

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**Aimee Hickman, Jared Hickman, William
Treasurer, Kelly Drogowski, Frank
Drogowski, John Taitano, Richard
Palermo, Lori Woiwode, Shawn Woiwode,
Carolyn Patol, Cassandra Sember, and
Steven Sember**, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

**Subaru of America, Inc. and
Subaru Corporation**

Defendants.

Civil Action No. 1:21-CV-02100

Settlement Agreement and Release

This Class Action Settlement Agreement and Release (“**Agreement**” or “**Settlement Agreement**”) is entered into between Plaintiffs Aimee Hickman, Jared Hickman, William Treasurer, Kelly Drogowski, Frank Drogowski, John Taitano, Richard Palermo, Lori Woiwode, Shawn Woiwode, Carolyn Patol, Cassandra Sember, and Steven Sember (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, with SOA, “**Defendants**” or “**Subaru**”). Collectively, Plaintiffs and Defendants shall be referred to as the “Parties.” The Agreement is intended to fully, finally, and forever resolve, discharge, and settle the lawsuit captioned *Hickman v. Subaru of America, Inc.*, No. 1:21-CV-02100 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. RECITALS

1. WHEREAS, Plaintiffs have filed the Action as a putative class action against Defendants, claiming that the Settlement Class Vehicles are equipped with a defective continuously variable transmission (“CVT”);

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 Settlement Class Vehicles are not defective; that no applicable warranties were breached nor applicable statutes violated ; that the Settlement Class Vehicles 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 6000 pages produced to date, with further productions pending, regarding:
 - i. Vehicle service and warranty histories for each of the Plaintiffs;
 - ii. Original and revised Technical Service Bulletins;
 - iii. Settlement Class Vehicle owner’s manuals and warranty and maintenance books;
 - iv. Settlement Class Vehicle warranty claims data; and
 - v. SOA and SBR’s internal investigation, analysis and conclusions.
- b. Independent investigations and analyses by Plaintiffs and Defendants, including consultation with class members, and consultation and research by consultants retained for the purposes of the Litigation.

c. Plaintiffs' confirmatory discovery requests, which included both Requests for Production and Interrogatories.

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 defective CVTs 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 two mediation sessions before Bradley A. Winters, Esq., of JAMS, and in the view of counsel for 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 Agreement and in the attached Exhibits (in addition to any definitions provided elsewhere in this Agreement), they shall have the following meanings:

1. “**Action**” means the lawsuit captioned *Hickman, et al. v. Subaru of America, Inc., et al.*, No. 1:21-CV-02100 pending in the United States District Court for the District of New Jersey.

2. “**Authorized Voucher Participant**” means any Class Member who has satisfied the Criteria for a Voucher. Status or rights as an Authorized Voucher Participant are not transferable.

3. “**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 in connection with the Action. Attorneys’ Fees and Expenses shall not, under any circumstances, exceed the sum of \$750,000.00 (“seven hundred fifty thousand 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 settlement class representatives by Defendants, as discussed below.

4. “**Authorized Subaru Dealer**” means any authorized Subaru dealer in the continental United States, Hawaii or Alaska.

5. “**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.

6. “**Claim Form**” means the forms attached hereto as **Exhibit A**, to be provided to the Settlement Class Members via the Settlement website.

7. **“Class Counsel”** shall mean Abigail Gertner of Berger Montague PC, Amey J. Park of Berger Montague PC, Natalie Lesser of Berger Montague PC, and Russell D. Paul of Berger Montague PC.

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

9. **“Criteria for a Voucher”** refers to the conditions a Class Member must meet to be eligible for a Voucher under this Settlement Agreement. To be eligible, a Class Member:

- a. Must be a current or former owner/lessee of a Class Vehicle as of the Notice Date; and
- b. Must provide Proof of Presentment showing that, while owning or leasing the Class Vehicle, the Settlement Class Member had at least two previous instances where they either:
 - i. Presented the vehicle to an Authorized Subaru Dealer for a repair, attempted repair, replacement, diagnosis or inspection for a Qualifying Voucher Failure but not for the implementation of a Recall; or
 - ii. Contacted SOA’s customer service division about a Qualifying Voucher Failure, but not about the implementation of a Recall.

10. **“Defendants’ Counsel”** means Ballard Spahr LLP, 700 East Gate Drive, Mt. Laurel 08054, who are the attorneys of record representing Subaru of America, Inc. and Subaru Corporation.

11. **“Effective Date”** means ten (10) business days after 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).

12. “**Fairness Hearing**” means the hearing at which the Court will consider whether to 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 Final Judgment and Order, and make such other final rulings as are contemplated by this Settlement Agreement.

13. “**First Class Notice**” means the postcard 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.

14. “**Full Notice**” means the notice substantially in the form attached hereto as **Exhibit C**, as approved by the Court, which will be provided to Settlement Class Members after the Effective Date via the Settlement website.

15. “**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.

16. “**Final Judgment and Order**” or “**Judgment**” means the judgment, substantially in the form attached hereto as **Exhibit D**, to be entered by the Court in the Action finally approving this Agreement and dismissing the Action with prejudice.

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

18. “**Notice Date**” means the date the Settlement Administrator provides the First Class Notice to the Settlement Class Members. Subject to the Court’s approval, the Notice Date shall be within 90 (ninety) days after the Court enters a Preliminary Approval Order, substantially in the form attached hereto as **Exhibit E**.

19. “**Preliminary Approval Order**” means the Court’s order preliminarily approving the terms of this 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 E.

20. “**Proof of Repair Expenses**” refers to reasonable documentation (e.g., repair order, receipt, credit card statement, bank statement, invoice, photograph, historical accounting record, or similar documents, in any combination) for a Qualifying Repair before the Notice Date. This documentation must include: (i) repair date; (ii) vehicle make and model; (iii) vehicle identification number; (iv) vehicle mileage at repair time; (v) repair facility; (vi) description of work, with a parts and labor cost breakdown; and (vii) proof of payment by (or on behalf of) the Settlement Class Member for a repair or replacement eligible for reimbursement under this Settlement Agreement.

21. “**Qualifying Voucher Failure**” in the context of this Settlement Agreement, is a criterion used to determine the eligibility of Class Members for compensation, benefits, or remedies as outlined in the terms of this Agreement. Specifically, it refers to:

- a. A specific type of malfunction within the CVT of the Settlement Class Vehicles, as addressed in Service Bulletin 16-136-22 (including all revisions) characterized by the potential failure of the multiple plate transfer (“**MPT**”) clutch that can result in the vehicle experiencing judder, shudder and vibration, and

- b. A malfunction associated with a Recall, which addresses symptoms such as the CVT chain slipping and/or breaking that can result in the vehicle experiencing hesitation or slipping.

A Qualifying Voucher Failure may be noticeable to the driver or passengers as hesitation, slip, shudder, vibrations, and/or judder. Other discrete component failures of the CVT not related to this hesitation, slip, shudder, vibration and/or judder or failures caused by misuse, abuse, or neglect are not Qualifying Voucher Failures.

22. **“Qualifying Extended Warranty Failure”** refers to the occurrence of shudder, judder and vibration issues related to the MPT clutch, as specified in the 16-136-22 Service Bulletin, or damage to any component (such as the engine shaft or transmission shaft) caused by a malfunctioning MPT clutch in Class Vehicles. In the context of this Settlement Agreement, a Qualifying Extended Warranty Failure is a criterion used to determine the eligibility of Class Members for compensation, benefits, or remedies as outlined in the terms of this Agreement. Other discrete component failures of the CVT not related to the occurrence of vibration, shudder and/or judder or failures caused by misuse, abuse, or neglect are not Qualifying Extended Warranty Failures.

23. **“Qualifying CVT Repair”** refers to any repair, attempted repair, replacement, or inspection performed by an Authorized Subaru Dealer in which the primary purpose is to address a Qualifying Extended Warranty Failure, excluding any repairs or visits related to a Recall. A Qualifying CVT Repair does not include repair work performed to address a condition that was unrelated to a Qualifying Extended Warranty Failure. Repairs performed pursuant to any Subaru recalls, including those related to the CVT, are governed by the National Traffic and Motor

Vehicle Safety Act, 49 U.S.C. §§ 30101–30505, and are not considered Qualifying CVT Repairs for the purposes of this Settlement Agreement.

24. **“Recall”** refers to any voluntary safety and emissions recalls initiated by SOA and supervised by the National Highway Traffic Safety Administration (NHTSA) that affect the CVT in the Settlement Class Vehicles, including Recall Nos. 21V-955 and 21V-485, Manufacturer Recall Nos. WRK-21 and WRK-22, and the earlier WUV-07 recall, which was superseded by WRK-21 and WRK-22. These recalls target specific Subaru vehicles, such as the 2019-2020 Subaru Ascent vehicles produced between February 22, 2018, and July 20, 2020, where the CVT chain may slip and/or break and/or the vehicle may experience hesitation or slipping. The definition encompasses any recalls addressing safety and emissions concerns related to the CVT and which prescribe the necessary corrective actions to be taken by the manufacturer and authorized dealers to ensure the safety, performance, and compliance of the impacted vehicles. The required reimbursement program under the Recall covers properly documented out-of-pocket expenses paid for diagnostic fees.

25. **“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 Voucher Failure of Settlement Class Vehicles including claims for reimbursement for amounts spent on parts or related labor, or diminution in value of the vehicle, that were or could have been raised in the Action related to a Qualifying Voucher Failure. 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) that were not asserted in the Action. Nothing in this Settlement shall be construed as a waiver, release and/or compromise of any Lemon Law Action pending as of the Notice Date pertaining to the defective CVTs as alleged in the Action. Settlement Class Members 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."

26. **“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., all designers, manufacturers, assemblers, distributors, importers, marketers, advertisers, testers, inspectors, sellers, suppliers, component suppliers, lessors, warrantors, 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, members, assigns, representatives, attorneys, insurers, trustees, vendors, contractors, heirs, executors, administrators, successor companies, parent companies, subsidiary companies, affiliated companies, divisions, trustees, vendors and representatives.

27. **“Service Awards”** means the \$3,750 (combined total of \$30,000) that Defendants have agreed to pay to the named Class Representatives, such that there will be one payment per vehicle owned or leased by the named Class Representative, i.e. eight payments, as indicated in the operative complaint of the Action, upon finalization of this Settlement Agreement and approval by the Court.

28. **“Settlement Administrator”** means JND Legal Administration, 1100 2nd Ave Suite 300, Seattle, WA.

29. **“Settlement Class”** means the stipulated certified class as described in Section III.

30. **“Settlement Class Vehicle”** and **“Vehicles”** means model year 2019-2020 Ascent vehicles.

31. “**Settlement Class Member**” means, subject to the exclusion in Section III, a natural person who is the current or former owner or lessee of a Settlement Class Vehicle, who purchased or leased in the continental United States, including Alaska or Hawaii, who purchased the vehicle for purposes other than for resale, 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. This definition is not intended to exclude military personnel stationed overseas.

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

33. “**Settlement Extended Parts Warranty**” or “**Extended Parts Warranty**” means the terms of extended parts warranty coverage as described in Section VI.B.

34. “**Technical Service Bulletin**” or “**TSB**” means the document(s) issued by Subaru, which provide Authorized Subaru Retailers with the recommended diagnostic and repair procedures for Settlement Class Vehicles. Any future issued or revised TSB shall not diminish the relief provided to Class Members under the Settlement.

35. “**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 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 that arise from the same facts as were alleged in the Action and that were or could have been raised in the Action related to a

Qualifying Failure. As outlined above, and in furtherance of the same, the definitions of “Released Claims” and “Unknown Claims” shall both expressly exempt claims for death, personal injuries and property damage (other than damage to the Settlement Class Vehicle) that were not asserted in the Action.

36. “**Voucher**” means a one-time, non-transferable credit issued to qualifying Settlement Class Members, which can be applied towards the purchase of sales, services, or merchandise.

III. ESTABLISHMENT OF A SETTLEMENT CLASS

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

All natural persons who are residents of the continental United States as well as Hawaii and Alaska, currently or previously owning or leasing a Settlement Class Vehicle originally purchased or leased in the continental United States, Alaska or Hawaii. Excluded from the Settlement Class are (a) claims for personal injury and/or property damage, though claims for a Qualifying Failure in a Settlement Class Vehicle are included regardless of additional personal injury or property damage not claimed; (b) all Judges who presided over the Action and their spouses; (c) all current employees, officers, directors, agents, and representatives of Defendants and their family members; (d) any affiliate, parent, or subsidiary of Defendants and any entity in which Defendants have a controlling interest; (e) used car dealers; (f) anyone who purchased a Settlement Class Vehicle solely for resale; (g) anyone who purchased a Settlement Class Vehicle with a salvaged title and/or any insurance company that acquired a Settlement Class Vehicle as a result of a total loss; (h) any insurer of a Settlement Class Vehicle; (i) issuers of extended vehicle warranties and service contracts; (j) any Settlement Class Member who, prior to the date of the Settlement Agreement, settled with and released Defendants or any Released Parties from any Released Claims; (k) any Settlement Class Member filing a timely and proper Request for Exclusion from the Settlement Class; and (l) third-party issuers.

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 Representative Plaintiffs as representatives of the Settlement Class, and appointing Class Counsel to serve as counsel for the Settlement Class.

3. For the purposes of implementing this Settlement Agreement and effectuating the settlement, the Parties stipulate to propose that JND Legal Administration will be appointed as the Settlement Administrator, subject to the approval of the Court. Defendants will pay all costs of notice of the settlement and settlement administration.

4. For the purposes of implementing this Settlement Agreement and effectuating the settlement, Subaru stipulates that Representative Plaintiffs and Class Counsel are adequate representatives of the Settlement Class.

IV. NO ADMISSION OF LIABILITY

1. The Parties acknowledge that the Settlement Consideration, described in Section VI, represents a compromise and final settlement of disputed claims. Neither the fact of, nor any provision contained in this 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 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 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 this Agreement or to raise the release provisions of this Agreement as a defense.

V. RELEASE AND WAIVER

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

2. In consideration of the Settlement, all parties, including Defendants, Representative Plaintiffs, Plaintiffs, and 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.

3. 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 Date, to the extent that the action relates in any way to a Qualifying Failure.

4. 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 Failure.

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

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

7. 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.

8. 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) concerning the Action, except as otherwise stated in this Settlement Agreement.

9. Representative Plaintiffs expressly understand and acknowledge, that all Representative Plaintiffs, Plaintiffs, and Settlement Class Members will be deemed by the Final Judgment and Order 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.

10. 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.

11. 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 Bradley A. Winters, Esq., JAMS Mediator, Arbitrator and Referee/Special Master. 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.

12. 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.

13. 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 Judgment and Order entered by the Court.

VI. SETTLEMENT CONSIDERATION

In consideration of 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 benefits to the Settlement Class. The availability of settlement benefits upon the Notice Date is a negotiated term of the settlement, secured by Class Counsel as a direct result of the Class Action Settlement. If a final judgment is not entered for this Settlement, Subaru reserves the right to revert all warranties back to the limits set forth in the applicable Powertrain Limited Warranty and the Limited Warranty for Genuine Subaru Replacement Parts and Accessories.

A. Settlement Warranty Extension for Current Owners or Lessees

1. Effective on the Notice Date, Subaru will extend its Powertrain Limited Warranty for Settlement Class Vehicles concerning a Qualifying Extended Warranty Failure or components damaged by a malfunctioning MPT clutch (*i.e.*, engine shaft, transmission shaft, etc.), covering repair work performed by an Authorized Subaru Dealer to address a Qualifying Extended Warranty Failure. The extended warranty lasts for eight years or 100,000 miles, whichever occurs first, from the In-Service Date. Apart from the extended duration, the

Settlement Extended Warranty adheres to the Powertrain Limited Warranty terms. If a one-time repair is ineffective, the warranty shall provide for a CVT replacement, if required.

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

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

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

5. Vehicles are ineligible for warranty coverage under the Powertrain Limited Warranty's existing terms if declared a total loss, sold for salvage, dismantled, destroyed, or materially altered; or if the odometer mileage has been tampered with, rendering it indeterminable. Such vehicles are excluded from the Settlement Extended Warranty.

6. The Settlement Extended Warranty, the Settlement Parts Warranty Extension discussed in Part VI.B below, and the Settlement Agreement generally, do not add to, diminish, or otherwise affect any express or implied warranty, duty, or contractual obligation of Defendants regarding Settlement Class Vehicles, except for matters related to Qualifying Voucher Failures, Qualifying Extended Warranty Failures, and Qualifying CVT Repairs.

7. SOA may continue implementing vehicle service, customer satisfaction or goodwill policies, programs, or procedures at its discretion, extending goodwill consideration to individual Settlement Class Members on a case-by-case basis without considering their entitlement to relief under the Settlement Agreement. However, a Settlement Class Member cannot obtain more than one recovery for the same Qualifying CVT Repair. Any compensation paid under the Settlement Agreement for a Qualifying CVT Repair will be reduced by any cash

or cash-in-kind concession, excluding the value of any Voucher paid pursuant to this Settlement Agreement, related to a Qualifying CVT Repair provided by SOA, a Subaru Authorized Dealer, or any other entity, up to no reimbursement if the Class Member received payments equal to or exceeding the available settlement relief. There will be no offset for non-cash considerations previously provided (e.g., Bluetooth speakers, bags, vacuum cleaners). Interim goodwill decisions by SOA will not deprive a Settlement Class Member of the Settlement Extended Warranty, the Settlement Parts Warranty Extension discussed in Part VI.B below, or benefits under the Settlement Agreement not previously provided as goodwill.

B. Settlement Parts Warranty Extension for Current Owners or Lessees

1. Effective on the Notice Date, Subaru will extend its Limited Warranty for Genuine Subaru Replacement Parts and Accessories for any MPT clutch replacement to two years with no mileage limitation. The Settlement Extended Warranty follows the same terms as the Limited Warranty for Genuine Subaru Replacement Parts and Accessories, except for the extended duration.

2. Effective on the Notice Date, Subaru will extend its Limited Warranty for Genuine Subaru Replacement Parts and Accessories for CVTs replaced as part of, or prior to, the Recall to two years with no mileage limitation. The Settlement Extended Warranty follows the same terms as the Limited Warranty for Genuine Subaru Replacement Parts and Accessories, except for the extended duration.

3. The Settlement Extended Parts Warranty is transferable during its coverage period.

4. The Settlement Extended Parts Warranty covers all costs associated with Qualifying Repairs performed by an Authorized Subaru Dealer.

5. The Settlement Extended Parts Warranty is subject to the same terms and conditions set forth in the Settlement Class Vehicle's Limited Warranty for Genuine Subaru Replacement Parts and Accessories and the Warranty and Maintenance Booklet, except as specifically modified herein.

C. Voucher for Multiple Qualifying Repair Visits

1. An Authorized Voucher Participant satisfying the Criteria for a Voucher is entitled to receive a Voucher upon approval of a properly submitted Claim.

2. The value of the Voucher is determined by the number of Qualifying Voucher Failure visits made by the Settlement Class Member:

- a. for two such visits, the Voucher value is \$400; and
- b. for three or more such visits, the Voucher value is \$750.

3. Vouchers must be used within one year from the date of issuance, after which they will expire and no longer be valid.

D. Pre-Notice Qualifying Reimbursable Expenses

1. Reimbursement: SOA agrees to reimburse former and current owners and lessees of Settlement Class Vehicles for certain expenses related to obtaining a Qualifying CVT Repair for shudder, judder or vibration related to the MPT clutch, subject to sufficient Proof of Repair Expenses. If a Settlement Class Vehicle required a Qualifying CVT Repair from an Authorized Subaru Dealer prior to the Notice Date, and the Settlement Class Member paid out-of-pocket for that repair, they may be reimbursed for the unreimbursed cost of the Qualifying CVT Repair upon providing sufficient proof. The reimbursement program under the Recall covers properly documented out-of-pocket expenses paid for diagnostic fees.

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.C and 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 Qualifying Failure 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

The Parties agree that Defendants shall be responsible for the costs of First Class Notice and settlement administration. Plaintiffs retain the right to audit and review the First Class Notice and claims administration processes in accordance with Section VII below.

VII. CLAIMS ADMINISTRATION

A. Administration

1. Settlement Administrator shall mail to the Settlement Class Member, at the address listed on the Claim Form or at an address later updated by the Settlement Class Member, the Administrator's decision on the Claim, to be sent within ninety (90) days after receipt of the Claim, or within ninety (90) days of the Effective Date, whichever is later.

2. For each approved Claim for Reimbursement, the Settlement Administrator shall within this time period mail to the Settlement Class Member a reimbursement check for the unreimbursed permissible expenses to which the Settlement Class Member is entitled.

3. For any Claim for Reimbursement that is incomplete or deficient, or 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 Paragraph 1 above, mail to the

Settlement Class Member, at the address listed on the Claim Form, a “Claim Decision and Option Letter” (substantially in the form attached hereto as **Exhibit F**) stating:

- a. That a partial reimbursement has been awarded and/or that the claim has been rejected;
- b. The amount of the proposed reimbursement;
- c. Whether rejection of the 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. Any other applicable reason impacting payment of the full amount of the reimbursement sought by the Settlement Class Member.
- d. The Settlement Class Member’s right to a Second Review of the Settlement Administrator’s decision, as described in Section VII.B below; and

4. Any Settlement Class Member who receives a Claim Decision and Option Letter under Paragraph 3 above, may:

- a. Initiate a Second Review of the Settlement Administrator’s decision by completing and mailing or emailing the Claim Decision and Option Letter along with any additional explanation and/or documents to cure any alleged deficiencies, postmarked within or emailed within forty-five (45) days of the mailing of the Claim Decision and Option Letter; or
- b. Accept the reimbursement offered, which no response is required to accept.

5. If a Settlement Class Member accepts the reimbursement offer, Settlement Administrator shall mail the Settlement Class Member a reimbursement check within ninety (90)

days of the Effective Date or within ninety (90) days of the mailing of the Claim Decision and Option Letter after receipt of said acceptance by Settlement Administrator (determined either by Settlement Administrator's receipt of the completed Claim Decision and Option Letter 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 Review

1. A Settlement Class Member who initiates a Second Review may:
 - a. rely solely on the documents submitted with the Claim; or
 - b. also submit a written statement and/or additional documentation to cure any alleged deficiencies in advance of the Settlement Administrator's Second Review.
2. In each Second Review, the 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 a senior level 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, and will not involve consultation with the employee who made the initial determination.
4. The reviewer will review the 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 reimbursement sought, if the Settlement Class Member's Claim meets the requirements under this Agreement for justifying that amount.

5. The Second Review determination, along with any applicable payment, will be mailed to the Settlement Class Member within forty-five (45) days of the date in which the request for a Second Review was received by the Settlement Administrator, or within sixty (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 either modified or not changed. The Settlement Administrator's decision shall be final and not appealable.

6. Class Counsel will have the right to reasonably monitor the claims administration process and ensure that the Settlement Administrator is acting in accordance with the Settlement Agreement.

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

8. As soon as reasonably possible after the claims deadline, after all Claims have been processed to determine their validity, the Settlement Administrator will provide Class Counsel and Defendants' Counsel with a list of Claimants with valid claims, including the settlement payment for each Claimant; and a list of all Claims it deems invalid or untimely.

9. The Settlement Administrator will maintain a database of Claims, which will include all relevant information captured from Claimants' Claim Forms.

VIII. CLASS NOTICE AND PUBLICATION

A. To Attorney General

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. Defendants shall also provide contemporaneous notice to Class Counsel that notice to the Attorneys General was completed.

B. To Settlement Class

1. Settlement Administrator shall be responsible for the following Settlement Class

Notice program:

- a. Within ninety (90) days after entry of the Preliminary Approval Order discussed in Section II.19 of this Agreement, Settlement Administrator shall cause individual notice, substantially in the form attached hereto as Exhibit F, to be mailed, by first class mail, to the current or last known addresses of all reasonably identifiable Settlement Class Members. Notice shall be in made in the form of a postcard, that shall: (1) advise the Class Member to access the settlement website; or (2) call a toll free number for the Full Notice including instructions on seeking the Claim Form and the Request for Exclusion Form. The Parties may format the First Class Notice in such a way as to ensure legibility, and access to the Full Notice. The ability to receive a Full Notice via toll free number is to be prominently displayed. Settlement Administrator shall be responsible for dissemination of the First Class Notice.
- b. For purposes of identifying Settlement Class Members, the Settlement Administrator shall obtain from Subaru's records and verify with Experian (or a reasonable substitute agreed to by the 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 First 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 First Class Notice that is returned as undeliverable, Settlement Administrator shall re-mail the First 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 First Class Notices originally mailed to Settlement Class Members, the number of individual First Class Notices initially returned as undeliverable, the number of additional individual First Class Notices mailed after receipt of a forwarding address, and the number of those additional individual First 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 Settlement Administrator sent a First Class Notice pursuant to this section.
- f. Consistent with Section IX.B.1 and Paragraph 1.g defendants shall implement a Settlement website containing:
 - i. a copy of the Claim Form, Full Notice, this Settlement Agreement, Court Orders regarding this Settlement, and other relevant Court documents, including Co-Lead Class Counsel's Motion for Approval of Attorneys' Fees, Costs, and Service Awards;
 - ii. instructions on how to submit a Claim for reimbursement;

- iii. information concerning deadlines for filing a Claim and the dates and locations of relevant Court proceedings, including the Fairness Hearing;
 - iv. instructions on how to contact the Settlement Administrator, Defendants, and Class Counsel for assistance;
 - v. online submissions forms; and
 - vi. any other relevant information agreed upon by counsel for the Parties.
- g. The Settlement Administrator will also email a hyperlink to the Settlement Website and electronic versions of the Long Form Notice and Claim Form to Class Members for whom the Settlement Administrator may obtain an email address for.

2. No later than ten (10) days before the Fairness Hearing, Defendants and the Settlement Administrator shall provide an affidavit(s) to Class Counsel, attesting that the First Class Notice was disseminated in a manner consistent with the terms of this 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 Full Notice, file any such objection via the Court's electronic filing system, and if not filed via the Court's electronic 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

Russell D. Paul, Esq.
Berger Montague PC
1818 Market Street
Suite 3600
Philadelphia, PA 19103

Neal Walters
Ballard Spahr, LLP
700 East Gate Drive
Suite 300
Mount Laurel, NJ 08054

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 that the objector has reviewed the Settlement Class definition and understands in good faith that he or she is a Settlement Class Member;
 - d. 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;
 - e. copies of any papers, briefs, or other documents upon which the objection is based and which are pertinent to the objection; and

- f. a statement whether the Settlement Class Member complained to Defendants or an Authorized Subaru Dealer about a Qualifying Failure 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 (5) 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 (5) 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 to obtain any evidence relevant to the objection. Service of the subject deposition notice may be accomplished by e-mail upon the objector. Failure by an objector to make himself or herself available for deposition or comply with expedited discovery may result in the Court striking 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 G**, to Settlement Administrator at the address specified in the Full Notice by the date specified in the Preliminary Approval Order and recited in the Full 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; and
- b. 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 First Class Notice gives up the right to exclude him or herself from this settlement.

3. Any request or exclusion must be submitted online or postmarked on or before the deadline set by the Court, which date shall be approximately forty-five (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 thirty (30) days prior to the Fairness

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 Judgment and Order.

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 only on behalf of the person who actually submitted the exclusion.

6. Settlement Class Members who obtain relief under this Settlement Agreement after receiving the Class Notice relinquish their right to exclude themselves from the settlement.

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 this 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 Judgment and Order described in this Agreement is vacated by the Court or reversed or substantially modified by an appellate court; or
- d. If 1,000 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 (10) business days of receipt of any order or notice of the Court modifying, adding or altering any of the material terms or conditions of this 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.

3. A change in law, or change of interpretation of present law, that affects this Settlement shall not be grounds for withdrawal from the Settlement.

XI. ADMINISTRATIVE OBLIGATIONS

A. Preliminary Approval of Settlement

Promptly after the execution of this Agreement, Class Counsel shall present this Agreement to the Court, along with a motion requesting that the Court issue a Preliminary Approval Order substantially in the form attached as **Exhibit E**.

B. Final Approval of Settlement

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

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 Judgment and Order 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. 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 \$750,000 (seven hundred and fifty 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 this 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 \$3,750.00 (combined total of \$30,000) for each named Class Representative, such that there will be one payment per vehicle owned or leased by the named Class Representatives, i.e. eight payments, as indicated in the operative complaint of the Action. If awarded by the Court, the fee, cost, and expense award shall be payable by Defendants within 60 days after the date of entry of the Final Judgment and Order, notwithstanding the existence of any Objections, pending or forthcoming appeals, or collateral attack on the Settlement, the fee, cost, and expense Award, or the Service Awards. At least 30 days prior to payment of the fee, cost, and expense Award, Class Counsel shall furnish Defendants' Counsel with all necessary payment and routing information to facilitate the transfer.

3. If the Final Judgment and Order is vacated, overturned, reversed, or rendered void or unenforceable as a result of an appeal, or if the Settlement Agreement is voided, rescinded, or otherwise terminated, then Class Counsel shall, within 30 days, repay to Defendants the fee, cost, and expense award it received, plus interest Class Counsel earned on that amount, if any.

4. If the fee, cost, and expense award is reduced on appeal, but all other terms of the Settlement Agreement remain in full effect, Class Counsel shall only repay the portion of the fee, cost, and expense award by which it is reduced.

5. 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.

6. The Class Counsel payee will be selected by Class Counsel within ten (10) days after the date the Final Judgment and 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.

7. The procedure for the grant, denial, allowance or disallowance by the Court of the Attorneys' Fee and Expenses application are not part of the Settlement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement. Any order or proceedings relating solely to the Fee and Expense Application, or any appeal from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the Effective Date of this Agreement. Payment of Attorneys' Fees and Expenses and 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.

8. The Parties agree that Defendants are in no way liable for any taxes Class Counsel, Plaintiffs, Representative 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

The Parties agree that any statements made to the press shall be agreed upon by counsel for all parties. In no event shall any reference be made to information designated as "Confidential."

B. Effect of Exhibits

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

C. Entire Agreement

This 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 this 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 this Agreement has been made or relied on except as expressly set forth in this Agreement. No modification or waiver of any provisions of this 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

The Parties have negotiated all of the terms and conditions of this Agreement at arm’s length and as an extension of the mediation efforts conducted by Bradley A. Winters, Esq. The Parties agree that during the course of this Litigation, 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 this Agreement and have been relied upon by the Parties in entering into this Agreement. The Parties agree to act in good faith during the claims administration process.

E. Continuing Jurisdiction

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 this Agreement.

F. Binding Effect of Settlement Agreement

This 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

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

H. Authority to Execute Settlement Agreement

Each counsel or other person executing this 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

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 November 21, 2022 (ECF No. 56).

J. No Assignment

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

This 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 this Agreement.

L. Construction

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

M. Choice of Law

New Jersey law will apply to any disputes regarding the settlement agreement. Federal law shall govern approval of the settlement, preliminary and final certification of the Settlement Class, and all related issues, such as Plaintiffs' fee and expense petition.

N. Captions

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

BERGER MONTAGUE PC

BALLARD SPAHR LLP

BY: 

Russell D. Paul
Amey J. Park
Abigail J. Gertner
Natalie Lesser
1818 Market St., Suite 3600
Philadelphia, PA 19103

BY: 

Neal D. Walters
Casey G. Watkins
Kristen Petagna
700 East Gate Dr., Suite 330
Mount Laurel, NJ 08054

Attorneys for Plaintiffs

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

Dated: 7/25/2023

Dated: 08/18/2023

Dated: 7/19/2023

DocuSigned by:


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Aimee Hickman, Plaintiff

Dated: _____

Jared Hickman, Plaintiff

Dated: _____

William Treasurer, Plaintiff

Dated: _____

Kelly Drogowski, Plaintiff

Dated: _____

Frank Drogowski, Plaintiff

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.

BERGER MONTAGUE PC

BALLARD SPAHR LLP

BY: _____
Russell D. Paul
Amey J. Park
Abigail J. Gertner
Natalie Lesser
1818 Market St., Suite 3600
Philadelphia, PA 19103

BY: _____
Neal D. Walters
Casey G. Watkins
Kristen Petagna
700 East Gate Dr., Suite 330
Mount Laurel, NJ 08054

Attorneys for Plaintiffs

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

Dated: _____

Dated: _____

Dated: _____

Aimee Hickman, Plaintiff

Dated: 7/23/2023

DocuSigned by:
Jared Hickman

Jared Hickman, Plaintiff

Dated: _____

William Treasurer, Plaintiff

Dated: _____

Kelly Drogowski, Plaintiff

Dated: _____

Frank Drogowski, Plaintiff

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.

BERGER MONTAGUE PC

BALLARD SPAHR LLP

BY: _____
Russell D. Paul
Amey J. Park
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Natalie Lesser
1818 Market St., Suite 3600
Philadelphia, PA 19103

BY: _____
Neal D. Walters
Casey G. Watkins
Kristen Petagna
700 East Gate Dr., Suite 330
Mount Laurel, NJ 08054

Attorneys for Plaintiffs

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

Dated: _____

Dated: _____

Dated: _____

Aimee Hickman, Plaintiff

Dated: _____

Jared Hickman, Plaintiff

Dated: 7/12/2023

DocuSigned by:
William Treasurer
87538C0909754A2...

William Treasurer, Plaintiff

Dated: _____

Kelly Drogowski, Plaintiff

Dated: _____

Frank Drogowski, Plaintiff

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.

BERGER MONTAGUE PC

BALLARD SPAHR LLP

BY: _____
Russell D. Paul
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Philadelphia, PA 19103

BY: _____
Neal D. Walters
Casey G. Watkins
Kristen Petagna
700 East Gate Dr., Suite 330
Mount Laurel, NJ 08054

Attorneys for Plaintiffs

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

Dated: _____

Dated: _____

Dated: _____

Aimee Hickman, Plaintiff

Dated: _____

Jared Hickman, Plaintiff

Dated: _____

William Treasurer, Plaintiff

Dated: _____

Kelly Drogowski, Plaintiff

Dated: 7/12/2023

DocuSigned by:
Frank Drogowski
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Frank Drogowski, Plaintiff

Dated: 7/12/2023 _____

DocuSigned by:


C936ZCC79D994BE

John Taitano, Plaintiff

Dated: _____

Richard Palermo, Plaintiff

Dated: _____

Lori Woiwode, Plaintiff

Dated: _____

Shawn Woiwode, Plaintiff

Dated: _____

Carolyn Patol, Plaintiff

Dated: _____

Cassandra Sember, Plaintiff

Dated: _____

Steven Sember, Plaintiff

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.

BERGER MONTAGUE PC

BALLARD SPAHR LLP

BY: _____
Russell D. Paul
Amey J. Park
Abigail J. Gertner
Natalie Lesser
1818 Market St., Suite 3600
Philadelphia, PA 19103

BY: _____
Neal D. Walters
Casey G. Watkins
Kristen Petagna
700 East Gate Dr., Suite 330
Mount Laurel, NJ 08054

Attorneys for Plaintiffs

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

Dated: _____

Dated: _____

Dated: _____

Aimee Hickman, Plaintiff

Dated: _____

Jared Hickman, Plaintiff

Dated: _____

William Treasurer, Plaintiff

Dated: 7/12/2023

DocuSigned by:

Kelly Drogowski

Kelly Drogowski, Plaintiff

Dated: _____

Frank Drogowski, Plaintiff

Dated: _____

John Taitano, Plaintiff

Dated: 7/13/2023

DocuSigned by:
Richard Palermo

5144AFB1E16C4DD...
Richard Palermo, Plaintiff

Dated: _____

Lori Woiwode, Plaintiff

Dated: _____

Shawn Woiwode, Plaintiff

Dated: _____

Carolyn Patol, Plaintiff

Dated: _____

Cassandra Sember, Plaintiff

Dated: _____

Steven Sember, Plaintiff

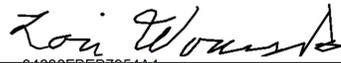
Dated: _____

John Taitano, Plaintiff

Dated: _____

Richard Palermo, Plaintiff

Dated: 7/12/2023

DocuSigned by:

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Lori Woiwode, Plaintiff

Dated: _____

Shawn Woiwode, Plaintiff

Dated: _____

Carolyn Patol, Plaintiff

Dated: _____

Cassandra Sember, Plaintiff

Dated: _____

Steven Sember, Plaintiff

Dated: _____

John Taitano, Plaintiff

Dated: _____

Richard Palermo, Plaintiff

Dated: _____

Lori Woiwode, Plaintiff

Dated: 7/12/2023

DocuSigned by:



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Shawn Woiwode, Plaintiff

Dated: _____

Carolyn Patol, Plaintiff

Dated: _____

Cassandra Sember, Plaintiff

Dated: _____

Steven Sember, Plaintiff

Dated: _____

John Taitano, Plaintiff

Dated: _____

Richard Palermo, Plaintiff

Dated: _____

Lori Woiwode, Plaintiff

Dated: _____

Shawn Woiwode, Plaintiff

Dated: 7/12/2023

DocuSigned by:
Carolyn Patol

ADD04D4047E2441...
Carolyn Patol, Plaintiff

Dated: _____

Cassandra Sember, Plaintiff

Dated: _____

Steven Sember, Plaintiff

Dated: _____

John Taitano, Plaintiff

Dated: _____

Richard Palermo, Plaintiff

Dated: _____

Lori Woiwode, Plaintiff

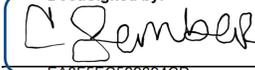
Dated: _____

Shawn Woiwode, Plaintiff

Dated: _____

Carolyn Patol, Plaintiff

Dated: 7/12/2023

DocuSigned by:


EA8F5EC599894CD...
Cassandra Sember, Plaintiff

Dated: _____

Steven Sember, Plaintiff

Dated: _____

John Taitano, Plaintiff

Dated: _____

Richard Palermo, Plaintiff

Dated: _____

Lori Woiwode, Plaintiff

Dated: _____

Shawn Woiwode, Plaintiff

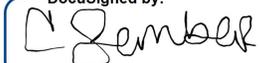
Dated: _____

Carolyn Patol, Plaintiff

Dated: _____

Cassandra Sember, Plaintiff

Dated: 7/12/2023 _____

DocuSigned by:  As power of attorney
for Steven Sember
EA8F5EC599894CD...

Steven Sember, Plaintiff

APPROVED AND AGREED TO BY AND ON BEHALF OF DEFENDANTS, SUBARU OF AMERICA, INC. and SUBARU CORPORATION

Dated: 8/17/2023

SUBARU OF AMERICA, INC.


By: MICHAEL D. CAMPBELL
VICE PRESIDENT SERVICE & QUALITY

EXHIBIT A