the types of unfair trade practices actionable at common law or under other statutes of this state.”

109. Defendants engaged in unlawful, unconscionable, false, and deceptive acts and practices in selling and labeling Honda Pioneers to imply that the product could safely be used for recreational and off-road riding when Defendants knew or should have known, if exercising ordinary care, that this was not the case. Defendants also knew or should have known that the throttle pedal could become stuck and not return to the closed position while in operation, creating a crash hazard.

110. Defendants’ actions and omissions were the direct and proximate cause of the Plaintiffs’ injuries and damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for their actual financial losses, together with interest, costs of suit, attorneys’ fees, and all such other relief as the Court deems proper.

COUNT IX AGAINST ALL DEFENDANTS
PUNITIVE DAMAGES

111. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though set forth fully at length herein.

112. Upon information and belief, the acts, conduct, and omissions of Defendants, as alleged throughout this Complaint, were willful and malicious. It is unconscionable and outrageous that Defendants would risk the health, safety, and well-being of users and consumers, including the Plaintiffs. Despite their knowledge that the throttle pedals of Honda Pioneers could become

stuck and not return to the closed position while in operation, creating a crash hazard, Defendants made conscious decisions to proceed with their defective design and not to redesign the Honda Pioneers despite the existence of an economically feasible, safer alternative design(s), and not to immediately recall the Honda Pioneers or recall them immediately after receiving the first reports of stuck throttles. Defendants' outrageous conduct rises to the level that Plaintiffs should be awarded punitive damages to deter Defendants from this type of outrageous conduct in the future, as well as to discourage other Defendants from placing profits above the safety of users and consumers in Arkansas and the United States of America.

113. Upon information and belief, prior to and during the manufacture, sale, and distribution of Honda Pioneers, Defendants knew that said vehicles were in a defective condition because the throttle pedals of Honda Pioneers could become stuck and not return to the closed position while in operation, creating a crash hazard that caused an unreasonable risk of severe physical, mental, and emotional injuries to those who used Honda Pioneers, including the Plaintiffs.

114. Upon information and belief, despite their knowledge, Defendants, for the purpose of enhancing their profits, knowingly and deliberately failed to remedy the known defects in Honda Pioneers, and failed to warn the public, including Plaintiffs, of the unreasonable risk of injury occasioned by those defects. Defendants intentionally proceeded with the manufacturing, sale, distribution and marketing of Honda Pioneers knowing these actions would expose users and consumers, such as the Plaintiffs, to serious danger in order to advance Defendants' pecuniary interest and monetary profits.

115. Upon information and belief, Defendants' conduct was despicable and so contemptible that it would be looked down upon and despised by ordinary decent people, and this

conduct was carried on by Defendants with willful and conscious disregard for the safety of the Plaintiffs and users and consumers like them, entitling the Plaintiffs to punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for punitive damages, together with interest, costs of suit, and all such other relief as the Court deems proper.

DAMAGES

116. As the direct and proximate result of Defendants' strict liability, negligence, breaches of warranty and other wrongful conduct as described herein, Plaintiffs have suffered and will continue to suffer physical and emotional injuries and damages including permanent injuries and past, present, and future physical and emotional pain and suffering as a result of the crash on or about October 15, 2016. Plaintiffs are entitled to recover damages from Defendants for these injuries in an amount which shall be proven at trial.

117. As the direct and proximate result of Defendants' strict liability, negligence, breaches of warranty and other wrongful conduct as described herein, Plaintiffs have incurred and will continue to incur lost wages as a result of the crash on or about October 15, 2016. Plaintiffs are entitled to recover past and future lost wages from Defendants in an amount which shall be proven at trial.

118. As the direct and proximate result of Defendants' strict liability, negligence, breaches of warranty and other wrongful conduct as described herein, Plaintiffs have incurred and will continue to incur disfigurement and the loss of full enjoyment of life as a result of the crash on or about October 15, 2016. Plaintiffs are entitled to recover damages for disfigurement and loss of the full enjoyment of life from Defendants in an amount to be proven at trial.

119. As the direct and proximate cause of Defendants' strict liability, negligence, breaches of warranty and other wrongful conduct as described herein, Plaintiffs have incurred

substantial medical treatment expenses and will continue to incur expenses for medical care and treatment, as well as other expenses, as a result of the severe injuries they suffered from the crash on or about October 15, 2016. Plaintiffs are entitled to recover damages from Defendants for their past, present and future medical and other expenses in an amount which shall be proven at trial.

JURY TRIAL DEMANDED

Plaintiffs demand that all issues of fact of this case be tried to a properly impaneled jury to the extent permitted under the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against the Defendants for damages, including exemplary damages, to which they are entitled by law, as well as all costs of this action, interest and attorneys' fees, to the full extent of the law, whether arising under the common law and/or statutory law, including:

- a. judgment for Plaintiffs and against Defendants;
- b. damages to compensate Plaintiffs for their injuries and suffering sustained as a result of the use of the Subject Honda Pioneer;
- c. pre and post judgment interest at the lawful rate;
- d. punitive damages on all applicable Counts as permitted by the law;
- e. a trial by jury on all issues of the case;
- f. an award of attorneys' fees and costs; and
- g. for any other relief this Court may deem equitable and just, or that may be available under the law of another forum to the extent the law of another forum is applied, including but not limited to all relief prayed for in this Complaint and in the foregoing Prayer for Relief.

Respectfully submitted,

**KEITH, MILLER, BUTLER, SCHNEIDER &
PAWLK, PLLC**

Date: 10/10/19


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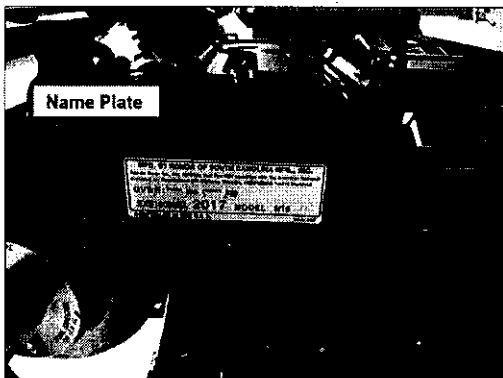
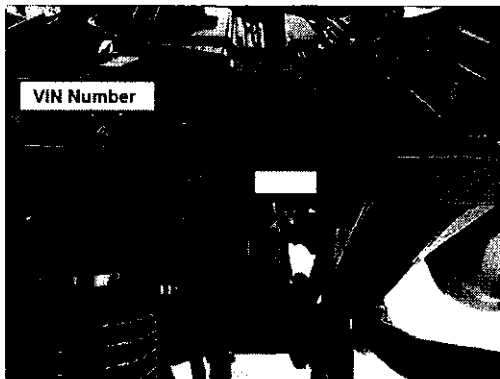
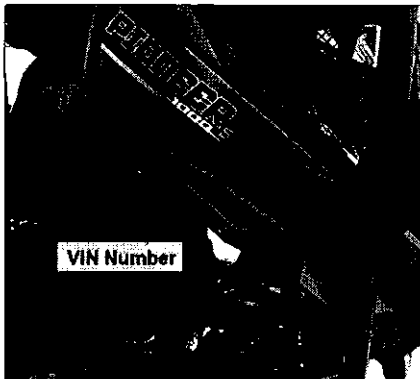
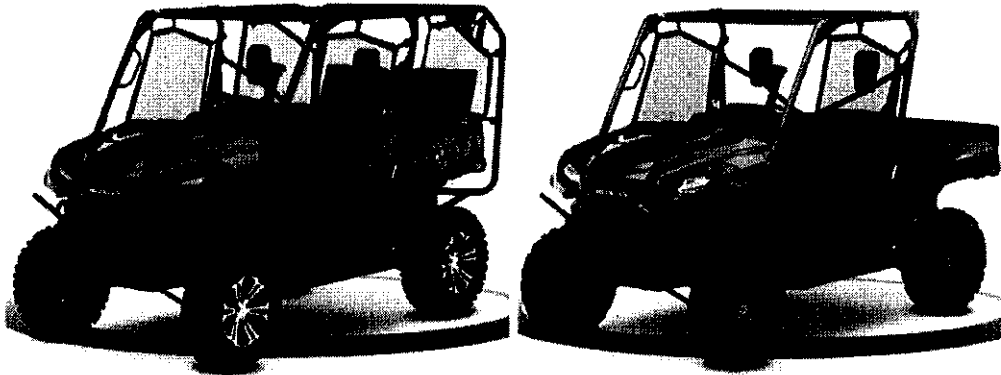
EXHIBIT A

Consumer Products Safety Commissions'
June 13, 2019 Recall Notice



United States
CONSUMER PRODUCT SAFETY COMMISSION

American Honda Recalls Recreational Off-Highway Vehicles Due to Crash and Injury Hazards (Recall Alert)



Recall Summary

Name of product:

Recreational off-highway vehicles (ROVs)

Hazard:

The throttle pedal can stick in the open position, posing crash and injury hazards.

Remedy:

Repair

Recall date:

June 13, 2019

Units:

About 82,000

Consumer Contact:

American Honda toll-free at 866-784-1870 from 8:30 a.m. to 4:30 p.m. PT Monday through Friday or online at <http://powersports.honda.com/> and click on “Recall Information” at the bottom of the page for more information.

Recall Details

Description:

This recall involves all model year 2016 through 2019 Honda Pioneer 1000 side-by-side vehicles. The recalled vehicles were sold in various colors including: red, blue, green, gray and yellow. The name "HONDA" is on the front, sides and the rear of the vehicle. The model name Pioneer 1000 is printed on a label located on both sides of the vehicle, near the rear. The serial number (VIN #) is stamped in the frame at the left rear, below the tilt-up bed/seat. The following model numbers and serial number ranges are being recalled:

MY	Model
2016	SXS10M3*
2016	SXS10M5*
2017	SXS10M3*
2017	SXS10M5*
2018	SXS10M3*
2018	SXS10M5*
2019	SXS10M3*
2019	SXS10M5*

Remedy:

Consumers should immediately stop using the recalled ROVs and contact an authorized Honda Powersports dealer to schedule an appointment for a free inspection and repair. Honda is contacting all known purchasers directly.

Incidents/Injuries:

The firm has received 15 reports of the throttle pedal sticking in the open position, including six crashes, resulting in a report of a concussion and a broken nose.

Sold At:

Authorized Honda Powersports dealers nationwide from August 2015 through March 2019 for between \$14,000 and \$22,000.

Manufacturer(s):

American Honda Motor Company Inc., of Torrance, Calif.

Manufactured In:

United States

Recall number:

19-753



This recall was conducted, voluntarily by the company, under CPSC's Fast Track Recall process. Fast Track recalls are initiated by firms, who commit to work with CPSC to quickly announce the recall and remedy to protect consumers.