

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CHAD UDEEN, MARY JANE
JEFFERY, LYDIA RUNKEL,
MICHAEL BOLICK, GARY GILPIN,
ALICIA SMITH, and SUSAN
WILLIAMS, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., and
SUBARU CORPORATION,

Defendants.

No. 1:18-cv-17334-RBK-JS

JURY TRIAL DEMANDED

CLASS ACTION

SETTLEMENT AGREEMENT

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This Class Action Settlement Agreement and Release (the “Settlement Agreement” or “Agreement”) is entered into as of August 30, 2019 by and between Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams, (collectively, “**Plaintiffs**” or “**Representative Plaintiffs**”), individually and as representatives of the Class (as defined below), and Subaru of America, Inc. (“**SOA**”) and Subaru Corporation (“**SBR**”) (collectively, “**Defendants**” or “**Subaru**”). Collectively, Plaintiffs and Defendants shall be referred to as the “**Parties.**” The Settlement Agreement is intended to fully, finally, and forever resolve, discharge, and settle the above-captioned lawsuit, pending in the United States District Court for the District of New Jersey (the “**Action**”), and all matters raised or that could have been raised therein, subject to the terms and conditions hereof and approval by the Court.

I. BACKGROUND

1. WHEREAS, Plaintiffs have filed the Action as a putative class action against Defendants, claiming that due to alleged defects in the Starlink System, the Settlement Class Vehicles are equipped with an infotainment system that suffers from a range of technical glitches that cause freezing, non-responsiveness or other malfunctions (“**Qualifying Starlink Malfunction**”);

2. WHEREAS, Plaintiffs seek damages and injunctive relief, and assert that the litigation should proceed as a class action;

3. WHEREAS, Defendants deny Plaintiffs' allegations and claims and maintain that the Starlink System with which Settlement Class Vehicles are equipped is not defective; that the Settlement Class Vehicles are not defective or are being fixed with various software updates; that no applicable warranties were breached nor applicable statutes violated; that the Settlement Class Vehicles and their components, including the Starlink System, were properly designed, manufactured, distributed, marketed, advertised, warranted, and sold; and that Defendants have not engaged in any wrongdoing;

4. WHEREAS, the Parties have conducted, and continue to conduct, extensive discovery, including:

a. Document production and review, including over 6,000 pages produced to date, regarding:

- i. All warranty data and customer service records for each of the Representative Plaintiffs;
- ii. Aggregate Settlement Class Vehicle warranty data reflecting Starlink System related claims;
- iii. Settlement Class Vehicle Owner's Manuals;
- iv. Settlement Class Vehicle Warranty and Maintenance Booklets;

v. Templates of any and all final Service Bulletins, Recalls and Campaign Notices relating to the Starlink System that were filed with the National Highway Transportation Safety Administration (“NHTSA”) or provided to customers or retailers.

vi. Documents relating to countermeasures and firmware updates implemented in the field.

b. Independent investigations and analyses by Plaintiffs and Defendants.

c. The deposition of Defendants’ corporate representative.

5. WHEREAS, the Parties, following discovery, investigation, and careful analysis of their respective claims and defenses, and with full understanding of the risks, expense, and uncertainty of continued litigation, desire to compromise and settle all issues and claims that were or could have been brought in the Action by or on behalf of Plaintiffs and Settlement Class Members with respect to any allegation of a defective Starlink System in the Settlement Class Vehicles;

6. WHEREAS, the Parties agree that neither this Settlement Agreement nor the underlying settlement shall constitute or be construed as any admission of

liability or wrongdoing on the part of Defendants, which is expressly denied, or that the Plaintiffs' claims or similar claims are, or would be, suitable for class treatment if the Action proceeded through litigation and trial;

7. WHEREAS, this Settlement Agreement is the result of arm's-length negotiations between the Parties and was reached with the assistance of mediation before the Honorable Dennis Cavanaugh, U.S.D.J. (ret.), and, in the view of counsel for the Parties, based upon the information exchanged to date, is fair, adequate, and reasonable;

8. NOW, THEREFORE, in consideration of the mutual promises and agreements set forth below, the Parties hereby agree as follows:

II. DEFINITIONS

Whenever the following capitalized terms are used in this Settlement Agreement and in the attached Exhibits (in addition to any definitions provided elsewhere in this Settlement Agreement), they shall have the following meanings:

1. **"Action"** means the lawsuit captioned *Udeen v. Subaru of America, Inc.*, No. 1:18-cv-17334-RBK-JS, pending in the United States District Court for the District of New Jersey.

2. **"Attorneys' Fees and Expenses"** means the amount awarded by the Court to Class Counsel to compensate them, and any other attorneys for Plaintiffs

or the Settlement Class, and is inclusive of all attorneys' fees, costs, and expenses of any kind incurred in connection with the Action. Attorneys' Fees and Expenses shall not under any circumstances exceed \$1,500,000 ("One Million, Five Hundred Thousands Dollars"). Attorneys' Fees and Expenses shall be in addition to the benefits provided directly to the Settlement Class, and shall not reduce or otherwise have any effect on the benefits made available to the Settlement Class. Attorneys' Fees and Expenses shall not include the payment of Service Awards to Representative Plaintiffs by Defendants, as discussed below.

3. **"Authorized Subaru Dealer"** means any authorized Subaru retailer in the continental United States, as well as Hawaii and Alaska.

4. **"Claim"** or **"Claim for Reimbursement"** shall mean the timely submission of the required Claim Form and proof by which a Settlement Class Member seeks to claim the reimbursement or compensation available under this Settlement Agreement.

5. **"Claim Form"** means the form attached hereto as Exhibit A, to be sent to Settlement Class Members with the Class Notice.

6. **"Class Counsel"** shall mean Benjamin F. Johns, Esq. and Andrew W. Ferich, Esq. of Chimicles Schwartz Kriner & Donaldson Smith LLP, 361 W. Lancaster Avenue, Haverford, Pennsylvania 19041, Daniel R. Lapinski, Esq. of

Motley Rice LLC, 210 Lake Drive East, Suite 101, Cherry Hill, New Jersey 08002, and Kevin P. Roddy, Esq. of Wilentz, Goldman & Spitzer, P.A., 90 Woodbridge Center Drive, Suite 900, Woodbridge, NJ 07095-0958, who were appointed Interim Co-Lead Counsel by the Court on January 20, 2019 (ECF No. 23).

7. **“Class Notice”** means the notice, substantially in the form attached hereto as Exhibit B, to be provided to Settlement Class Members in accordance with the Preliminary Approval Order issued by the Court.

8. **“Court”** refers to the United States District Court for the District of New Jersey.

9. **“Defendants’ Counsel”** means Ballard Spahr LLP, 210 Lake Drive East, Suite 200, Cherry Hill, NJ 08002, who are the attorneys of record representing Subaru of America, Inc. and Subaru Corporation.

10. **“Effective Date”** means the later of (a) the date upon which the time for seeking appellate review of the Judgment (by appeal or otherwise) shall have expired; or (b) the date upon which the time for seeking appellate review of any appellate decision affirming the Judgment (by appeal or otherwise) shall have expired and all appellate challenges to the Judgment shall have been dismissed with prejudice without any person having further right to seek appellate review thereof (by appeal or otherwise).

11. **“Fairness Hearing”** means the hearing at which the Court will consider and finally approve the Agreement as fair, reasonable, and adequate, certify the Class for settlement purposes, award Attorneys’ Fees and Expenses, including settlement class representative Service Awards, enter the Judgment, and make such other final rulings as are contemplated by this Settlement Agreement.

12. **“In-Service Date”** shall mean the date on which a Settlement Class Vehicle was delivered to the first retail purchaser or lessee; or if the vehicle was first placed in service as a “demonstrator” or “company” car, then the date on which the vehicle was placed in such service.

13. **“Judgment”** means the judgment, substantially in the form attached hereto as Exhibit C, to be entered by the Court in the Action finally approving this Settlement Agreement and dismissing the Action with prejudice.

14. **“Lemon Law Action”** means any action asserting claims under any federal or state statute defining and allowing suit for defective automobiles, and/or an action for the enforcement of express or implied warranties for the fitness of an automobile concerning a Qualifying Starlink Malfunction.

15. **“Notice Date”** means the date by which Defendants or the Settlement Administrator first initiates the mailing of the Class Notice to the Settlement Class. Subject to the Court’s approval, the Notice Date shall be within 60 days after the

Court enters a Preliminary Approval Order, substantially in the form attached hereto as Exhibit D.

16. **“Notice Completion Date”** means the date on which the Settlement Administrator completes the original mailing of the Class Notice to Settlement Class Members.

17. **“Preliminary Approval Order”** means the Court’s order preliminarily approving the terms of the Settlement Agreement as fair, adequate, and reasonable, including the Court’s approval of the form and manner of giving notice to Settlement Class Members, substantially in the form attached hereto as Exhibit D.

18. **“Proof of Repair-Related Expense”** means documentation (such as a repair order, receipt, credit card statement, bank statement, invoice, photograph, or historical accounting records) indicating that a Settlement Class Member paid for a rental car, rideshare, or other out-of-pocket expense directly related to obtaining a Qualifying Repair, and that identifies that (i) the expense was incurred for such a repair expense, (ii) the date the expense was incurred, and (iii) the dollar amount paid.

19. **“Proof of Repair Expense”** shall take the form of an original or legible copy of a receipt, invoice or other record, or some combination thereof,

identifying (i) the date of repair; (ii) the make and model of the vehicle; (iii) the vehicle identification number; (iv) the mileage of the vehicle at the time of repair; (v) the facility that performed the repair; (vi) a description of the work performed, including a breakdown of parts and labor costs (if not apparent from the document itself); and (vii) proof of the sum of money paid by (or on behalf of) the Settlement Class Member, for a repair or replacement for which reimbursement is available under the terms of this Settlement Agreement.

20. **“Qualifying Starlink Malfunction”** means the failure of a Settlement Class Vehicle’s Starlink System or failure of a vehicle function which failure was caused by a Starlink System error as pleaded in the Amended Complaint (ECF No. 24), including, but not limited to, the following: the backup camera freezes and/or shut downs; failure of the system’s head unit with resulting loss of audio and radio functions; complete system lock-up/error message displayed on infotainment system that only goes away after vehicle is turned off for several hours and then turned back on to properly reset entire system; display shuts off even though functions of infotainment system remain working; inability to shut radio/audio off or turn high volume level down (set automatically by way of technical glitch) when backing up; radio automatically comes on at high volume when the car is turned on, even if the radio was off when the car was last turned off; loss of functionality of the navigation system and/or erratic glitches i.e.

navigation system providing inaccurate directions; loss of audio cue or warning sound for various safety features, including the forward collision and blindside detection functions; favorites from smartphone or connected device not being saved to the system; audio/radio functioning is erratic, in that radio/audio will turn off at random intervals then come back on suddenly without warning; touchscreen controls unresponsive; and Bluetooth connectivity issues preventing phones from connecting properly and calls from being made as well as disabling Apple CarPlay or Android Auto functionality with the system. A Qualifying Starlink Malfunction does not include failure of any vehicle function not controlled by the Starlink System, e.g., mechanical failures, or any other vehicle failure not caused by a malfunction in the Starlink System.

21. **“Qualifying Repair”** means any type of repair, replacement, diagnosis, or inspection of the Settlement Class Vehicle performed by an Authorized Subaru Dealer to address a Qualifying Starlink Malfunction. Excluded from Qualifying Repairs are repairs performed subject to Subaru recalls, including NHTSA Campaign Number 17V132000 (“Rearview Camera Display may not Function Properly”) and NHTSA Campaign Number 18V935000 (“Camera Image may not Display/FMVSS 111”). A Qualifying Repair also does not include repair work performed to address a condition that was unrelated to a Qualifying Starlink

Malfunction. Repairs performed pursuant to any Subaru recalls are governed by the National Traffic and Motor Vehicle Safety Act, 49 U.S.C. §§ 30101–30505.

22. **“Released Claims” or “Settled Claims”** means any and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, actions, rights of action, remedies of any kind and/or causes of action of every nature and description, whether known or unknown, asserted or unasserted, foreseen or unforeseen, regardless of any legal theory, existing now or arising in the future, by Plaintiffs and any and all Settlement Class Members based on a Qualifying Starlink Malfunction in Settlement Class Vehicles including claims for reimbursement for amounts spent on parts or related labor, the head unit or infotainment system and its components, or diminution in value of the vehicle, as relating to a Qualifying Starlink Malfunction. This applies to claims arising under statute, including a state lemon law, rule, regulation, common law or equity, and including, but not limited to, any and all claims, causes of action, rights or entitlements under any federal, state, local or other statute, law, rule and/or regulation, any claims relating to violation of California Business and Professions Code Sections 17200-17209, California Business and Professions Code Section 17500, or the California Consumer Legal Remedies Act (California Civil Code Section 1750-1784), any consumer protection, consumer fraud, unfair business practices or deceptive trade practices laws, any legal or equitable theories, any

claims or causes of action in tort, contract, products liability, negligence, fraud, misrepresentation, concealment, consumer protection, restitution, quasi contract, unjust enrichment, express warranty, implied warranty, secret warranty and/or any injuries, losses, damages or remedies of any kind, in law or in equity, under common law, statute, rule or regulation, including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, restitution, recovery of attorneys' fees or litigation costs, or any other legal or equitable relief. This also includes any related claims or counter claims that Defendants may have against Plaintiffs, the Settlement Class, or Plaintiffs' counsel. This release expressly exempts claims for death, personal injuries and property damage (other than damage to the Settlement Class Vehicle). Nothing in this Settlement shall be construed as a waiver, release, and/or compromise of any automobile lemon law lawsuit pending as of the Notice Completion Date pertaining to Starlink System failure as alleged in the Action.

23. **“Released Parties”** shall mean Subaru of America, Inc., Subaru Corporation, Subaru Tecnica International Inc., North American Subaru, Inc., Subaru Research & Development, Inc., Subaru of Indiana Automotive, Inc., Servco Automotive Distribution, Harman International Industries, Inc., Samsung Electronics Co., Ltd., United Radio, Inc., United Radio Service, Inc., all designers, manufacturers, assemblers, distributors, importers, marketers, advertisers, testers,

inspectors, sellers, suppliers, component suppliers, lessors, warrantors, dealers, retailers, repairers, and servicers of Settlement Class Vehicles and each of their component parts and systems, all dealers, lessors, and retailers of Settlement Class Vehicles, and all of the aforementioned persons' or entities' past and present directors, officers, shareholders, principals, partners, employees, agents, servants, assigns, representatives, attorneys, insurers, trustees, vendors, contractors, heirs, executors, administrators, successor companies, parent companies, subsidiary companies, affiliated companies, divisions, trustees, vendors and representatives, as well as Plaintiffs, the Settlement Class, and Plaintiffs' counsel.

24. **“Service Awards”** means the \$3,500 that Defendants have agreed to pay to each Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams, who have served as putative Representative Plaintiffs in the Action, upon finalization of the Settlement Agreement and approval by the Court.

25. **“Settlement Administrator”** means JND Legal Administration Co.

26. **“Settlement Class Vehicle”** and **“Vehicles”** means model year 2017 Subaru Impreza, 2018 Subaru Impreza, 2018 Subaru Outback, 2018 Forester, 2018 Subaru Legacy, 2018 Subaru Crosstrek, and 2018 Subaru BRZ vehicles equipped with a Generation 3.0 Starlink Infotainment System, manufactured by Harman

International Industries, Inc. Excluded from this class action settlement are all Subaru Impreza, Subaru Outback, Subaru Forester, Subaru Legacy, Subaru Crosstrek, Subaru BRZ, or any other Subaru vehicles with a model year prior to or subsequent to the model year vehicles listed above or equipped with a head unit and/or infotainment system other than the Generation 3.0 Starlink System manufactured by Harman International Industries, Inc.

27. **“Settlement Class Member”** means a person who is the current or former owner or lessee of a Settlement Class Vehicle, who does not validly and timely opt out of the Settlement Class pursuant to the procedure set forth in the Court’s Preliminary Approval Order.

28. **“Settlement Extended Warranty”** means the terms of extended warranty coverage as described in Section VI.A.

29. **“Unknown Claims”** means any Released Claim that any Plaintiff or Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release provided for herein, including without limitation those that, if known to him, her or it, might have affected his, her or its settlement and release pursuant to the terms of this Settlement Agreement, or might have affected his, her or its decision not to object to the settlement terms memorialized herein. As more fully discussed in Section V below, Settlement Class members expressly

waive all rights to pursue unknown claims and rights conferred upon them by the provisions of Section 1542 of the California Civil Code or any other law.

III. ESTABLISHMENT OF A SETTLEMENT CLASS

1. The Parties stipulate to certification, for settlement purposes only, of a “Settlement Class” defined as follows:

All residents of the continental United States or Hawaii or Alaska who currently own or lease, or previously owned or leased, a Settlement Class Vehicle originally purchased or leased in the continental United States, including Alaska or Hawaii. Excluded from the Settlement Class are SOA, SBR, SOA’s employees, SBR’s employees, employees of SOA’s and/or SBR’s affiliated companies, SOA’s and SBR’s officers and directors, dealers that currently own Settlement Class Vehicles, all entities claiming to be subrogated to the rights of Settlement Class Members, issuers of extended vehicle warranties, and any Judge to whom the Litigation is assigned.

2. Solely for purposes of implementing this Settlement Agreement and effectuating the settlement, Defendants stipulate to the Court entering an order preliminarily certifying the Settlement Class, appointing named Plaintiffs Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams as representatives of the Settlement Class, and appointing Benjamin F. Johns, Andrew W. Ferich, Daniel R. Lapinski, and Kevin P. Roddy to serve as Class Counsel for the Settlement Class.

3. Solely for the purposes of implementing this Settlement Agreement and effectuating the settlement, the Parties stipulate that Settlement Administrator will be appointed as the settlement administrator, subject to the approval of the Court.

4. Solely for the purposes of implementing this Settlement Agreement and effectuating the settlement, Defendants stipulate that named Plaintiffs Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams, and Class Counsel are adequate representatives of and counsel for the Settlement Class.

IV. NO ADMISSION OF LIABILITY

1. The Parties acknowledge that the Settlement Consideration represents a compromise and final settlement of disputed claims and that neither the fact of, nor any provision contained in this Settlement Agreement, nor any action taken hereunder, shall constitute, or be construed as, an admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendants and the Released Parties, or any admissions by Defendants and the Released Parties of any claim or allegation made in any action or proceeding against them. The Parties understand and agree that neither this Settlement Agreement, nor the negotiations that preceded it, shall be offered or be admissible in evidence against Defendants, the Released Parties,

the Plaintiffs, Plaintiffs' counsel, or the Settlement Class Members, or cited or referred to in the Action or any action or proceeding, except in an action or proceeding brought to enforce the terms of the Settlement Agreement, or to raise the release provisions of the Settlement Agreement as a defense.

V. RELEASE AND WAIVER

2. The Parties agree to the following release and waiver ("**Release**"), which shall, *except as noted in Section V.3., below*, take effect upon entry of the Final Order and Final Judgment.

3. In consideration for the Settlement, all parties, including Defendants, Representative Plaintiffs, Plaintiffs, each Settlement Class Member, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, agree to fully, finally and forever release, relinquish, acquit, discharge, and hold harmless the Released Parties from any and all Released Claims.

4. Representative Plaintiffs, Plaintiffs, and Settlement Class Members who have not validly and timely excluded themselves from this Settlement Agreement, may not initiate any action, including any Lemon Law Action, against the Released Parties beginning two (2) days after the Notice Completion Date, to the extent that the action relates in any way to a Qualifying Starlink Malfunction.

5. Notwithstanding the foregoing, Representative Plaintiffs, Plaintiffs, and Class Members are not releasing claims for personal injury, wrongful death, or actual physical property damage alleged to be caused by a Qualifying Starlink Malfunction.

6. The Final Order and Final Judgment will reflect these terms.

7. Defendants, Representative Plaintiffs, Plaintiffs, and Settlement Class Members expressly agree that this Release, the Final Order, and/or the Final Judgment are, will be, and may be raised as a complete defense to, and will preclude, any action or proceeding encompassed by this Release.

8. Representative Plaintiffs, Plaintiffs, and Settlement Class Members who have not validly and timely excluded themselves from this Settlement Agreement shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action, and/or proceeding, against the Released Parties, either directly or indirectly, on their own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims, causes of action and/or any other matters released through this Settlement Agreement.

9. In connection with this Settlement Agreement, Representative Plaintiffs, Plaintiffs, and Class Members acknowledge that they may hereafter

discover Unknown Claims, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Release herein. Nevertheless, it is the intention of Class Counsel and Settlement Class Members in executing this Settlement Agreement to fully, finally, and forever settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Action, except as otherwise stated in this Settlement Agreement.

10. Representative Plaintiffs expressly understand and acknowledge, and all Representative Plaintiffs, Plaintiffs, and Settlement Class Members will be deemed by the Final Order and Final Judgment to acknowledge and expressly waive, the provisions of Section 1542 of the California Civil Code and understand that such section provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Representative Plaintiffs, Plaintiffs, and Settlement Class Members expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of Section 1542 of the California Civil Code, or any other law of any state or territory that is similar,

comparable or equivalent to Section 1542, to the fullest extent they may lawfully waive such rights.

11. Representative Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under this Settlement Agreement. Representative Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that Representative Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.

Settlement Class Members submitting a Claim Form shall represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under this Settlement Agreement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Settlement Class Member(s) are not aware of anyone other than themselves claiming or sharing any interest in their respective

Class Vehicle, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.

12. Representative Plaintiffs, Class Counsel and any other attorneys who receive attorneys' fees and costs from this Settlement Agreement acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Settlement Agreement; and that this settlement was reached with the assistance of mediation before the Honorable Dennis Cavanaugh, U.S.D.J. (ret.). By executing this Settlement Agreement, Representative Plaintiffs, Plaintiffs, and Settlement Class Members state that they have not relied upon any statements or representations made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement.

13. Nothing in this Release shall preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed herein.

14. Representative Plaintiffs and Plaintiffs' Class Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Settlement Agreement and shall be included in any Final Order and Final Judgment entered by the Court.

VI. SETTLEMENT CONSIDERATIONS

In consideration for the full and complete Release of all Released Claims against all Released Parties, and the dismissal of the Action with prejudice, Defendants agree to provide the following consideration to the Settlement Class.

A. Settlement Warranty Extension for Current Owners or Lessees.

1. Effective on the Notice Date, Subaru will extend its existing express New Car Limited Warranty, only with respect to Starlink System to the Settlement Class Vehicles, to cover only Qualifying Repairs performed by an Authorized Subaru Dealer, to a period of five years or 100,000 miles, whichever occurs first, from the In-Service Date of the Settlement Class Vehicle. With the exception of the extension of the duration, the Settlement Extended Warranty shall be governed by the same terms as the New Vehicle Limited Warranty. The Settlement Extended Warranty will cover all firmware updates and repairs needed to address Starlink System Malfunctions.

2. The Settlement Extended Warranty is transferable during the duration of its coverage period.

3. The Settlement Extended Warranty will cover all costs associated with Qualifying Repairs performed by an Authorized Subaru Dealer.

4. If a Settlement Class Member has already purchased a Subaru Added Security plan of equal or greater duration to the Settlement Extended Warranty for the Class Vehicle, SOA will reimburse the Settlement Class Member \$5.00, which reflects the value of that extended warranty purchase related to the Starlink System.

5. Any Settlement Class Member who obtains relief pursuant to the terms of this Settlement Agreement after the receipt of the Class Notice gives up the right to exclude him or herself from this settlement.

6. The Settlement Extended Warranty is subject to the same terms and conditions set forth in the Settlement Class Vehicle's New Vehicle Limited Warranty and the Warranty and Maintenance Booklet, except as specifically modified herein.

7. Additionally, in accordance with the existing terms of the New Vehicle Limited Warranty, vehicles are ineligible for warranty coverage if the vehicle has been declared a total loss or sold for salvage purposes; if the vehicle has been dismantled, destroyed, or changed in such a manner that constitutes a material alteration of its original construction; if the odometer mileage has been changed so that mileage cannot be readily determined, and shall be excluded and not covered by the Settlement Extended Warranty.

8. Nothing in this Settlement Agreement will be construed as adding to, diminishing, or otherwise affecting any express or implied warranty, duty, or contractual obligation of Subaru in connection with the Settlement Class Vehicles, except as it relates to Qualifying Starlink Malfunctions and Qualifying Repairs as set forth herein.

9. SOA may continue to implement any customer satisfaction or goodwill policy, program, or procedure at its discretion, and may extend goodwill consideration to individual Settlement Class Members on a case-by-case basis, without regard to their entitlement to relief under the Settlement Agreement, except that in no case shall a Settlement Class Member obtain more than one recovery for the same Qualifying Starlink Malfunction during the Settlement Extended Warranty for any Settlement Class Vehicle. Any compensation paid under the Settlement Agreement will be reduced by any cash or cash-in-kind concession (e.g., being excused from making a monthly lease payment) provided by SOA or any Subaru Authorized Dealer or any other entity (including insurers and providers of extended warranties) and which was related to a Qualifying Starlink Malfunction, up to no reimbursement if the Class Member received such payments equal to or exceeding the available settlement relief. There will not be an offset for any non-cash consideration previously provided to class members (e.g., Bluetooth speakers, bags, vacuum cleaners). No such interim goodwill decision by

SOA shall act to deprive a Settlement Class Member of the Settlement Extended Warranty or benefits available under the Settlement Agreement that were not provided as previous goodwill.

B. Compensation for Repairs Performed Prior to Notice Date.

1. Repairs Performed by Authorized Subaru Dealer. Subject to the proof and conditions required in Section VI.B.5., below, a Settlement Class Member will be entitled to compensation, on a claims-made basis, based on the number of visits to an Authorized Subaru Dealer during which the Settlement Class Member complained of a Qualifying Starlink Malfunction, regardless of whether service was performed. Excluded from qualifying repairs are repairs undertaken under recalls (NHTSA Campaign Numbers: 17V132000 & 18V935000). Payments may be provided pursuant to the following schedule:

Number of Visits	Compensation Amount
2	\$150.00
3 or more	\$300.00

2. Alternative to Monetary Compensation. Subject to the proof and conditions required in Section VI.B.5., below, a Settlement Class Member who has not already been reimbursed by SOA or a third party may choose to receive, in place of the monetary compensation discussed in Section VI.B.1., either:

- a. Two separate \$100.00 coupons, valid for one year from the Effective Date, for any service or merchandise at an Authorized Subaru Dealer;
or
- b. One \$400.00 credit, valid for three years from the Effective Date, toward the purchase or lease of a new Subaru vehicle. This credit is not valid for the purchase of certified preowned vehicles.

A Settlement Class Member may choose to receive either the monetary compensation provided in Section VI.B.1, above, or to instead receive one of the two listed alternative compensation options. Settlement Class Members may not elect to receive both the monetary compensation and the alternative coupon compensation. The alternative coupon relief discussed above in Section VI.B.2. shall not be transferable and is valid for use only by Settlement Class Members.

3. Exclusions and Limitations. A Settlement Class Member will not be eligible for compensation under this Section if the Class Vehicle's service documentation indicates that the Qualifying Repair was caused by abuse, alteration or modification, a collision or crash, vandalism and/or other impact.

C. Compensation (in Addition to the Compensation described above) for Repair Delay Caused by Starlink System Backorder.

1. Settlement Class Members whose Starlink System became inoperable during a certain time period are eligible for compensation for the time the Starlink System remained inoperable (the “**Down-Time**”) if, and only if:

- a. The Settlement Class Member contacted or presented his or her Class Vehicle to an Authorized Subaru Dealer between the dates of July 1, 2018 and January 31, 2019 (the “**Backorder Period**”) with a Starlink System that was allegedly suffering from one or more of the Qualifying Starlink Malfunction Issues;
- b. The Authorized Subaru Dealer placed an order for a replacement Starlink System head unit; and
- c. The Settlement Class Member had to wait more than one full day for a replacement Starlink System head unit to be installed in his or her Class Vehicle. This one-day threshold period will not, however, be deducted from the calculation of the daily damages amount discussed in Section VI.C.2., below.

2. Settlement Class Members are eligible, on a claims-made basis, to receive compensation of \$16.00 for each day the Settlement Class Member waited

to receive a replacement Starlink System head unit, beginning the day after the Settlement Class Member presented the Class Vehicle to an Authorized Subaru Dealer with an inoperable Starlink System head unit.

D. Reimbursement of Repair-Related Expenses.

1. Reimbursement. Upon sufficient Proof of Repair-Related Expenses, SOA agrees to reimburse former and current owners and lessees of Settlement Class Vehicles for certain expenses related to obtaining a Qualifying Repair as follows:

- a. Qualifying Repair Reimbursement. If, prior to the Notice Date, a Settlement Class Vehicle required a Qualifying Repair from an Authorized Subaru Dealer, and the Settlement Class Member paid out-of-pocket for that repair, upon sufficient proof the Settlement Class Member may be reimbursed for the unreimbursed cost of such a Qualifying Repair.
- b. Rental Car Expenses. If, during the Backorder Period, a Settlement Class Vehicle required a Qualifying Repair from an Authorized Subaru Dealer, and that repair required two days or more in a single repair period, the Settlement Class Member, upon sufficient Proof of Repair-Related Expenses may be reimbursed for the unreimbursed

cost of a rental car procured as the result of a Qualifying Repair, starting on the second day, up to \$45 per day, for a maximum of two days. In no case shall the total reimbursement for rental car expenses exceed \$90. Coverage for any future rental car expenses shall be governed by the same terms as the New Vehicle Limited Warranty.

- c. Ride-Hailing Expenses. If a Settlement Class Member previously incurred unreimbursed out-of-pocket expenses for engaging a ride-hailing service in order to travel to or from an Authorized Subaru Dealer for the purpose of obtaining a Qualifying Repair during the Backorder Period, which was necessitated by a Qualifying Starlink Malfunction, then the Settlement Class Member, upon sufficient Proof of Repair-Related Expenses, may be reimbursed for those ride-hailing expenses. The Settlement Class Member must provide documentation in the form of a receipt, to or from an Authorized Subaru Dealer, that corresponds to a Qualifying Repair. In no case shall the total reimbursement for rideshare expenses exceed \$90. Coverage for any future rideshare expenses shall be governed by the same terms as the New Vehicle Limited Warranty.

2. Limitation on Consequential Damages. Settlement Class Members are not entitled to receive compensation for any additional forms of consequential damages not made expressly available under the Settlement Agreement.

E. Required Proof.

1. Required Proof. The following proof must be submitted, and conditions satisfied, in order for a Settlement Class Member to be eligible for compensation under Sections VI.B., VI.C, and VI.D. of the Settlement Agreement:

- a. A Claim is submitted online, no later than 90 days after the Notice Date, or mailed to Settlement Administrator, post-marked no later than 90 days after the Notice Date.
- b. The Claim contains a properly completed online or mailed Claim Form.
- c. If the claimant is not a person to whom the Class Notice or Claim Form was addressed, and/or the vehicle with respect to which a Claim is made is not the vehicle identified by VIN number on the Class Notice or mailing, the Claim contains proof that the claimant is in fact a Settlement Class Member.

- d. The Claim contains the proper proof demonstrating the Settlement Class Member's right to receive compensation or reimbursement under the terms of this Settlement Agreement.
 - e. The Settlement Class Member has not previously been reimbursed by SOA, an Authorized Subaru Dealer, or any third party, by any means, including but not limited to Subaru Added Security or other extended warranty provider, for expenses provided by the Settlement Agreement. If a Settlement Class Member has previously received partial reimbursement for such expenses, then a claim may be made pursuant to this Settlement Agreement for only the unreimbursed portion of those expenses.
 - f. The Qualifying Repair was not performed because of a Starlink System Malfunction caused by abuse, a collision or crash, vandalism and/or other impact.
- F. Compensation Contingent on Final Approval.**
- 1. Compensation is contingent upon the Court's final approval of this

Settlement Agreement.

G. Costs of Administration and Notice.

1. The Parties agree that Defendants shall be responsible for the costs of Class Notice and settlement administration, including the fees and expenses incurred by the Settlement Administrator. Plaintiffs retain the right to audit and review the handling of the claims by Defendants, and will receive periodic reports as to the claims filing data from the Settlement Administrator.

VII. CLAIMS ADMINISTRATION

A. Administration.

1. For each approved claim for compensation or reimbursement, Settlement Administrator shall mail to the Settlement Class Member, at the address listed on the Claim Form, a reimbursement check for 100% of the approved, unreimbursed permissible expenses to which the Settlement Class Member is entitled, to be sent within 60 days after receipt of the Claim, or within 60 days of the Effective Date, whichever is later.

2. For any Claim for Compensation or Reimbursement that qualifies for less than the full amount of the reimbursement sought by the Settlement Class Member, Settlement Administrator shall, within the period set forth in Section VII.A.1., above, e-mail or mail to the Settlement Class Member, at the address listed on the Claim Form, a **“Claim Decision and Option Selection Form”** (substantially in the form attached hereto as Exhibit E) stating:

- a. That partial compensation or reimbursement has been awarded;
- b. The amount of the proposed compensation or reimbursement;
- c. Whether rejection of the compensation or reimbursement sought was based on:
 - i. Lack of or insufficient Proof of Repair Expense and/or other required proof;
 - ii. Error in the Claim Form; or
 - iii. That the claim amount has been reduced because of an offset for prior goodwill, or any other applicable reason impacting payment of the full amount of the compensation or reimbursement sought by the Settlement Class Member.
- d. the Settlement Class Member's right to a Second Review of Settlement Administrator's decision, as described in Section VII.B.;
and
- e. the Settlement Class Member's right to attempt to cure the deficiency, except for a deficiency related to a Claim Form that is postmarked after the deadline for submitting a Claim.

3. Any Settlement Class Member who receives a Claim Decision and Option Selection Form under Section VII.A.2, notifying him or her of his or her right to Second Review, may:

- a. Attempt to cure the deficiency stated by submitting online or mailing the information and/or documentation identified as lacking in the Claim, postmarked within 30 days of receipt of the letter. Within 75 days of receiving a cure attempt under this paragraph, or within 60 days of the Effective Date, whichever is later, SOA will either pay the full amount of the reimbursement if the cure information and/or documentation satisfies the criteria for said reimbursement under the Settlement Agreement, or Settlement Administrator will notify the Settlement Class Member by e-mail or mail that the Claim has been finally denied and advising of the right to a Second Review;
- b. Initiate a Second Review of Settlement Administrator's decision by completing and submitting online or mailing the Claim Decision and Option Selection Form, postmarked within 30 days of receipt of the letter (or within 30 days of receipt of written denial following a cure attempt under Section VII.A.3(a)); or

- c. Accept the reimbursement offered, which acceptance will be presumed if no completed Claim Decision and Option Selection Form or cure attempt is received by Settlement Administrator within 30 days of receipt of the letter.

4. If a Settlement Class Member accepts the reimbursement offer under Section VII.A.3.c., Settlement Administrator shall mail the Settlement Class Member a reimbursement check within 60 days of the Effective Date or within 45 days after receipt of said acceptance by Settlement Administrator (determined either by Settlement Administrator's receipt of the completed Claim Decision and Option Selection Form from the Settlement Class Member accepting the reimbursement offered, or by the expiration of the above-referenced period of time in which acceptance will be presumed), whichever occurs later.

B. Second-Level Review.

1. A Settlement Class Member who initiates a Second Review may:
 - a. rely solely on the documents submitted with the Claim; or
 - b. submit a written statement in advance of Settlement Administrator's Second Review, signed by the Settlement Class Member, that includes an oath that the information submitted is true and accurate.

2. In each Second Review, Settlement Administrator shall review the decision with regard to the reimbursement, including the criteria required under this Settlement Agreement.

3. The Second Review will be made by an employee of Settlement Administrator who is a different employee from the one that made the initial determination. His or her Second Review will be independent of the initial review.

4. The reviewer will review Settlement Administrator's initial determination and independently determine, based upon the claim and proof submitted by the Settlement Class Member, whether the initial determination should be adjusted. The reviewer will have the authority to increase the reimbursement amount originally offered up to the full amount of the reimbursement sought, if the Settlement Class Member's Claim meets the requirements under the Settlement Agreement. Under no circumstance shall the second reviewer decrease the reimbursement amount previously offered.

5. The Second Review determination, along with any applicable payment, will be mailed to the Settlement Class Member within 45 days of the date in which the request for a Second review was received by Settlement Administrator, or within 60 days of the Effective Date, whichever is later, along with any supporting documentation. The Second Review determination will state

the reason(s) why the initial determination was modified or not. Settlement Administrator's decision shall be final and not appealable unless the Settlement Class Member submits the Claim to the Better Business Bureau for resolution as described in Section VII.C. of the Settlement Agreement.

6. Class Counsel will monitor the claims administration process and receive periodic updates from the Settlement Administrator throughout the claims process to ensure that Settlement Administrator is acting in accordance with the Settlement Agreement.

7. Defendants shall bear all costs of the Second Review.

C. Better Business Bureau Appeals.

1. In the event a Settlement Class Member wishes to appeal Settlement Administrator's Second Review determination, the Settlement Class Member may appeal the determination to the Better Business Bureau ("BBB"). Any appeal to the BBB must be made within 30 days following the date of Settlement Administrator's Second Review determination and any decision by the BBB will be final and binding upon both parties. A Settlement Class Member may not proceed to the BBB in the absence of a Second Review.

2. Defendants will pay any cost charged by the BBB for resolving the dispute. Each party shall be responsible for paying his, her, or its own attorneys'

fees and other expenses in the event they decide to retain counsel in connection with any proceeding before the BBB.

3. Class Counsel will have no obligation to represent a Settlement Class Member in connection with a BBB appeal but Class Counsel will have the option, to be exercised in their own discretion, to represent a Settlement Class Member if so requested by a Settlement Class Member.

VIII. CLASS NOTICE AND PUBLICATION

A. To Attorney General

1. In compliance with the Attorney General notification provision of the Class Action Fairness Act, 28 U.S.C. § 1715, Defendants shall provide notice of this proposed Settlement to the Attorney General of the United States, and the Attorneys General of each state in which a Settlement Class Member resides.

B. To Settlement Class

1. Settlement Administrator, as the settlement administrator, shall be responsible for the following Settlement Class Notice program:

- a. Within 60 days after entry of the Preliminary Approval Order discussed in Section XII.A of the Settlement Agreement, Settlement Administrator shall cause to be mailed, by first class mail to the current or last known addresses of all reasonably identifiable

Settlement Class Members, individual short-form notice, which shall direct Settlement Class Members to the settlement website and to the long-form notice, substantially in the form attached hereto as Exhibit B, as well as the Claim Form and Request for Exclusion Form.

Defendants may format the Class Notice in such a way as to minimize the cost of the mailing, so long as Settlement Class Members can reasonably read it and Class Counsel approves all changes and formatting prior to mailing. Settlement Administrator shall be responsible for dissemination of the Class Notice.

- b. For purposes of identifying Settlement Class Members, SOA shall obtain from its own records and verify with R.L. Polk & Co. (or a reasonable substitute agreed to by Class Counsel) the names and current or last known addresses of Settlement Class Vehicle owners and lessees that can reasonably be obtained, and the Vehicle Identification Numbers (VINs) of Settlement Class Vehicles.
- c. Prior to mailing the Class Notice, an address search through the United States Postal Service's National Change of Address database will be conducted to update the address information for Settlement Class Vehicle owners and lessees. For each individual Class Notice

that is returned as undeliverable, Settlement Administrator shall re-mail the Class Notice where a forwarding address has been provided. For the remaining undeliverable notice packets where no forwarding address is provided, Settlement Administrator shall perform an advanced address search (e.g. a skip trace) and re-mail any undeliverable notices to the extent any new and current addresses are located.

- d. Settlement Administrator shall diligently, and/or as reasonably requested by Class Counsel, report to Class Counsel the number of individual Class Notices originally mailed to Settlement Class Members, the number of individual Class Notices initially returned as undeliverable, the number of additional individual Class Notices mailed after receipt of a forwarding address, and the number of those additional individual Class Notices returned as undeliverable.
- e. Settlement Administrator shall, upon request, provide Class Counsel with the names and addresses of all Settlement Class Members to whom Subaru sent a Class Notice pursuant to this section.
- f. Defendants shall implement a Settlement website containing:
 - i. instructions on how to submit a Claim for reimbursement;

- ii. instructions on how to contact Defendants and Class Counsel for assistance;
- iii. online submission forms;
- iv. a copy of the Claim Form, Class Notice and this Settlement Agreement; and
- v. any other relevant information agreed upon by counsel for the Parties.

2. No later than 10 days before the Fairness Hearing, Defendants shall provide an affidavit to Class Counsel, attesting that the Class Notice was disseminated in a manner consistent with the terms of the Settlement Agreement or those required by the Court.

IX. RESPONSE TO NOTICE

A. Objection to Settlement.

1. Any Settlement Class Member who intends to object to the fairness of this Settlement Agreement must, by the date specified in the Preliminary Approval Order and recited in the Class Notice, file any such objection via the Court's electronic filing system, and, if not filed via the Court's electronic filing system, must mail, postmarked by the date specified in the Preliminary Approval Order,

the objection to the Court and also serve by first-class mail copies of the objection upon:

Clerk of the Court
United States District Court
District of New Jersey
Mitchell H. Cohen Building
& U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101

Benjamin F. Johns
Chimicles Schwartz Kriner & Donaldson Smith LLP
361 W. Lancaster Avenue
Haverford, Pennsylvania 19041

Daniel R. Lapinski
Motley Rice LLC
210 Lake Drive East
Suite 101
Cherry Hill, New Jersey 08002

Kevin P. Roddy
Wilentz, Goldman & Spitzer, P.A.
90 Woodbridge Center Drive, Suite 900
Woodbridge, NJ 07095-0958

Neal Walters
Ballard Spahr LLP
210 Lake Drive East, Suite 200
Cherry Hill, New Jersey 08002

2. Any objecting Settlement Class Member must include with his or her objection:

- a. the objector's full name, current address, and telephone number;

- b. the model, model year, date of acquisition and vehicle identification number of the Settlement Class Vehicle, along with proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt);
- c. a written statement stating whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
- d. a written statement that the objector has reviewed the Settlement Class definition and understands in good faith that he or she is a Settlement Class Member;
- e. a written statement of all grounds for the objection accompanied by any legal support for such objection sufficient to enable the parties to respond to those specific objections;
- f. copies of any papers, briefs, or other documents upon which the objection is based and which are pertinent to the objection; and
- g. a statement of whether the Settlement Class Member complained to Defendants or an Authorized Subaru Dealer about a Qualifying Starlink Malfunction or has had any Qualifying Repairs and, if so, provide evidence of any such complaint or repairs.

3. In addition, any Settlement Class Member objecting to the settlement shall provide a list of all other objections submitted by the objector, and/or the objector's counsel, to any class action settlements submitted in any state or federal court in the United States in the previous five years, including the full case name with jurisdiction in which it was filed and the docket number. If the Settlement Class Member or his, her, or its counsel has not objected to any other class action settlement in the United States in the previous five years, he or she shall affirmatively so state in the objection.

4. Moreover, subject to the approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Fairness Hearing to explain why the proposed settlement should not be approved as fair, reasonable, and adequate, or to object to any petitions for Class Counsel Fees and Expenses or Service Awards. If the objecting Settlement Class Member intends to appear at the Fairness Hearing, the objecting Settlement Class Member must file with the Clerk of the Court and serve upon all counsel designated in the Notice a notice of intention to appear at the Fairness Hearing by the objection deadline as specified in the Preliminary Approval Order. The notice of intention to appear must include copies of any papers, exhibits, or other evidence, and the identity of witnesses, that the objecting Settlement Class Member (or the objecting Settlement Class Member's counsel) will present to the Court in connection with the Fairness

Hearing. A Settlement Class Member who fails to adhere to the requirements of this section may be deemed to have waived any objections to the settlement, any adjudication or review of the Settlement Agreement, by appeal or otherwise, and/or any right to appear at the Fairness Hearing.

5. Upon the filing of an objection, Class Counsel and Defendants' Counsel may take the deposition of the objecting Settlement Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and obtain any evidence relevant to the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

B. Request for Exclusion from the Settlement.

1. Any Settlement Class Member who wishes to be excluded from the Settlement Class must submit a request for exclusion ("**Request for Exclusion**"), online at the settlement website, or mailed substantially in the form attached hereto as Exhibit F, to Settlement Administrator at the address specified in the Class Notice by the date specified in the Preliminary Approval Order and recited in the Class Notice. To be effective, the Request for Exclusion must be submitted on the settlement website or sent to the specified address and:

- a. include the Settlement Class Member's full name, current address and telephone number;
 - b. identify the model, model year, date of acquisition and vehicle identification number of the Settlement Class Vehicle; and
 - c. specifically and unambiguously state in writing his or her desire to be excluded from the Settlement Class and election to be excluded from any judgment entered pursuant to the settlement.
2. Any Settlement Class Member who obtains relief pursuant to the terms of this Settlement Agreement after the receipt of the Class Notice gives up the right to exclude him or herself from this settlement.
3. Any request or exclusion must be submitted or postmarked on or before the deadline set by the Court, which date shall be approximately 45 days after the date of the mailing of Notice to Settlement Class Members. Any Settlement Class Member who fails to submit a timely and complete Request for Exclusion sent to the proper address shall be subject to and bound by this Settlement Agreement, the Release and every order or judgment entered relating to this Settlement Agreement.

4. Settlement Administrator will receive Requests for Exclusion and will follow guidelines developed jointly by Class Counsel and Defendants' counsel for determining whether they meet the requirements of a Request for Exclusion. Any communications from Settlement Class Members (whether styled as an exclusion request, an objection, or a comment) as to which it is not readily apparent whether the Settlement Class Member meant to exclude himself or herself from the Settlement Class will be evaluated jointly by counsel for the Parties, who will make a good faith evaluation, if possible, and may contact the Settlement Class Member for clarification. Any uncertainties about whether a Settlement Class Member is requesting exclusion from the Settlement Class will be submitted to the Court for resolution. Settlement Administrator will maintain a database of all Requests for Exclusion, and will send the original written communications memorializing those Requests for Exclusion to Class Counsel. Settlement Administrator shall report the names and addresses of all such persons and entities requesting exclusion to the Court and Class Counsel within seven days prior to the Final Hearing, and the list of persons and entities deemed by the Court to have excluded themselves from the Settlement Class will be attached as an exhibit to the Final Order and Judgment.

5. Objections and Requests for exclusions shall be permitted on an individual basis only. Any purported “class-wide” objections or opt-outs will be construed as being submitted on behalf of the person(s) signing them only.

X. WITHDRAWAL FROM SETTLEMENT

1. Plaintiffs or Defendants shall have the option to withdraw from this Settlement Agreement, and to render it null and void if any of the following occurs:

- a. Any objection to the proposed settlement is sustained and such objection results in changes to the Settlement Agreement that the withdrawing party deems in good faith to be material (*e.g.*, because it substantially increases the costs of the Settlement, or deprives the withdrawing party of a material benefit of the Settlement). A mere delay of the approval and/or implementation of the Settlement, including a delay due to an appeal procedure, if any, shall not be deemed material;
- b. The preliminary or final approval of this Settlement Agreement is not obtained without material modification, and any modification required by the Court for approval is not agreed to by both Parties, and the withdrawing party deems any required modification in good faith to

be material (e.g., because it increases the cost of the Settlement, or deprives the withdrawing party of a material benefit of the Settlement). A mere delay of the approval and/or implementation of the Settlement, including a delay due to an appeal procedure, if any, shall not be deemed material;

- c. Entry of the Final Order and Judgment described in the Settlement Agreement is vacated by the Court or reversed or substantially modified by an appellate court; or
- d. If 2,000 or more Class Members properly and timely exercise their right to opt out of the settlement, Defendants or Plaintiffs shall have the right to terminate this Settlement Agreement without penalty or sanctions, without prejudice to its position on the issue of class certification and the amenability of the claims asserted in the Action to class treatment, and the Parties shall be restored to their litigation position existing immediately before the execution of this Settlement Agreement.

2. To withdraw from this Settlement Agreement under this Section, the withdrawing party must provide written notice to the other party's counsel and to the Court within ten business days of receipt of any order or notice of the Court

modifying, adding, or altering any of the material terms or conditions of the Settlement Agreement. In the event either party withdraws from the Settlement, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Action, and shall not be offered into evidence or used in the Action or any other litigation for any purpose, including the existence, certification, or maintenance of any purported class. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be inadmissible as evidence and without prejudice to the Defendants and Plaintiffs, and shall not be deemed or construed to be an admission or confession by any party of any fact, matter or proposition of law, and shall not be used in any manner for any purpose, and all parties to the Action shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court. Upon withdrawal, either party may elect to move the Court to vacate any and all orders entered pursuant to the provisions of this Settlement Agreement.

XI. ADMINISTRATIVE OBLIGATIONS

A. Preliminary Approval of Settlement.

1. Promptly after the execution of the Settlement Agreement, Class Counsel shall present the Settlement Agreement to the Court, along with a motion requesting that the Court issue a Preliminary Approval Order.

B. Final Approval of Settlement.

1. If the Settlement Agreement is preliminarily approved by the Court, Class Counsel shall present a motion requesting that the Court issue a Final Order and Judgment directing the entry of judgment pursuant to FED. R. CIV. P. 54(b) substantially in the form attached as Exhibit C.

XII. FORM AND SCOPE OF JUDGMENT

1. Upon the Effective Date, the Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of the Final Order and Judgment shall have, fully and completely released, acquitted, and discharged the Released Parties from all Released Claims.

2. Upon the Effective Date, with respect to the Released Claims, the Plaintiffs and Settlement Class Members expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

3. Upon the Effective Date, the Action will be deemed dismissed with prejudice.

XIII. ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

1. The Parties agree that Class Counsel may apply to the Court for an award of reasonable attorneys' fees and expenses, inclusive of costs up to, but not to exceed, the total combined sum of \$1,500,000 ("one million five hundred thousand dollars"). Defendants will not oppose Class Counsel's application for Attorneys' Fees and Expenses up to and not exceeding the above amount, and Class Counsel may not be awarded, and shall not accept, any amount for attorneys' fees and expenses in excess of the above amount. Each party shall have the right of appeal to the extent the award is inconsistent with the Settlement Agreement. Attorneys' Fees and Expenses shall be in addition to the benefits provided directly to the Settlement Class (and shall be in addition to the Representative Plaintiffs' Service Awards), and shall not reduce or otherwise have any effect on the benefits made available to the Settlement Class.

2. Upon finalization of this Settlement Agreement, the Parties have agreed that Defendants will not oppose Plaintiffs' request, made as part of the Fee and Expense Application, that Defendants separately pay Service Awards of \$3,500 to each of the named Plaintiffs Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams, who have served as putative Representative Plaintiffs in the Action.

3. The Attorneys' Fees and Expenses and settlement class representative Service Awards shall be paid by wire transfer, check, or other mutually agreeable fashion to the designated Class Counsel payee ("Class Counsel payee") within ten (10) business days of the Effective Date or of the first date after all appellate rights with respect to the Attorney Fees and Expenses and settlement class representative Service Awards have expired or been fully resolved, whichever occurs later. Payment to the Class Counsel payee shall fully satisfy and discharge all obligations of Subaru with respect to payment of the Attorneys' Fees and Expenses and settlement class representative Service Awards.

4. The Class Counsel payee will be selected by Class Counsel within ten days after the date the Final Approval Order is entered. The Class Counsel payee shall distribute Attorneys' Fees and Expenses awarded by the Court between and among Class Counsel as Class Counsel mutually agree amongst themselves.

5. Payment of Attorneys' Fees and Expenses and the Representative Plaintiffs' Service Awards will not reduce the benefit being made available to the Settlement Class Members, and the Settlement Class Members will not be required to pay any portion of the Representative Plaintiffs' Service Awards or Attorneys' Fees and Expenses.

6. The Parties agree that Defendants are in no way liable for any taxes Class Counsel, Representative Plaintiffs, Plaintiffs, Settlement Class Members, or others may be required to pay as a result of the receipt of any settlement benefits.

XIV. MISCELLANEOUS PROVISIONS

A. Publicity

1. The Parties agree that other than the SOA website provided in Section VIII.B.1.f, no other publicity will be prepared or proceed by the Parties or counsel, except that counsel may respond to press inquiries and issue a general press release through their websites. Nothing in the Settlement Agreement shall preclude Class Counsel from issuing a press release or establishing and maintaining, at their own expense, an internet presence referencing only their role as Class Counsel in the Action and that a settlement has been reached with a hyperlink to the settlement website.

B. Effect of Exhibits

1. The exhibits to the Settlement Agreement are an integral part of the settlement and are expressly incorporated and made a part of the Settlement Agreement.

C. Entire Agreement

1. The Settlement Agreement represents the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations,

agreements and understandings relating to the subject matter of the Settlement Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation or understanding concerning any part or all of the subject matter of the Settlement Agreement has been made or relied on except as expressly set forth in the Settlement Agreement. No modification or waiver of any provisions of the Settlement Agreement shall in any event be effective unless the same shall be in writing and signed by the person or party against whom enforcement of the Agreement is sought.

D. Arm's-Length Negotiations and Good Faith

1. The Parties have negotiated all of the terms and conditions of the Settlement Agreement at arm's length, with the assistance of a mediator to reach agreement. The Parties agree that during the course of this Action, the Parties and their respective counsel have acted in good faith. All terms, conditions and exhibits in their exact form are material and necessary to the Settlement Agreement and have been relied upon by the Parties in entering into the Settlement Agreement. The Parties agree to act in good faith during the claims administration process.

E. Continuing Jurisdiction

1. The Parties agree that the Court may retain continuing and exclusive jurisdiction over them, including all Settlement Class Members, for the purpose of the administration and enforcement of the Settlement Agreement.

F. Binding Effect of Settlement Agreement

1. The Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, attorneys, heirs, successors and assigns.

G. Extensions of Time

1. The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in the Settlement Agreement, without further notice (subject to Court approval as to Court dates).

H. Authority to Execute Settlement Agreement

1. Each counsel or other person executing the Settlement Agreement or any of its exhibits on behalf of any party hereto warrants that such person has the authority to do so.

I. Return of Confidential Materials

1. All documents and information designated as “confidential” and produced or exchanged in the Action, shall be returned or destroyed in accordance

with the terms of the Discovery Confidentiality Order entered in the Action on June 19, 2019 (ECF No. 40).

J. No Assignment

1. The Parties represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the litigation or any related action.

K. No Third-Party Beneficiaries

1. The Settlement Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation or undertaking established herein to any third party (other than Settlement Class Members themselves) as a beneficiary of the Settlement Agreement.

L. Construction

1. The determination of the terms and conditions of the Settlement Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of the Settlement Agreement and, therefore, the terms and conditions of the Settlement Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

M. Captions

1. The captions or headings of the sections and paragraphs of the Settlement Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of the Settlement Agreement.

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.


Benjamin F. Johns
Andrew W. Ferich
Alex M. Kashurba
Chimicles Schwartz Kriner
& Donaldson Smith LLP
361 W. Lancaster Avenue
Haverford, Pennsylvania 19041
Tel: (610) 642-8500
bfj@chimicles.com
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Date: August 30, 2019

Attorneys for Plaintiffs and the Class


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Date: August 30, 2019

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Date: August 30, 2019

Attorneys for Defendants, Subaru Corporation and Subaru of America, Inc.

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Benjamin F. Johns
Andrew W. Ferich
Alex M. Kashurba
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& Donaldson Smith LLP
361 W. Lancaster Avenue
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Date:

Date:

Attorneys for Plaintiffs and the Class

Attorneys for Plaintiffs and the Class



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Date: *8/30/2019*

Date:

Attorneys for Plaintiffs and the Class

Attorneys for Plaintiffs and the Class



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calins@ballardspahr.com

Date: August 30, 2019

Attorneys for Defendants, Subaru
Corporation and Subaru of America,
Inc.

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: _____

CHAD UDEEN

DATED: _____

MARY JANE JEFFERY

DATED: _____

LYDIA RUNKEL

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: 8/13/2019



CHAD UDEEN

DATED: _____

MARY JANE JEFFERY

DATED: _____

LYDIA RUNKEL

DATED: _____

MICHAEL BOLICK

DATED: _____

GARY GILPIN

DATED: _____

ALICIA SMITH

DATED: _____

SUSAN WILLIAMS

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: _____

CHAD UDEEN

DATED: 8/12/2019



MARY JANE JEFFERY

DATED: _____

LYDIA RUNKEL

DATED: _____

MICHAEL BOLICK

DATED: _____

GARY GILPIN

DATED: _____

ALICIA SMITH

DATED: _____

SUSAN WILLIAMS

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: _____
CHAD UDEEN

DATED: _____
MARY JANE JEFFERY

DATED: _____ 8/12/2019
LYDIA RUNKEL *Lydia Runkel*

DATED: _____
MICHAEL BOLICK

DATED: _____
GARY GILPIN

DATED: _____
ALICIA SMITH

DATED: _____
SUSAN WILLIAMS

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: _____ CHAD UDEEN

DATED: _____ MARY JANE JEFFERY

DATED: _____ LYDIA RUNKEL

DATED: 8.14.19 *Michael Bolick*
MICHAEL BOLICK

DATED: _____ GARY GILPIN

DATED: _____ ALICIA SMITH

DATED: _____ SUSAN WILLIAMS

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: _____
CHAD UDEEN

DATED: _____
MARY JANE JEFFERY

DATED: _____
LYDIA RUNKEL

DATED: _____
MICHAEL BOLICK

DATED: 8/15/2019

GARY GILPIN

DATED: _____
ALICIA SMITH

DATED: _____
SUSAN WILLIAMS

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: _____
CHAD UDEEN

DATED: _____
MARY JANE JEFFERY

DATED: _____
LYDIA RUNKEL

DATED: _____
MICHAEL BOLICK

DATED: _____
GARY GILPIN

DATED: 8/19/2019

ALICIA SMITH

DATED: _____
SUSAN WILLIAMS

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: _____
CHAD UDEEN

DATED: _____
MARY JANE JEFFERY

DATED: _____
LYDIA RUNKEL

DATED: _____
MICHAEL BOLICK

DATED: _____
GARY GILPIN

DATED: _____
ALICIA SMITH

DATED: 8-14-19
Susan Williams
SUSAN WILLIAMS