

**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

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

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I. INTRODUCTION

Plaintiffs seek preliminary approval of a class action settlement that will provide benefits valued at more than \$6.25 million to the owners and lessees of Subaru vehicles equipped with allegedly defective Starlink infotainment systems. The Class Vehicles eligible to participate in the settlement are model year 2018 Subaru Outback, 2018 Subaru Forester, 2018 Subaru Legacy, 2018 Subaru Crosstrek, 2017-2018 Subaru Imprezas, and 2018 Subaru BRZ (the “Class Vehicles”).

As discussed herein, the proposed settlement affords owners and lessees of Class Vehicles an opportunity to be compensated based on multiple visits to a Subaru dealer for a Starlink repair or complaint (\$150 for two visits, \$300 for three or more visits or, at the class member’s election, vouchers that can be used for Subaru service, apparel, or a new vehicle). It also allows them to receive compensation at the rate of \$16 per day during the period of time when Starlink replacement head units were on backorder. Subaru continues to issue software updates to address ongoing product development, including a recent release and another update planned for the future. It has also agreed to extend the warranty applicable to the Starlink system from three years/36,000 miles to five years/100,000 miles. Finally, any settlement class members who incurred an out of pocket expense related to Starlink problems not covered by a voluntary recall

conducted under the supervision of the National Highway Safety Transportation Administration will have an opportunity to have up to \$90 reimbursed by Subaru to cover costs associated with obtaining alternative transportation.

The settlement was negotiated extensively and at arms-length between experienced parties and counsel on both sides. It included two mediation sessions with Judge Dennis M. Cavanaugh (ret.), and its fairness was verified by class counsel through both litigation and confirmatory discovery. Granting the motion will allow the parties to proceed with the notice plan envisioned by the Settlement, which in turn will allow Settlement Class Members to begin responding to, and taking part in, the Settlement during the months leading up to a final fairness hearing. As set forth below, the proposed settlement meets the criteria for preliminary approval and, therefore, Plaintiffs' motion should be granted.

II. BACKGROUND

A. Nature of the Case

This is a putative class action brought by consumers who purchased or leased one of the Class Vehicles. *See* First Amended Complaint (“FAC”) ¶ 1. All Class Vehicles came equipped with a Subaru Starlink infotainment system, which consists of a touchscreen multimedia interface in the front-center console. Among other things, Starlink is designed to provide the display for the backup camera, as

well as an interface for making telephone calls, using the GPS navigation system, and accessing radio controls. FAC ¶ 2.

Plaintiffs allege that the Starlink system is defective. FAC ¶ 5. The problems with the system manifest themselves in various ways, including the following: the backup camera freezes and/or shuts down; audio and radio functions fail; complete system lock-up/error message is displayed on the infotainment system; the display shuts off even though functions of the infotainment system remain working; the radio will not shut off or turn down when backing up; 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; audio/radio functioning is erratic; and Bluetooth connectivity issues preventing mobile telephones from connecting properly and calls from being made (collectively, the “Starlink Issues”). The FAC alleges that these problems can be distracting to drivers and lead to safety issues. FAC ¶ 69. Defendants have denied those allegations and have filed a motion to dismiss. ECF No. 28.

B. Relevant Procedural History

Plaintiffs originally filed this case in the New Jersey Superior Court in Camden County on November 28, 2018. It was filed after an extensive pre-suit investigation by Plaintiffs’ counsel that began in approximately April of 2018. This

investigation included, *inter alia*, speaking with and reviewing documents provided by class members, reviewing information Subaru issued publicly regarding the Starlink System, and investigating potential legal claims and defenses. After Subaru was served with the lawsuit, it removed the case to this Court pursuant to the Class Action Fairness Act on December 18. *See* ECF No. 1.

On January 3, 2019, counsel for Subaru sent a letter to the Court seeking to adjourn a previously scheduled Rule 16 conference, and to stay all discovery pending the disposition of its forthcoming motion to dismiss. *See* ECF No. 10. Magistrate Judge Schneider held conference calls with counsel on January 16 and February 15 to address Subaru's request. *See* ECF Nos. 15, 25.

On March 3, following letter briefing from the parties and oral argument, Magistrate Judge Schneider issued an opinion which denied Subaru's motion to stay, and permitted "limited and focused discovery on core issues." *Udeen v. Subaru of Am., Inc.*, No. 18-17334 (RBK/JS), 2019 U.S. Dist. LEXIS 40049, at *1-2 (D.N.J. Mar. 12, 2019). The Court noted Subaru's acknowledgment that its motion to dismiss did not seek to dismiss all of the claims asserted in the complaint, and agreed that Plaintiffs will be "prejudiced if all discovery is stayed." *Id.* at *3. Magistrate Judge Schneider required the parties to meet and confer further, and scheduled a Rule 16 conference for April 22. The parties had several meet and confer conferences subsequent to the Court's order. The April 22

conference was subsequently stayed when the parties advised the Court that they had scheduled a mediation.¹ ECF No. 35.

On January 31, 2019, Plaintiffs filed the operative FAC. *See* ECF No. 24. Subaru filed a motion to dismiss on February 28. *See* ECF No. 28. Plaintiffs filed their motion to dismiss opposition brief on March 18. *See* ECF No. 32. Among other points, Plaintiffs' brief identified four independent grounds which gave rise to a disclosure duty by Subaru, and explained how several recent cases from this Court supported Plaintiffs' allegations that Subaru had knowledge of the defect. Subaru's motion to dismiss was fully briefed and *sub judice* when the parties went to mediation and ultimately resolved the case. On May 30, after conferring with Magistrate Judge Schneider and advising him of the settlement, the Court issued a scheduling order which required confirmatory discovery to be completed by July 31. *See* ECF No. 38.

III. THE MEDIATION SESSIONS WITH JUDGE CAVANAUGH (RET.)

The parties participated in two mediation sessions with Judge Dennis M. Cavanaugh, a former judge of this Court who is presently counsel at the law firm

¹ On January 30, Judge Schneider issued an order appointing Benjamin F. Johns and Andrew W. Ferich of Chimicles Schwartz Kriner & Donaldson-Smith LLP, Kevin P. Roddy of Wilentz, Goldman & Spitzer, PA, and Daniel R. Lapinski now of Motley Rice LLC as interim co-lead counsel for Plaintiffs and the putative class. *See* ECF No. 23.

of McElroy, Deutsch, Mulvaney & Carpenter, LLP. These all-day mediation sessions occurred in Newark, New Jersey on May 6 and May 14. Prior to these mediations, the parties participated in an in-person meeting on April 30 where they discussed the strengths and weaknesses of their respective positions, Subaru's responses to early complaints from consumers about issues with the Starlink System, Subaru's warranty claims data and other records, and the potential framework for a class-wide resolution of the case.

At the first mediation session, the parties built upon their preliminary discussions at their April 30 meeting and, by the end of the day, had made significant progress (with the assistance of Judge Cavanaugh) towards reaching a settlement framework. Thereafter, the parties reached agreement on all material terms of the settlement. By the end of the second full day of mediation, the parties had reached agreement on all material terms of the settlement. And at the end of the process, the parties reached agreement on attorneys' fees, litigation expenses, and class representative incentive awards (again, with the substantial assistance of Judge Cavanaugh).

The settlement's terms have since been verified as fair, reasonable, and adequate by Plaintiffs' Counsel in confirmatory discovery. Specifically, Subaru has produced 6,380 pages of documents in response to Plaintiffs' discovery requests. Among other things, these documents consisted of vehicle service and warranty

history for each of the named Plaintiffs; Technical Service Bulletins; owners' manuals and warranty manuals for each of the Settlement Class Vehicles; warranty claims data for the Settlement Class Vehicles; and documents identifying Defendants' internal investigation, analysis, and conclusions.

In addition to reviewing these materials and speaking with their clients and several putative class members, Plaintiffs' counsel also took a FED. R. CIV. P. 30(b)(6) deposition of John Gray, Field Quality Assurance Manager at Subaru of America, on July 12. The substance of Mr. Gray's deposition verified that the terms of the settlement are fair, reasonable and adequate to the class.

VI. SUMMARY OF SETTLEMENT TERMS

The proposed settlement has five principle features, which are summarized below.

First, Subaru has issued several additional software updates that have significantly improved the performance of the Starlink System in Class Vehicles. The most recent update was released this summer and another update is planned for later this year. Subaru has represented – and Plaintiffs' have verified – that these updates address and largely fix the Starlink Issues which led to the filing of this lawsuit. Gray Dep. 49:18-19 (describing new version released on June 25, 2019); 51:7-52:9, 64:19-22 (discussing how first recall fixed the backup camera problem with the 2017 Impreza and how claims data verifies its effectiveness);

76:18-21 (describing various updates effective for various problems); 151:10-13 (Subaru not aware of anyone who is still experiencing problems and has been verified to have gotten the most recent update).

This lawsuit and the settlement have the additional effect of increasing awareness among class members of the latest software updates since Subaru typically does not notify owners when a new version is released. *See* Gray Depo. 107:10-24. The robust class notice in this case will clearly advise class members how to determine which software version is updated on their vehicle, whether a more recent update is available and, if so, how to obtain it.

Second, Subaru has agreed to extend its standard three year / 36,000 mile warranty to five years / 100,000 miles. This significant enhancement to the warranty ensures that Class Members will be protected if they have additional issues with Starlink in the future, in the unlikely event that the various updates do not cure all of the Starlink Issues. This warranty extension will be limited to issues associated with the Starlink System, and will not address any other feature or component of the Class Vehicles. The parties have estimated that the value of this Starlink-specific extended warranty is \$5 per car. Significantly, class members who previously paid for an extended warranty will be eligible for a refund in this amount as part of the settlement. *See* Gray Depo. 160:19-21 (approximately

278,280 class members bought extended warranties). The total estimated value of this relief to the class is approximately \$2.45 million.

Third, Subaru has agreed to compensate those Class Members who brought their vehicles into an authorized dealer or retailer more than once for a Qualifying Repair of the Starlink system,² in accordance with the schedule below:

Number of Qualifying Complaints	Cash Payment Amount
2	\$150.00
3 or More	\$300.00

Class Members who qualify for either of the two cash categories above alternatively may select either of these non-cash option instead: (a) two coupons valued at \$100 each, which can be used for service or merchandise from an authorized Subaru dealer or (b) one coupon valued at \$400 which can be used towards the purchase or lease of any new Subaru vehicle. These coupons can be used for, among other things, purchasing Subaru merchandise, vehicle service, purchasing parts and accessories. Gray Dep. 162:12-163:6. Class Members will be eligible for relief under this category if they visited a Subaru retailer or dealer

² Qualifying Repair is defined in the SA as 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. Visits to a Subaru dealer or retailer for an update to the Starlink system as required by NHTSA Campaign Numbers 17V132000 or 18V935000 do not qualify as a Qualifying Repair because they were made pursuant to NHTSA recalls.

complaining about a Starlink system problem, regardless of whether service was actually performed. The parties estimate that the value of this component of the settlement is approximately \$1.75 million.

Fourth, Subaru has also agreed to compensate Class Members for the period of time, between July 1, 2018 and January 31, 2019, during which time there was a shortage of Starlink head replacement units (the “Backorder Period”). Specifically, anyone who (a) owned or leased a Class Vehicle, (b) presented their vehicle to an authorized Subaru dealer during the Backorder Period with an inoperable head unit, (c) an order was placed for a new unit, and (d) the consumer waited at least one day for the replacement head unit, will be eligible to be paid \$16 for each day that they waited for a replacement. It is estimated that approximately 9,590 class members fall into this category. *See* Gray Dep. 136:12-16. Given the estimated number of days that this group collectively waited for a replacement head unit, the estimated value of this component of the settlement is \$2.08 million.

Fifth, subject to reasonable proof requirements, Subaru has also agreed to reimburse Class Members for certain unreimbursed out-of-pocket expenses incurred as a result of the Starlink Issues. In particular, if a Class Member paid for a rental car, for a taxi, and/or for a ridesharing service (e.g., Uber or Lyft) because their Class Vehicle was unavailable due to a Starlink issue, they will be eligible to be refunded up to \$45 per day, up to a maximum amount of \$90.

The various components of relief above are not disjunctive; Class Members can be eligible to elect to receive some or all of these categories depending on their circumstances. The Settlement Agreement also gives Subaru the right to augment the settlement at its discretion to provide further benefits to Settlement Class Members, and to provide goodwill benefits to Settlement Class Members as it sees fit.

In addition to the foregoing, Subaru has agreed to pay – subject to Court approval – reasonable attorneys’ fees and litigation expenses in the amount of \$1.5 million, and incentive awards to each of the seven class representatives of \$3,500 each (i.e., \$24,500 total). These amounts will not decrease the relief going to the class; they will be paid separately by Subaru in addition to the settlement consideration described above. Notably, these payments were negotiated only after the parties had agreed upon all material terms of the settlement, and were reached after extensive adversarial negotiations at the second mediation with Judge Cavanaugh. All told, as noted above, the parties estimate that the value of the settlement benefits to the Class will exceed \$6,250,000.

V. THE CLASS NOTICE PLAN

The Settlement Agreement contains a comprehensive notice plan, to be paid for by Subaru and administered by JND Legal Administration Co. Settlement Class Members will be notified by short-form postcard notice sent to them via direct mail.

Within 60 days after entry of the Preliminary Approval Order the 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 as well as the Claim Form and Request for Exclusion Form.

Subaru will identify Class Members through its records and verify and update the information via R.L. Polk – a third party that maintains and collects the names and addresses of automobile owners – and will send the postcard notice to them by first-class mail. 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. In addition, Subaru will set up a dedicated website that will include the postcard notice, long form notice, claim form, settlement agreement, and other relevant

documents. Class Counsel will also provide a link to the settlement website on their respective law firm websites. As noted above and in the Settlement Agreement, Subaru has agreed to pay the costs of notice and other settlement administration costs.

Notice will be sent to class members within 60 days after entry of the Court's Order preliminarily approving this proposed settlement. *See* SA at § VIII(B). For those Settlement Class Members seeking any financial compensation, those Settlement Class Members must submit a Claim Form within ninety (90) days of the Notice Date. Subaru has also agreed to provide notice of the settlement to the appropriate state and federal officials, as required by the Class Action Fairness Act, 28 U.S.C. § 1715.

The Settlement Agreement clearly delineates the procedure in the event that Subaru rejects a claim for any form of financial compensation provided for as part of the settlement. *See* SA at § VII. Subaru will provide notice of its decision to any such claimant, and provide them with an opportunity to cure any defect. Should the claim be rejected in whole or in part, Subaru will advise the claimants of the right to a Second Review. The claimant may then accept Subaru's decision, attempt to cure the deficiency, or initiate a second level review. This Second Review will be made by an employee of the Settlement Administrator who is different from the employee who made the initial determination. If that does not resolve the dispute,

claimants may submit their claims to the Better Business Bureau, whose findings will be final and binding on both parties. Defendants will bear the costs associated with the Second Review, as well as any cost charged by the BBB.

The Settlement Agreement also accounts for any Settlement Class Members who wish to object or exclude themselves from the settlement. Any such request must be made online or postmarked within 45 days after the mailing of notice. The Settlement Agreement requires that any objection or opt-out request contain sufficient information to reasonably demonstrate that the submission is made by a person who actually has standing as a Settlement Class Member.

VI. ARGUMENT

A. The 2018 Amendments to FED. R. CIV. P. 23(e)

The recent amendments to Rule 23 of the Federal Rules of Civil Procedure revised the preliminary approval process for class action settlements. Under the Rule as amended, the Court must determine whether “giving notice is justified by the parties’ showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” *Du v. Blackford*, No. 17-cv-194, 2018 U.S. Dist. LEXIS 211796, at *21 (D. Del. Dec. 17, 2018) (quoting FED. R. CIV. P. 23(e)(1)(B)). In other words, the question before the Court now is “whether, following notice to the class and a final fairness hearing, the Court will likely be able to: (1) approve the settlement

proposal under Rule 23(e)(2); and (2) certify the proposed class.” *Swinton v. SquareTrade, Inc.*, No. 4:18-CV-00144-SMR-SBJ, 2019 U.S. Dist. LEXIS 25458, at *14 (S.D. Iowa Feb. 14, 2019); accord *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 28 (E.D.N.Y. Jan. 28, 2019). As discussed below, Plaintiffs respectfully submit that all of the requirements for preliminary approval are met here.

B. The Settlement Is Fair, Reasonable, and Adequate

The Third Circuit has, “on several occasions, articulated a policy preference favoring voluntary settlement in class actions.” *Rodriguez v. Nat’l City Bank*, 726 F.3d 372, 378 (3d Cir. 2013). Rule 23 continues to require that a class action settlement be “fair, reasonable, and adequate.” *See* FED. R. CIV. P. 23(e)(2). For purposes of determining whether a proposed settlement meets this criteria and should be approved, amended Rule 23(e)(2) directs the Court to consider whether “the class representatives and class counsel have adequately represented the class”; “the proposal was negotiated at arm’s length”; “the relief provided for the class is adequate”; and “the proposal treats class members equitably relative to each other.” *See id.*

The Advisory Committee Notes make clear that these factors do not displace the “lists of factors” courts have traditionally applied to assess proposed class settlements. Instead, the enumerated factors under Rule 23(e)(2) “focus the court

and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.” FED. R. CIV. P. 23(e)(2) (advisory committee’s note to 2018 amendment).

Courts in the Third Circuit evaluate whether a settlement is “fair, reasonable, and adequate” using the applicable *Girsh* approval factors:

(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) stage of the proceedings and the amount of discovery completed; (4) risks of establishing liability; (5) risks of establishing damages; (6) risks of maintaining the class action through the trial; (7) ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975). Thus, the “Court first considers the Rules 23(e)(2) factors, and then considers additional [*Girsh*] factors not otherwise addressed by the Rule 23(e)(2) factors.” *In re Payment Card Interchange Fee*, 330 F.R.D. at 29. Application of both the Rule 23(e)(2) and traditional factors demonstrates that the settlement here is fair, reasonable, and adequate and is in the best interests of the class.

1. The Proposed Settlement Is the Product of Arms-Length Negotiations Among Experienced Counsel.

Under Rule 23(e)(2)(A) and (B), the Court considers whether the class representatives and class counsel adequately represented the class and whether the settlement proposal was negotiated at arm’s length. *See In re Payment Card*

Interchange Fee, 330 F.R.D. at 29 (quoting FED. R. CIV. P. 23 advisory committee’s note to 2018 amendment) (“Paragraphs (A) and (B) constitute the ‘procedural’ analysis factors, and examine ‘the conduct of the litigation and of the negotiations leading up to the proposed settlement.’”); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516 (3d Cir. 2004) (citation omitted) (“The third *Girsh* factor captures the degree of case development that class counsel [had] accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.”). In this case, both Plaintiffs and their counsel are adequate representatives for the settlement class. This Court previously appointed Plaintiffs’ counsel interim co-lead counsel (ECF No. 23), and all of the named Plaintiffs have actively participated in both the litigation and settlement proceedings of this case.

A presumption of fairness is available when the settlement was negotiated by experienced and informed counsel assisted by a respected mediator. *See, e.g., In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 435 (3d Cir. 2016). This approach is consistent with the principle that “settlement of litigation is especially favored by courts in the class action setting.” *In re Insurance Brokerage Antitrust Litig.*, 297 F.R.D. 136, 144 (D.N.J. 2013). “The participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm’s length and without collusion between the parties.” *Shapiro v.*

Alliance MMA, Inc., No. 17-2583 (RBK/AMD), 2018 U.S. Dist. LEXIS 108132, at *6 (D.N.J. June 28, 2018) (quoting *Alves v. Main*, No. 01-789 (DMC), 2012 U.S. Dist. LEXIS 171773, at *73 (D.N.J. Dec. 4, 2012)).

This presumption should apply here given that experienced counsel on both sides of the deal endorse the settlement, and it followed two all-day mediation sessions with a respected neutral party. *See* FED. R. CIV. P. 23(e)(2) advisory committee’s note to 2018 amendment (advising that “the involvement of a neutral . . . mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests.”); *Demmick v. Cellco P’ship*, No. 06-2163 (JLL), 2015 U.S. Dist. LEXIS 192723, at *19-20 (D.N.J. Apr. 20, 2015) (“[T]he use of a mediator with respect to the present settlement is persuasive evidence that the negotiations were hard-fought, arms-length affairs.”).

To negotiate a fair and reasonable settlement, class counsel must be “aware of the strengths and weaknesses of their case.” *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 435. The parties in this case reached their settlement after Plaintiffs had gained a thorough understanding of the relevant law through complex motion practice and of the relevant facts through review and analysis of documents produced by Subaru, as well as a designee deposition. Class Counsel here conducted sufficient informal factual discovery and also had a “grasp of the

legal hurdles that [Plaintiffs] would need to clear in order to succeed on their” claims. *Id.* at 436. These factors support granting the settlement.

2. The Settlement Treats All Class Members Fairly.

“A district court’s ‘principal obligation’ in approving a plan of allocation ‘is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.’” *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 326 (3d Cir. 2011) (quoting *Walsh v. Great Atl. & Pac. Tea Co., Inc.*, 726 F.2d 956, 964 (3d Cir. 1983)). The proposed settlement categories and terms satisfy this standard. The settlement treats all class members fairly and equally in relation to the strengths of their claims. Each is invited to submit a Claim Form, and the settlement establishes a uniform, objective method for distributing awards that accounts for structural differences relating to claim value.

For purposes of setting recovery amounts, the Plan of Allocation makes common-sense distinctions between: (1) class members who waited for a replacement head unit during the Backorder Period and those who did not; (2) those who went to a Subaru dealer multiple times for Starlink problems; and (3) those who incurred out of pocket expenses. The Plan of Allocation fairly protects the interests of all parties in targeting relief to the most injured class members, while at the same time providing other relief (warranty extension and software update) to all owners and lessees of Class Vehicles. In sum, the settlement ensures

the class members will be treated equitably relative to each other and should be approved as fair, reasonable, and adequate.

3. The Relief Under the Proposed Settlement Is Adequate.

In determining whether the class-wide relief is adequate under Rule 23(e)(2)(C), the Court considers “the costs, risks, and delay of trial and appeal”; “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims”; “the terms of any proposed award of attorney’s fees, including timing of payment”; and “any agreement required to be identified under Rule 23(e)(3).”³

First, the costs, risks, and delay of trial and appeal factor subsumes several *Girsh* factors, “including (i) the complexity, expense and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial.” *In re Payment Card Interchange Fee*, 330 F.R.D. at 36. The complexity and expense of this case in light of the risks Plaintiffs faced in maintaining this litigation weighs heavily in favor of approval.

³ There are no side agreements to disclose under Rule 23(e)(3). Moreover, this Court has observed that at preliminary approval, consideration of the reaction of class members is premature. *See Shapiro v. Alliance MMA, Inc.*, No. 17-2583 (RBK/AMD), 2018 U.S. Dist. LEXIS 108132, at *8 (D.N.J. June 28, 2018).

Courts have recognized that “[a]pproval of a class settlement is appropriate when ‘there are significant barriers plaintiffs must overcome in making their case.’” *Mendoza v. Hyundai Motor Co.*, No. 15-cv-01685-BLF, 2017 U.S. Dist. LEXIS 9129, at *15 (N.D. Cal. Jan. 23, 2017) (citation omitted). Likewise, it is “well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the class members at trial.” *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. MDL No. 1917, 2016 U.S. Dist. LEXIS 88665, at *184 (N.D. Cal. July 7, 2016) (internal quotation marks and citation omitted).

In this case, Subaru has vigorously denied liability from the outset. Plaintiffs would likely have faced considerable risks obtaining class certification or prevailing on summary judgment. *See, e.g., Neale v. Volvo Cars of N. Am., LLC*, Civil Action No. 10-4407 (JLL), 2017 U.S. Dist. LEXIS 201309, at *25 (D.N.J. Dec. 6, 2017) (denying, without prejudice, a motion for class certification in an alleged automobile defect case); *Haag v. Hyundai Motor Am.*, 330 F.R.D. 127, 133 (W.D.N.Y. 2019) (finding that common issues did not predominate in an automobile defect class action, as “there is no basis for the Court to infer that a reasonable consumer—let alone an entire class of consumers—would have demanded a lower purchase or lease price if they were informed that they might have to perform [auto part] replacement and maintenance . . . earlier than they

otherwise expected.”); *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 326 (C.D. Cal. 2016 (“The settlement the parties have reached is even more compelling given the substantial litigation risks in this case.”). *See also, Coba v. Ford Motor Co.*, No. 17-2933, 2019 U.S. App. LEXIS 22315, at *15 (3d Cir. July 26, 2019) (“...a warranty that limits its coverage to defects in “materials” and “workmanship” does not, without more, apply to defects in ‘design.’”).

To prevail, Plaintiffs would have had to withstand Subaru’s pending motion to dismiss, obtain class certification, likely defend a certification order on appeal under Rule 23(f), survive inevitable motions for decertification and for summary judgment, and prevail at trial and any subsequent appeal. By comparison, the proposed settlement provides certain and relatively timely relief to the consumers comprising the class. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (“difficulties in proving the case” favored settlement approval); *Aguirre v. DirecTV, LLC*, No. CV 16-06836 SJO (JPRx), 2017 U.S. Dist. LEXIS 221840, at *44 (C.D. Cal. Oct. 6, 2017) (risk posed by summary judgment and continued litigation supported approval).

In contrast to the uncertainty and delays attendant to continued litigation, this settlement “provides a significant, easy-to-obtain benefit to class members” in the form of a cash payment to any Class Vehicle purchaser or lessee with a valid claim as well as benefits including a warranty extension to class members. *In re*

Haier Freezer Consumer Litig., No. 5:11-CV-02911-EJD, 2013 WL 2237890, at *4 (N.D. Cal. May 21, 2013); *see also Ebarle v. Lifelock, Inc.*, No. 15-CV-00258-HSG, 2016 WL 234364, at *8 (N.D. Cal. Jan. 20, 2016) (settlement that provides immediate benefits to class members has value compared to the risk and uncertainty of continued litigation).

Second, as discussed above, the plan's proposed method of distributing relief to the class is not unduly burdensome, yet deters fraudulent claims. *See* FED. R. CIV. P. 23(e)(2)(C)(ii).

Third, the amount of Plaintiffs' attorneys' fees and litigation expenses are reasonable. *See* FED. R. CIV. P. 23(e)(2)(C)(iii). The proposed order submitted herewith provides for Plaintiffs to file their motion for attorneys' fees and expenses before the expiration of the objection period.

Fourth, the ability of Subaru to withstand a greater judgment is neutral, at most, in this case. This *Girsh* factor is "most relevant when the defendant's professed inability to pay is used to justify the amount of the settlement." *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 440.

Fifth, the settlement is in the range of reasonableness in light of the best possible recovery and all the attendant risks of continued litigation. *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 440 (quoting Warfarin, 391 F.3d at 538) ("In evaluating the eighth and ninth *Girsh* factors, we ask 'whether the

settlement represents a good value for a weak case or a poor value for a strong case.”). Thus, the eighth and ninth *Girsh* factors weigh in favor of approval.

Considering Rule 23(e) factors and the additional *Girsh* factors, the proposed settlement is fair, adequate, and reasonable.

C. The Court Will Be Able to Certify the Class For Purposes of Settlement

Plaintiffs seek to certify a class comprised of:

All residents of the continental United States or Hawaii or Alaska who currently own or lease, or previously owned or leased, a 2017-2018 Impreza, 2018 Outback, 2018 Forester, 2018 Legacy, 2018 Crosstrek, or 2018 BRZ 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. *See SA at § III*

When a class has not been certified before settlement, the Court considers whether “it likely will be able, after the final hearing, to certify the class.” FED. R. CIV. P. 23(e)(1) advisory committee’s note to 2018 amendment; *see In re Payment Card Interchange Fee*, 330 F.R.D. at 50. As discussed below, the Court will likely be able to certify the proposed settlement class in connection with final approval.

1. The Class Members Are Too Numerous to Be Joined.

For certification of a class to be appropriate, its members must be so numerous that their joinder would be “impracticable.” FED. R. CIV. P. 23(a)(1). There are approximately 514,000 Class Vehicles in the United States. Gray Dep. 45:14. Numerosity, therefore, is readily satisfied. *See, e.g., Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012) (noting that classes exceeding 40 are sufficiently numerous).

2. There Are Common Questions of Law and Fact.

Rule 23 next requires common questions of law or fact. FED. R. CIV. P. 23(a)(2). “Meeting this requirement is easy enough,” *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 427, as commonality is satisfied if “the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.” *Id.* at 426-27 (quoting *Rodriguez v. Nat’l City Bank*, 726 F.3d 372, 382 (3d Cir. 2013)). The common questions in this case include, *inter alia*, whether the Subaru Starlink system is defective, whether Subaru had knowledge of the alleged defect (and if so, when), and whether Subaru had a legal duty to disclose the alleged defect. These questions are common to the class, capable of class-wide resolution, and “will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at 427 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). Thus, the commonality requirement is met. *See Henderson v. Volvo Cars of N. Am., LLC*, No. 09-4146

(CCC), 2013 WL 1192479, at *4 (D.N.J. Mar. 22, 2013) (“Several common questions of law and fact exist in this case, including whether the transmissions in the Class Vehicles suffered from a design defect, whether Volvo had a duty to disclose the alleged defect, whether the warranty limitations on Class Vehicles are unconscionable or otherwise unenforceable, and whether Plaintiffs have actionable claims.”).

3. Plaintiffs’ Claims Are Typical of the Class.

“Typicality ensures the interests of the class and the class representatives are aligned ‘so that the latter will work to benefit the entire class through the pursuit of their own goals.’” *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 182-83 (3d Cir. 2001) (quoting *Baby Neal v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994)). Typicality does not require that every class member “share identical claims,” *id.*, but only that plaintiffs’ and “class members’ claims arise from the same course of events and each class member makes similar legal arguments to prove the defendant’s liability,” *Atis v. Freedom Mortg. Corp.*, No. 15-03424 (RBK/JS), 2018 U.S. Dist. LEXIS 189586, at *20 (D.N.J. Nov. 6, 2018).

In this case, Plaintiffs and class members have the same types of claims stemming from the same alleged violations related to the same allegedly defective product. Typicality, therefore, is established. *See In re NFL Players Concussion Injury Litig.*, 821 F.3d at 428 (holding typicality met where plaintiffs “seek

recovery under the same legal theories for the same wrongful conduct as the [classes] they represent”).

4. Plaintiffs and Class Counsel Will Fairly and Adequately Protect the Interests of the Class.

Two questions are relevant to adequacy of representation under Rule 23(a)(4): “(1) whether Plaintiffs’ counsel is qualified, experienced, and able to conduct the litigation; and (2) whether any conflicts of interest exist between the named parties and the class they seek to represent.” *Atis*, 2018 U.S. Dist. LEXIS 189586, at *21 (citing *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 312 (3d Cir. 1998)). Plaintiffs and their counsel do not have any conflicts with class members and have vigorously prosecuted this case.

a. Class Counsel Are Well Qualified.

Rule 23(g) sets forth the criteria for evaluating the adequacy of Plaintiffs’ counsel:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel’s knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class

FED. R. CIV. P. 23(g)(1)(A). Interim Class Counsel are well qualified to serve as Class Counsel. Collectively, they have decades of experience successfully

representing plaintiffs and classes in complex class action litigation, including in consumer product defect cases. *See, e.g., Henderson v. Volvo Cars of N. Am., LLC*, Civil Action No. 09-cv-4146(DMC)(JAD), 2010 U.S. Dist. LEXIS 151733, at *4 (D.N.J. Nov. 1, 2010) (appointing the Chimicles law firm as interim lead counsel); *In re Nexus 6P Prods. Liab. Litig.*, No. 5:17-cv-02185-BLF, 2019 U.S. Dist. LEXIS 106192, at *5 (N.D. Cal. May 3, 2019) (same, and noting that the firm has “significant expertise in prosecuting consumer class actions, [and] ha[s] committed the necessary resources to represent the Settlement Class”); *Longo v. Am. Honda Motor Co.*, Case No. 08-0475 (D. Md.) (appointing Wilentz firm as interim co-lead counsel) *In re Ford Explorer Cases*, Sacramento County Superior Court, JCCP Nos. 4266 & 4270 (appointing Wilentz firm as interim co-lead counsel). And, as noted above, the Court previously appointed these attorneys to interim co-lead counsel positions in this case. Adequacy is thus satisfied.

b. Plaintiffs Have No Conflicts of Interest and Have Diligently Pursued the Action on Behalf of the Other Class Members.

“A named plaintiff is ‘adequate’ if his interests do not conflict with those of the class.” *Shapiro*, 2018 U.S. Dist. LEXIS 108132, at *14-15. Plaintiffs have agreed to serve in a representative capacity, communicated diligently with their attorneys, gathered relevant documents and produced to their attorneys, and helped prepare the allegations in the Complaint. Plaintiffs will continue to act in the best

interests of the other class members; there are no conflicts between Plaintiffs and the class. *See, e.g., id.* (holding adequacy requirement met where the plaintiff had no interests antagonistic to the class).

5. The Requirements of Rule 23(b)(3) Are Met.

As to the predominance and superiority requirements, when “[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems...for the proposal is that there will be no trial.” *Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997) (explaining that Rule 23(b)(3)(D) drops out of the analysis). Indeed, the Third Circuit has noted that it is “more inclined to find the predominance test met in the settlement.” *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 434 (quoting *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 304 n.29 (3d Cir. 2011)). As set forth below, the predominance and superiority requirements are met here.

a. Common Issues of Law and Fact Predominate for Settlement Purposes.

The predominance inquiry tests the cohesion of the class, “ask[ing] whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted).

Predominance is ordinarily satisfied, for settlement purposes, when the claims arise

out of the defendant's common conduct. *See, e.g., Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 299-300 (3d Cir. 2011) (“[T]he focus is on whether the defendant’s conduct was common as to all of the class members.”); *Yaeger v. Subaru of Am., Inc.*, No. 1:14-cv-4490 (JBS-KMW), 2016 U.S. Dist. LEXIS 117193, at *19-20 (D.N.J. Aug. 31, 2016) (predominance satisfied for purposes of settlement where Subaru vehicles had an allegedly common, undisclosed design defect); *Mendez v. Avis Budget Grp., Inc.*, No. 11-6537 (JLL), 2017 U.S. Dist. LEXIS 190730 (D.N.J. Nov. 17, 2017) (“[I]n cases where it is alleged that the defendant made similar misrepresentations, non-disclosures, or engaged in a common course of conduct, courts have found that said conduct satisfies the commonality and predominance requirements.”).

All class members purchased or leased Class Vehicles containing an allegedly common defect with the Starlink system, which Subaru is alleged to have fraudulently concealed. Common questions of law therefore predominate for settlement purposes. Fraudulent concealment, a cause of action available to all class members, itself “includes a similar set of elements: (1) misrepresentation or omission of a material fact, (2) a duty to disclose, (3) intent to induce reliance and/or defraud, (4) some form of reliance, and (5) resulting damages.” *See, e.g., In re Lumber Liquidators Chinese-Manufactured Flooring Durability Mktg. & Sales Practice Litig.*, No. 1:16MD2743 (AJT/TRJ), 2017 WL 2911681, at *7 (E.D. Va.

July 7, 2017); *see also Sullivan*, 667 F.3d at 303 (internal citation and quotations omitted) (holding “state law variations are largely irrelevant to certification of a settlement class”); *In re NFL Players’ Concussion Injury Litig.*, 307 F.R.D. 351, 380 (E.D. Pa. 2015), *aff’d* 821 F.3d 410, (holding predominance met for fraudulent concealment claims as defendant’s “knowledge and conduct” was “[c]entral to this case”).

Further, common questions of fact abound with respect to Plaintiffs’ warranty, unfair trade practices, and consumer protection counts: whether the vehicles are defective; whether Subaru should have disclosed the existence of the alleged defect, and if so, when and where; whether the allegedly concealed information was material to a reasonable consumer; and whether class members sustained harm as a result of Subaru’s conduct. *See, e.g., In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 314 (3d Cir. 1998) (noting that cases involving “a common scheme to defraud” readily meet predominance test); *Yaeger*, 2016 U.S. Dist. LEXIS 117193, at *19-20 (noting that whether a defect exists, whether it is covered by warranty, and what compensation class members are due are common questions that predominate); *In re Philips/Magnavox TV Litig.*, No. 09-3072 (CCC), 2012 U.S. Dist. LEXIS 67287 (D.N.J. May 14, 2012) (“Class Members share common questions of law and fact, such as whether Philips knowingly manufactured and sold defective televisions

without informing consumers and when Philips obtained actual knowledge of the alleged defect.”); *Alin v. Honda Motor Co.*, No. 08-4825 (KSH) (PS), 2012 U.S. Dist. LEXIS 188223, at *12 (D.N.J. Apr. 12, 2012) (superiority satisfied where “class vehicles allegedly suffer from defects that cause their air conditioning systems to break down, although there are differences as to how the breakdowns occur.”).

In contrast, the individual questions mostly relate to damages and are less important; the “focus of the predominance inquiry is on liability, not damages.” *Pollak v. Portfolio Recovery Assocs., LLC*, 285 F. Supp. 3d 812, 845 (D.N.J. 2018) (quoting *Smith v. Suprema Specialties, Inc.*, No. 02-168, 2007 U.S. Dist. LEXIS 30001, at *30 (D.N.J. 2007)). Thus, common questions predominate for settlement purposes.

b. A Class Action Is a Superior Means of Resolving This Controversy.

The Rule 23(b)(3) superiority inquiry “asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication.” *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 434 (quoting *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 528 (3d Cir. 2004)).

Here, given the relatively low amount of the individual claims, class members are unlikely to bring individual lawsuits against Subaru. Furthermore,

because the class members number in the hundreds of thousands, class-wide resolution of their claims in a single action is efficient. *See Atis*, 2018 U.S. Dist. LEXIS 189586, at *22-23 (finding superiority satisfied where “individual claims of class members are relatively small in monetary value,” management issues were “less likely” given common questions that predominated, and there were no other litigations concerning the controversy); *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 435 (citation omitted) (superiority satisfied where “the [s]ettlement avoids thousands of duplicative lawsuits and enables fast processing of a multitude of claims”).

For these reasons, consistent with Rule 23(e)(1)(B), the Court will likely be able to certify the settlement class in this case.

D. The Proposed Class Notice and Plan for Dissemination Are Reasonable and Should Be Approved.

Rule 23(e)(1)(B) requires the Court to “direct notice in a reasonable manner to all class members who would be bound by the proposal.” In an action certified under Rule 23(b)(3), the Court must “direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” FED. R. CIV. P. 23(c)(2)(B). “Generally speaking, the notice should contain sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when relevant, opting

out of the class.” *In re NFL Players Concussion Injury Litig.*, 821 F.3d at 435 (quoting *In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 180 (3d Cir. 2013)).

The notices presented here fully comply with Rule 23 and the due process mandates. Using plain language, the proposed notices provide all information required under Rule 23(c)(2)(B). As discussed above, the proposed notice program provides for direct mail postcard notice, with skip traces to be conducted and re-mailing to be attempted for any undeliverable notices returned. The settlement website will be a useful resource for class members—it will post the Claim Form, the long-form notice, and key pleadings in the case, including the attorneys’ fee application once it is filed. The Settlement Administrator will also establish a toll-free number for class members to call with questions. This plan provides the best notice practicable under the circumstances. *See In re Ins. Broker Antitrust Litig.*, 297 F.R.D. 136, 152 (D.N.J. 2013) (finding notice via postcards to be sufficient).

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) grant preliminary approval; (2) certify the settlement class pursuant to FED. R. CIV. P. 23(a) and (b)(3); (3) direct notice to the settlement class; and (4) set a schedule for settlement proceedings, including the final fairness hearing.

Dated: August 30, 2019

Respectfully submitted,

/s/ Benjamin F. Johns

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was filed with the Clerk using the Court's ECF system and therefore served electronically on all registered counsel of record on August 30, 2019.

/s/ Benjamin F. Johns

Benjamin F. Johns

EXHIBIT 1

**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.

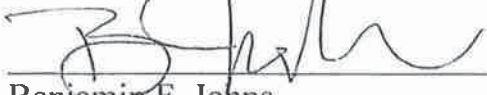
L. Construction

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.

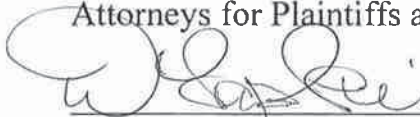
IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.



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Andrew W. Ferich
Alex M. Kashurba
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361 W. Lancaster Avenue
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Date: August 30, 2019

Attorneys for Plaintiffs and the Class



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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
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Date:

Date:

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



Neal D. Walters
Casey G. Watkins
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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

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DATED: _____
CHAD UDEEN

DATED: _____
MARY JANE JEFFERY

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

DATED: _____
MICHAEL BOLICK

DATED: _____
GARY GILPIN

DATED: _____
ALICIA SMITH

DATED: _____
SUSAN WILLIAMS

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DATED: _____ CHAD UDEEN

DATED: _____ MARY JANE JEFFERY

DATED: _____ LYDIA RUNKEL

DATED: 8.14.19 
MICHAEL BOLICK

DATED: _____ GARY GILPIN

DATED: _____ ALICIA SMITH

DATED: _____ SUSAN WILLIAMS

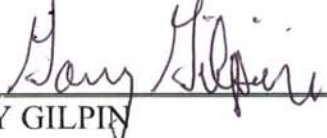
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DATED: _____
CHAD UDEEN

DATED: _____
MARY JANE JEFFERY

DATED: _____
LYDIA RUNKEL

DATED: _____
MICHAEL BOLICK

DATED: 8/15/2019

GARY GILPIN

DATED: _____
ALICIA SMITH

DATED: _____
SUSAN WILLIAMS

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CHAD UDEEN

DATED: _____
MARY JANE JEFFERY

DATED: _____
LYDIA RUNKEL

DATED: _____
MICHAEL BOLICK

DATED: _____
GARY GILPIN

DATED: 8/19/2019

ALICIA SMITH

DATED: _____
SUSAN WILLIAMS

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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

EXHIBIT A

COMPENSATION AND REIMBURSEMENT CLAIM FORM

MUST BE POSTMARKED BY [DATE]

Udeen, et al. v. Subaru of America, Inc., et al., No. 1:18-CV-17334-RBK-JS (D.N.J.)

If the pre-printed information is incorrect or absent, please check this box and complete the information below (and read item [2] below (located on page 3) very carefully):

Name: _____

Address: _____

City: _____

State: __ __ Zip Code: __ - ____

VIN: _____

Phone #: (__ __) __ - ____

Purchase/Lease Date: __ / __

Use this form to submit a claim for compensation or reimbursement under the *Udeen* Settlement regarding the Starlink Multimedia infotainment system if you satisfy the following criteria:

1. You currently own or lease, or previously owned or leased, any of the following Subaru vehicles: 2017 Impreza, 2018 Impreza, 2018 Forester, 2018 Outback, 2018 Legacy, 2018 Crosstrek or a 2018 BRZ (vehicles equipped with the Generation 3.0 head unit manufactured by Harmon International Industries, Inc.) (“Settlement Class Vehicle”); **and**
2. You have not excluded yourself from the Settlement; **and**
3. At least one of the following apply:
 - a. You purchased a Subaru Added Security plan with a duration equal to or greater than either five years or 100,000 miles; **and/or**
 - b. You presented your Settlement Class Vehicle to an Authorized Subaru Dealer for a Qualifying Repair of a Qualifying Starlink Malfunction two or more times, excluding any visits related to the March 2017 WTN-74 recall (applicable to model year 2017 Impreza vehicles) or the January 2019 WTZ-85 recall (applicable to certain model year 2018 vehicles); **and/or**
 - c. Between July 1, 2018 and January 31, 2019, your Settlement Class Vehicle’s Starlink head unit became inoperable and you waited for more than one day for a replacement Starlink head unit to be installed; **and/or**
 - d. You incurred out-of-pocket expenses related to a Qualifying Repair addressing a Qualifying Starlink Malfunction.

You must complete and timely return this claim form in order to receive monetary benefits under the Settlement.

Regardless of whether you return this form, however, you will automatically receive a warranty extension of the Settlement Class Vehicle's New Vehicle Limited Warranty to 5 years or 100,000 miles as related to any issues of materials or workmanship related to the Starlink Multimedia infotainment system ("Settlement Extended Warranty"). If you previously purchased a Subaru Added Security plan of equal or greater duration, you are eligible to receive a reimbursement check of \$5.00.

As stated above, you may also be eligible to receive compensation based on the number of visits made to an Authorized Subaru Dealer regarding a Qualifying Starlink Malfunction; reimbursement for certain out-of-pocket expenses related to a Qualifying Repair addressing a Qualifying Starlink Malfunction; compensation for repair delays caused by a Starlink head unit backorder between July 1, 2018 and January 31, 2019; or all three. Reimbursement for certain out-of-pocket expenses are subject to the limits stated in Section VI.D. of the Settlement Agreement.

NOTE: Before filling out this Claim Form, please review the Notice of Class Settlement carefully to determine if you qualify for compensation or reimbursement under this Settlement.

You do not need to fill out or send in this Claim Form to obtain the Settlement Extended Warranty or its benefits. The Settlement Extended Warranty will be automatically applied to all Settlement Class Vehicles.

Claims will not be processed, and no compensation or reimbursements will be issued, until the Settlement has received Final Approval and any appeals from the order approving the Settlement have been resolved or the appeal periods have expired. Please consult the settlement website (www.website.com) for updates regarding timing. The Settlement Agreement, which is available on this website, defines several of the terms used on this Claim Form. If you have questions, please contact the Claims Administrator at [REDACTED].

STEP 1: Check the Box for Each Compensation or Reimbursement for Which You Believe You are Entitled:

REIMBURSEMENT FOR THE PROPORTIONATE VALUE OF A SUBARU ADDED SECURITY PLAN CONCERNING THE STARLINK MULTIMEDIA SYSTEM.

To claim this benefit, enclose an invoice or any other document(s) that shows:

- The purchase of a Subaru Added Security Plan
- The time and mileage duration of the Subaru Added Security Plan

COMPENSATION FOR MULTIPLE QUALIFYING REPAIRS OF QUALIFYING STARLINK MALFUNCTIONS (CHECK THE BOX TO THE LEFT, AND THEN CHOOSE ONE OF THE THREE OPTIONS BELOW):

Option 1: Monetary Compensation

If your Settlement Class Vehicle received two or more Qualifying Repairs, check this box to receive a monetary payment described below:

Number of Qualifying Repairs	Cash Payment Amount
2	\$150.00
3 or more	\$300.00

As an alternative to the monetary payment above, you may choose either:

Option 2: Two separate coupons, each valued at \$100.00, good towards service or merchandise at an Authorized Subaru Dealer (Note: The two \$100.00 coupons are not transferable, are valid only for use by the Settlement Class Member, and expire after 1 year); or

Option 3: A \$400.00 credit towards the purchase or lease of a new Subaru vehicle (Note: The \$400.00 credit is not transferable, is valid only for use by the Settlement Class Member, and expires after 3 years).

To claim this benefit, enclose repair invoices or any other document(s) that show:

- VIN, make, and model
- That a Starlink-related replacement, diagnosis, repair, update or inspection was performed.
- Repair dates
- Vehicle mileage at time of repairs
- Proof that Settlement Class Vehicle was presented to Authorized Subaru Dealer for repairs
- Facility name, address, and phone number that performed the repair

Note: you are not required to elect one of the two coupon options; if you qualify for relief under this subsection, you can obtain a cash payment by checking Option 1.

DELAY IN REPAIR CAUSED BY BACKORDER

To claim this benefit, enclose repair invoices or any other document(s) that show:

- VIN, make, and model
- Repair dates
- Vehicle mileage at time of repairs
- Proof that vehicle was presented to authorized Subaru Retailer for repair between July 1, 2018 and January 31, 2019 (the “Backorder Period”)
- That a Starlink-related repair was performed after July 1, 2018
- Facility name, address, and phone number that performed the repair

- Note that you will only qualify for this benefit if a Starlink head unit was ordered by an Authorized Subaru Dealer during the Backorder Period and you were required to wait for more than one day for the replacement Starlink head unit to be installed.

OUT-OF-POCKET REPAIR EXPENSES

To claim this benefit, enclose a repair invoice or any other document(s) that shows:

- VIN, make, and model
- Repair date(s)
- Vehicle mileage at time of repair(s)
- That a Starlink-related replacement, diagnosis, or inspection was performed.
- Proof of payment
- Proof that vehicle was presented to Authorized Subaru Dealer for repairs
- Facility name, address, and phone number that performed the repair

RENTAL VEHICLE / RIDE-HAILING SERVICE

To claim this benefit, enclose a receipt or other document(s) that shows:

- VIN, make, and model
- Repair date(s)
- What was purchased (e.g., a rental car or ride-hailing service)
- Facility name, address, and phone number
- Amount paid
- Date purchased
- The date and type of Qualifying Repair

Step 2: Only If Your Name or VIN Is Not Pre-Printed Correctly Above:

Enclose document(s) that shows:

- You have owned or leased a Settlement Class Vehicle (e.g., copy of an insurance card or repair invoice)
- The year, model, and VIN of your Settlement Class Vehicle

Step 3: Sign & Date

*By signing this form, you are certifying under oath that all of the information provided with this Claim Form is true and accurate to the best of your knowledge, and that you **HAVE NOT** already been reimbursed for any of the above products and/or services except as reflected on the documents you have submitted. If you were only partially reimbursed, please enclose the document(s) that show how much you were reimbursed.*

Signature: _____ Date: _____

Step 4: Mail Claim Form with Paperwork by **DATE to:**

**[Starlink Consumer Litigation
c/o JND Legal Administration
Administrator's Address]**

*For more information please view the Class Notice, or
call JND Legal Administration at [phone number] or visit www.website.com.*

EXHIBIT B

NOTICE OF CLASS SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

IF YOU BOUGHT OR LEASED ONE OF THE BELOW SUBARU VEHICLES, YOU COULD BENEFIT FROM A CLASS ACTION SETTLEMENT.¹

A federal court authorized this notice. This is not a solicitation from a lawyer.

- **Please read this notice carefully and in its entirety. Your legal rights to participate in or object to a proposed settlement are affected.**
- The settlement provides an *extended warranty* and, where applicable, a *cash compensation or reimbursement* for:
 - Compensation for multiple Qualifying Repairs of Qualifying Starlink Malfunctions;
 - Compensation in the amount of \$16 per day for delay in repair caused by a backorder;
 - Reimbursement for out-of-pocket Qualifying Repair Expenses;
 - Reimbursement for the proportionate value of a Subaru Added Security plan concerning the Starlink Multimedia System.
- To qualify you must have bought or leased a model-year 2017 through 2018 Subaru Impreza; model-year 2018 Forester, Outback, Legacy, Crosstrek or BRZ equipped with the Generation 3.0 head unit manufactured by Harmon International Industries, Inc.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to get a reimbursement, but <i>not</i> necessary to get an extended warranty.
EXCLUDE YOURSELF	Get no reimbursement or extended warranty. This is the only option that allows you to ever be part of any other lawsuit against Subaru about the legal claims in this case.
OBJECT	Write to the Court about why you don't like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Receive extended warranty but no payment.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice. The Court in charge of this case still must decide whether to approve the Settlement. Reimbursements will be made if the Court approves the Settlement and after any appeals are resolved.

¹ The entire Class Action Settlement Agreement and Release and further details can be viewed on the settlement website at www.website.com. Capitalized terms in this Notice have the same meanings as defined in the Settlement Agreement.

BASIC INFORMATION

1. Purpose of This Notice.

This notice has been sent to you because you are, or may be, a member of the class of persons whose rights are being determined in this action. According to the records of Subaru of America, Inc., you are a current or past purchaser or lessee of a 2017 Impreza, 2018 Impreza, 2018 Forester, 2018 Outback, 2018 Legacy, 2018 Crosstrek or a 2018 BRZ vehicle equipped with the Generation 3.0 head unit manufactured by Harman International Industries, Inc. (“Settlement Class Vehicles”), and you purchased your vehicle in the continental United States, including Alaska and Hawaii.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure and an order of the Court listed above, this notice will inform you of the terms of the proposed settlement of this class action lawsuit and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the settlement. This notice describes the rights you may have in connection with the settlement and what steps you may take in relation to the settlement and this class action litigation.

2. Summary of the Proposed Settlement.

A class action lawsuit was filed against Subaru of America, Inc. (“SOA”) and Subaru Corporation (“SBR,” and, collectively with SOA, the “Defendants”) alleging that the Settlement Class Vehicles experience a range of technical glitches that cause freezing, non-responsiveness or other malfunctions of the Starlink System. The lawsuit alleges that Defendants have violated certain consumer statutes and breached certain warranties, and it seeks certification of a nationwide class of present and former purchasers and lessees of Settlement Class Vehicles to pursue these claims.

Defendants deny these claims. SOA and SBR maintain that the Settlement Class Vehicles are not defective. Defendants maintain that the Settlement Class Vehicles function(ed) in a proper manner, were properly designed, manufactured, distributed, marketed, advertised, warranted and sold, and that Defendants did not violate any warranties, statutes, or laws. In the instances in which such repairs have been necessary, Defendants maintain that they have provided warranty coverage where appropriate.

Without any finding of liability or wrongdoing on the part of Defendants, the Court has preliminarily approved a settlement of the Lawsuit pursuant to which the following benefits will be available to past and present owners and lessees of Settlement Class Vehicles (as applicable) purchased in the continental United States, including Alaska and Hawaii, unless they timely exclude themselves from the Settlement:

- (a) **An extension of the New Vehicle Limited Warranty, only with respect to Starlink System in 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. (hereinafter, the “Settlement Extended Warranty”).**
- (b) **Reimbursement for the proportionate value of a Subaru Added Security plan concerning the Starlink Multimedia System if you previously purchased a Subaru Added Security plan of equal or greater duration than the Settlement Extended Warranty;**
- (c) **Compensation for multiple Qualifying Repairs of Qualifying Starlink Malfunctions if you presented your Settlement Class Vehicle to an Authorized Subaru Dealer two or more times, excluding visits related to the March 2017 WTN-74 recall or the January 2019 WTZ-85 recall. These Recalls include (1) NHTSA Campaign Number 17V132000 (“Rearview Camera Display may not Function Properly”) relating only to the 2017 Impreza, and (2) NHTSA Campaign Number 18V935000 (“Camera Image may not Display/FMVSS 111”) relating to certain 2018 Outback, Legacy, and BRZ vehicles with Navigation.**
- (d) **Compensation for delay caused by the backorder lasting between July 1, 2018, and January 31, 2019 (the “Backorder Period”), if your Settlement Class Vehicle’s Starlink System was inoperable during that Backorder Period and you waited for more than one day for a replacement Starlink head unit to be installed.**
- (e) **To the extent not previously reimbursed, a cash reimbursement may be available if you previously paid out-of-pocket for costs associated with a Qualifying Repair to your vehicle to address a Qualifying Starlink Malfunction.**
- (f) **To the extent not previously reimbursed, a cash reimbursement of up to \$90 may be available, subject to the terms outlined below, if prior to the date of this Notice you made qualifying out-of-pocket payments for a rental car or ride-hailing service while your Settlement Class Vehicle underwent repairs related to a Qualifying Starlink Malfunction during the Backorder Period.**

**DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.
THE CLERK IS NOT ABLE TO PROVIDE ANY INFORMATION
OR ADVICE REGARDING THIS NOTICE.**

3. Reasons for Settlement.

In a class action lawsuit, one or more persons, called Class Representatives, sue on behalf of other people who have similar claims. All of these people are considered to be part of a Class, or Class Members. The Class Representatives and all Class Members are called the Plaintiffs, and

the companies they sued are called the Defendants. One court resolves the issues for all Class Members, except for those who take the necessary steps to exclude themselves from the Class.

The Court has not decided in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement, with no decision or admission of who is right or wrong. That way, all parties avoid the risks and cost of a trial, and the people affected (the “Settlement Class Members”) will receive compensation more quickly.

Counsel for Plaintiffs and the Settlement Class Members have considered the substantial benefits from the Settlement that will be given to the Settlement Class Members and balanced these benefits with the risk of litigating the case. They also considered the value of the immediate benefit to Settlement Class Members versus the costs and delay of litigation through trial and appeals, and the risk that the court might not certify the class. Even if Plaintiffs were successful in these efforts, Settlement Class Members might not receive any benefits for years.

The Court will be holding a hearing on [date] to approve or disapprove of the settlement before it becomes final.

WHO IS PART OF THE SETTLEMENT?

4. Am I in this Class?

The Court has conditionally approved the following definition of a Settlement Class Member:

All residents of the continental United States 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.

If you received this Notice, then Subaru of America’s records indicate that you are or were a purchaser or lessee of one or more of the above-referenced Settlement Class Vehicles covered under this Settlement. **You are not required to submit a Claim Form to receive the benefit of the 5-year/100,000 mile Extended Warranty, but you must do so in order to receive any monetary compensation as part of the settlement.**

Excluded from the Settlement Class are (a) anyone claiming personal injury, property damage and/or subrogation, (b) all Judges who have 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) anyone acting as a used car dealer; (f) anyone who purchased a Settlement Class Vehicle for the purpose of resale; (g) anyone who purchased a Settlement Class Vehicle with salvaged title and/or any insurance company who 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, and (k) any Settlement Class Member that files a timely and proper Request for Exclusion from the Settlement Class.

5. I am still not sure if I am included.

If you are still not sure whether you are included, you can call 555-555-5555, or visit www.website.com for more information.

SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the Settlement provide?

Subaru has agreed to provide the settlement benefits described above, subject to the following terms and conditions:

(a) Warranty Extension for Current Owners or Lessees of Settlement Class Vehicles:

Effective on the date of this Notice, Subaru will extend the existing express New Vehicle Limited Warranty on your vehicle, to cover repairs by an authorized Subaru retailer as needed to correct a Qualifying Starlink Malfunction, to a period of five (5) years or one hundred thousand (100,000) miles (whichever occurs first) from the date on which the Vehicle was delivered to either the original purchaser or lessee; or if the vehicle was first placed in service as a “demonstrator” or “company” car, on the date the vehicle was first placed in such service (hereinafter, the “Settlement Extended Warranty”). The warranty extension applies only to Qualifying Starlink Malfunctions. The Settlement Extended Warranty is fully transferable to subsequent vehicle owners.

If you have repairs performed on your vehicle pursuant to the Settlement Extended Warranty, you cannot opt out of or exclude yourself from the Settlement Class. You cannot recover more than one benefit or reimbursement for the same repair.

(b) Reimbursement for the proportionate value of a Subaru Added Security plan concerning the Starlink Multimedia System:

If you previously purchased a Subaru Added Security plan of equal or greater duration with respect to time or mileage than the Settlement Extended Warranty, you are eligible to receive a reimbursement check of \$5.00, which reflects the value of that Subaru Added Security plan related to the Starlink Multimedia System. If you purchased a Subaru Added Security plan with a lower time or mileage duration than the Settlement Extended Warranty, you will receive the 5-year/100,000-mile Settlement Extended Warranty. **To receive a cash reimbursement, you must submit the claim form available at www.website.com/address or mail in the enclosed Claim Form, together with the proof described in that form. The online submission or mailing must be completed or postmarked by **date**. Cash reimbursements will be made only if the Court approves the Settlement and after all appeals, if any, are finally resolved.**

(c) Compensation for multiple Qualifying Repairs of Qualifying Starlink Malfunctions:

If you presented your Settlement Class Vehicle to an Authorized Subaru Dealer for a Qualifying Repair of a Qualifying Starlink Malfunction two or more times, excluding any visits related to

the March 2017 WTN-74 recall (applicable to model year 2017 Impreza vehicles) or the January 2019 WTZ-85 recall (applicable to certain model year 2018 vehicles), you are eligible to receive a cash payment of \$150 for two Qualifying Repairs or \$300 for three or more Qualifying Repairs.

As an alternative to the cash payment, you have the ability to select to receive one of the following : (i) two separate coupons, each valued at \$100, good towards service or merchandise at an Authorized Subaru Dealer (valid for one year), or (ii) a \$400 credit towards the purchase or lease of a new Subaru vehicle (valid for three years). The coupons are not transferable and are valid only for use by the Settlement Class Member.

To receive a cash payment, or the alternative coupon relief, you must submit the claim form available at www.website.com/address or mail in the enclosed Claim Form, together with the proof described in that form. The online submission or mailing must be completed or postmarked by **date. Cash reimbursements will be made only if the Court approves the Settlement and after all appeals, if any, are finally resolved.**

(d) Compensation for delays in obtaining repairs caused by a backorder:

If between July 1, 2018, and January 31, 2019 (the “Backorder Period”), your Settlement Class Vehicle’s Starlink head unit became inoperable and you waited for more than one day for a replacement Starlink head unit to be installed, you may be eligible to receive compensation of \$16 for each day that you waited to receive a replacement Starlink head unit. You must have contacted or presented your Settlement Class Vehicle to an Authorized Subaru Dealer during the Backorder Period with a Qualifying Starlink Malfunction and the Authorized Subaru Dealer must have placed an order for a replacement Starlink head unit.

To receive a cash payment, you must submit the claim form available at www.website.com/address or mail in the enclosed Claim Form, together with the proof described in that form. The online submission or mailing must be completed or postmarked by **date. Cash reimbursements will be made only if the Court approves the Settlement and after all appeals, if any, are finally resolved.**

(e) Reimbursement for Qualifying Starlink Repairs performed by an Authorized Subaru Dealer prior to Notice Date:

Unless you were previously reimbursed, a cash reimbursement may be available if you previously paid certain out-of-pocket for costs associated with a Qualifying Repair to your vehicle to address a Qualifying Starlink Malfunction.

To receive a cash reimbursement, you must submit the claim form available at www.website.com/address or mail in the enclosed Claim Form, together with the proof described in that form. The online submission or mailing must be completed or postmarked by **date. Cash reimbursements will be made only if the Court approves the Settlement and after all appeals, if any, are finally resolved.**

(f) Reimbursement for cost of rental vehicles or ride-hailing service incurred as a result of a Qualifying Repair during the Backorder Period:

Unless you were previously reimbursed, a cash reimbursement may be available if, during the Backorder Period, you previously paid out-of-pocket for a rental car and/or ride-hailing service in connection with a Qualifying Repair to your Settlement Class Vehicle. Reimbursement for a rental car or ride-hailing service will be provided only if the repair of your Settlement Class Vehicle required more than two (2) working days in a single repair period.

The maximum rate of reimbursement for a rental car or ride-hailing service is \$45 per day, and the reimbursement is limited to two (2) days, for a total potential reimbursement of up to \$90.

To receive a cash reimbursement for any item in this section, you must submit the claim form available at www.website.com/address or mail in the enclosed Claim Form, together with the proof described in that form. The online submission or mailing must be completed or postmarked by **date. Cash reimbursements will be made only if the Court approves the Settlement.**

7. How do I claim the extended warranty?

If you are a Settlement Class Member who qualifies under this provision, you do not have to do anything to receive the benefit of the Settlement Extended Warranty. Subaru will notify its authorized dealers regarding the Settlement and the extended warranty. You are not required to submit a Claim Form to receive the benefit of the 5-year/100,000-mile Settlement Extended Warranty.

8. How do I send in a claim for a cash payment or reimbursement?

To submit a claim for a cash payment or reimbursement, do the following:

- (1) Visit www.website.com/address/ and fill out the online Claim Form and upload supporting documents no later than **date**; or
- (2)(a) Complete, sign, and date the enclosed Claim Form (you can also print a Claim Form at www.website.com). Keep a copy of the completed Claim Form for your own records; and
- (b) Mail the Claim Form and all required documentation, postmarked no later than **date**, to the address on the Claim Form.

If you fail to submit or mail in the Claim Form and supporting documents by the required deadline, you will not get paid. Submitting a Claim Form late or without documentation will be the same as doing nothing.

9. What type of supporting documentation must I submit with my Claim Form in order to receive a cash reimbursement?

The Claim Form, which is available on the settlement website at www.website.com/address/, describes in detail the documentation and information that must be submitted in support of your claim. The Settlement Administrator needs documents showing the specific nature of your out-of-pocket expenses. You must submit genuine and legible copies of any of the following, which prove that you are a Class Member and that your claim satisfies the requirements for a reimbursement: receipts, credit card statements, bank statements, invoices, or historical accounting records receipts (“documents”). The Claim Form also is available on the Settlement website at www.website.com.

10. If I submit a claim, when do I get my payment or reimbursement or learn whether I will receive a payment, and what are my rights?

The Court will hold a Fairness Hearing on [date](#), to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals which may delay the conclusion of the case. It is always uncertain whether these appeals can be resolved, and resolving them can take time. The final or “Effective Date” of the settlement will be the first day after (i) the Court enters a Final Order and Judgment approving the Settlement and (ii) either all appeals have been finally determined or resolved in a manner which affirms the Final Order and Judgment, or no appeal was filed and the time to do so has expired. Information about the progress of the case will be available at www.website.com.

If the Settlement Administrator approves your claim, a reimbursement check will be sent to you within sixty (60) days after receipt of your claim or sixty (60) days after the Effective Date, whichever is later. If the Settlement Administrator determines your claim should not be paid or should be paid only in part, then you will be mailed a letter telling you the amount you are to receive, if any; the reason(s) why your claim was denied in whole or in part; and your rights to either accept the award or seek additional review of your claim. The letter will be mailed within the same period described above. The letter will be accompanied by a Claim Decision and Option Selection Form which explains your rights and must be completed and mailed back to the Settlement Administrator if you choose certain options described below.

If your claim is denied in whole or in part, you will have the following options to choose from:

- (a) You may accept the reimbursement award either by doing nothing or, for faster processing, checking the appropriate box on the form stating that you are accepting the award and mailing the form back to the Settlement Administrator. If you accept the reimbursement amount awarded by the Settlement Administrator, you may not later contest the sufficiency of the amount awarded.**
- (b) If the Settlement Administrator denied your claim in whole or in part because you did not submit sufficient proof, and you have additional documents that contain the information missing from your original claim, you will have the opportunity to “cure” your claim by checking the**

appropriate box in the form and mailing the appropriate documents with the form to the Settlement Administrator within thirty (30) days of receiving the letter. If the paperwork contains the needed information (and you are otherwise eligible), you may receive a greater or full reimbursement. If not, you will still have the option of requesting a second review of your claim. You will receive the Settlement Administrator’s response within sixty (60) days of the Effective Date or within forty-five (45) days after receipt by the Settlement Administrator, whichever occurs later.

- (c) If you do not agree with the Settlement Administrator’s decision, you can request a second review of your claim.**
- (i) To request a second review, you must check the appropriate box on the Claim Decision and Option Selection Form received from the Settlement Administrator, and mail the form back to the Settlement Administrator within (a) thirty (30) days of receiving the initial letter, or (b) thirty (30) days of your receipt of the Settlement Administrator’s response to your “cure” attempt discussed in paragraph (b) above. You may rely solely on the documents and proof already submitted, and if you choose, you may submit a written statement setting forth the reasons why you believe the decision on your claim should be different.
 - (ii) The second reviewer will review the original decision and determine, based upon the claim and materials you submitted, whether the initial determination should be adjusted.
 - (iii) The second review determination will be mailed to you within forty-five (45) days of the date in which the request for second review with supporting documentation was received by the Settlement Administrator, or within sixty (60) days after the Effective Date of the Settlement, whichever is later. It will state the reasons why the initial determination was either adjusted or not changed. If a reimbursement is awarded, it will be included with your second review determination.

To check on the status of your claim, you can call the Settlement Administrator at **555-555-5555**.

In the event that you wish to appeal the Settlement Administrator’s second review determination, you may appeal the determination to the Better Business Bureau (“BBB”). Any appeal to the BBB must be made within ninety (90) days following the date of the Settlement Administrator’s second review determination, and any decision by the BBB will be final and binding upon both parties.

Subaru will pay any cost charged by the BBB for resolving the dispute, but you will be responsible for your own attorneys’ fees, should you retain an attorney, and other expenses.

11. What am I giving up to stay in the class?

Unless you exclude yourself, you will be part of the Settlement Class. By staying in the Class, you can avail yourself of any and all benefits under the Settlement to which you are entitled, and you will be releasing the Defendants and all Released Parties from any liability, cause of action, claim, right to damages or other relief, and any other legal rights to which you may otherwise be entitled under the law(s) of your state or any other applicable law, relating to Starlink Multimedia System and Qualifying Starlink Malfunctions in your Settlement Class Vehicle. You will not be able to commence or be a part of any lawsuit or arbitration, or pursue any claim, against Defendants and any Released Parties relating to such matters. Staying in the Class also means that all of the Court's orders will apply to you and legally bind you. However, the Settlement will not release any claims for personal injury or damage to property.

The scope of the claims and causes of action being released and the parties being released are set forth in Section V of the Settlement Agreement, a copy of which is available on the Settlement website, www.website.com, should you wish to review it. You may also contact Class Counsel, whose contact information is set forth below, with any questions you may have:

Benjamin F. Johns, Esq.
Andrew W. Ferich, Esq.
Chimicles Schwartz Kriner & Donaldson Smith LLP
361 W. Lancaster Avenue
Haverford, Pennsylvania 19041
610-642-5708

Daniel R. Lapinski, Esq.
Motley Rice LLC
210 Lake Drive East, Suite 101
Cherry Hill, New Jersey 08002
856-667-0500

Kevin P. Roddy, Esq.
Wilentz, Goldman & Spitzer, P.A.
90 Woodbridge Center Drive, Suite 900
Woodbridge, NJ 07095
732-855-6402

EXCLUDING YOURSELF FROM THE SETTLEMENT

12. How do I exclude myself from this Settlement?

To exclude yourself from the Settlement, you must fully complete and submit the online form available at www.website.com/address/ no later than **date**, or sign and return the enclosed Request for Exclusion Form by U.S. mail (or an express mail carrier) postmarked no later than **date** to:

[Starlink Consumer Litigation
c/o JND Legal Administration
Settlement Administrator's Address]

If you timely submit your fully completed and signed Request for Exclusion Form online or by U.S. mail or express mail, you will not be able to receive any benefits of the Settlement and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit.

13. If I do not exclude myself, can I sue Subaru later?

No. If you do not timely exclude yourself from the Settlement, you cannot sue for any matters, legal claims or damages (other than for personal injury or damage to property) relating to Starlink Malfunctions in your Settlement Class Vehicle(s).

14. If I exclude myself, can I get the benefits of this Settlement?

No. If you exclude yourself from the Class you will not be able to take advantage of any benefits from this Settlement. If you exclude yourself, you should not submit a Claim Form to ask for money from a class action settlement. You cannot do both.

THE LAWYERS REPRESENTING YOU

15. Do I have a lawyer in this case?

The Court has appointed Benjamin F. Johns, Esq. and Andrew W. Ferich, Esq. of Chimicles Schwartz Kriner & Donaldson Smith LLP, Daniel R. Lapinski, Esq. of Motley Rice LLC, and Kevin P. Roddy, Esq. of Wilentz, Goldman & Spitzer, P.A. to represent the Class, which includes you and all other Settlement Class Members. Together these lawyers are called "Class Counsel." However, if you want your own lawyer, you may hire one at your own cost.

16. How will the lawyers be paid and will the Plaintiff Settlement Class Representatives receive service payments?

Based on a class size that is estimated to be more than 500,000 members and the value of the settlement to class members estimated to be more than \$6,250,000, Class Counsel will apply to the Court, on behalf of all counsel for plaintiffs, for reimbursement of reasonable attorney fees and litigation expenses in an amount up to \$1,500,000 ("one million five hundred thousand dollars"), based upon factors that will be provided in Class Counsel's application for fees and expenses. Defendants have agreed not to oppose Class Counsel's application for fees and expenses not exceeding the above amount and Class Counsel have agreed not to accept any fees and expenses in excess of that amount. Class counsel fees and expenses will be paid by Defendants, and will not reduce any benefits available to you under the Settlement.

Class Counsel will also apply to the Court for service awards of \$3,500 for each of the named Plaintiffs who have conditionally been approved as Settlement Class Representatives, for their initiative and effort in pursuing this litigation for the benefit of the Class. Service awards will be paid by Defendants, and will not reduce any benefits available to you under the Settlement.

Class Counsel's motion for fees and expenses and Settlement Class Representative service awards will be made available for review at www.website.com after it is filed with the Court.

SUPPORTING OR OBJECTING TO THE SETTLEMENT

17. How do I tell the Court that I like or dislike the Settlement?

If you are a member of the Class and do not request to be excluded, you can tell the Court you like the Settlement and it should be approved, or that you object to the Settlement if you do not like it. The Court will consider all timely comments from Class Members. As a Class Member, you will be bound by the court's final decision regarding the approval of this settlement. You are not required to submit anything to the Court unless you are objecting or wish to be excluded from the Settlement.

To object, you must submit a letter to the Court, with copies to Class Counsel and defense counsel listed below, and to Subaru at the address contained in this Notice, saying that you are objecting to the Settlement in *Udeen, et al. v. Subaru of America, Inc., et al.*, Case No. 1:18-cv-17334-RBK-JS.

Your objection must include your full name, address, telephone number, the model year and VIN of your vehicle and proof that you own(ed) or lease(d) it, a statement of all your factual and legal grounds for objecting, any documents and/or briefs supporting your objection, a statement of whether you intend to appear at the Fairness Hearing, and your signature.

You must also provide a list of all other objections (if any) you made within the past five (5) years to any class action settlement in any court in the United States, including, for each, the full case name, the court in which the case was pending and the docket number, and whether you were represented by an attorney in connection with your objection; or if you have not made any such prior objection, an affirmative statement to that effect.

Your comment(s) must also state the identity of all attorneys representing you, if any, who will appear at the Fairness Hearing. Be sure to send your objection via the Court's electronic filing system, or by mail to the three different places set forth below, postmarked no later than **[DATE]**:

(a) The Court:

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

(b) Class Counsel:

Benjamin F. Johns, Esq.
Andrew W. Ferich, Esq.
Chimicles Schwartz Kriner & Donaldson Smith LLP

361 W. Lancaster Avenue
Haverford, Pennsylvania 19041

(c) Defense Counsel:

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

If you intend to appear at the Fairness Hearing personally or through a lawyer, you must, prior to the **Date** deadline, file with the Clerk of the Court and serve on all counsel designated above a notice of intention to appear at the hearing. The notice of intention to appear must include copies of any papers, exhibits or other evidence and identity of witnesses that will be presented at the hearing.

If you do not submit a written comment on or objection to the proposed Settlement or the application of Class Counsel for attorney fees and expenses and/or class representative service awards, in accordance with the deadline and procedure set forth above, you will waive your right to be heard at the Fairness Hearing and to appeal from any order or judgment of the Court concerning the matter.

18. What is the difference between objecting and excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class, in which case you will be bound by the Court's final ruling. Excluding yourself is telling the Court that you do not want to be part of the Class and the Settlement and wish to preserve any claims against Subaru that you may have. If you exclude yourself, you have no basis to object because the case no longer affects you.

FAIRNESS HEARING

19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at **date and place**. At this hearing the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel and whether to approve service awards. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long it will take for the Court to make its decision.

20. Do I have to come to the hearing?

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it.

As long as you sent your written objection such that it is received on time, the Court will consider it. You may also attend or pay your own lawyer to attend, but it is not required.

21. May I speak at the hearing?

If you do not exclude yourself, you may ask the Court's permission to speak at the hearing concerning the proposed Settlement or the application of Class Counsel for attorneys' fees and expenses and class representative service payments. To do so, you must submit a letter notice saying that it is your intention to appear at the Fairness Hearing in *Udeen, et al. v. Subaru of America, Inc., et al.*, Case No. 1:18-cv-17334-RBK-JS. The letter notice must state the position you intend to present at the hearing, state the identities of all attorneys who will represent you (if any), and must include your full name, current address, telephone number, model and model year and VIN of your Settlement Class Vehicle(s), and your signature. You must send your letter notice to the Clerk of the Court, Class Counsel, and defense counsel at the addresses listed above, such that it is postmarked no later than **date**. You may combine this notice and your comments in a single letter. You cannot speak at the hearing if you excluded yourself from the Settlement.

IF YOU DO NOTHING

22. What happens if I do nothing at all?

If you do nothing, you will be bound by the Settlement if the Court approves it, and release the claims described under Section V of the Settlement Agreement.

23. No Further Notices Unless Settlement Approved

You will receive no further notices concerning approval of this proposed settlement agreement.

ADDITIONAL INFORMATION

24. How can I obtain more information?

Visit the website at **www.website.com**, where you can find extra claim forms and more information on this litigation and Settlement. Updates regarding the case will also be available on the website. You may also call Subaru at **555-555-5555**. You may also contact class counsel if you have any questions.

For definitions regarding any terms used in this notice, such as "backorder period" for example, please see the Settlement Agreement which is available on the settlement website.

EXHIBIT C

**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

**[PROPOSED] FINAL ORDER
AND JUDGMENT**

This matter came before the Court for hearing pursuant to the Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, dated _____ ("Preliminary Approval Order"), on the motion of Plaintiffs for approval of proposed class action settlement with Defendants Subaru of America, Inc. and Subaru Corporation (collectively, "Defendants"). Due and adequate notice having been given of the Settlement as required by the Preliminary Approval Order, the Court having considered all papers filed and proceedings conducted herein, and good cause appearing therefor, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. This Final Order and Judgment incorporates by reference the definitions in the Settlement Agreement with Defendants dated August 30, 2019 (the “Agreement”), and all defined terms used herein have the same meanings ascribed to them in the Agreement.

2. This Court has jurisdiction over the subject matter of the Action and over all Parties thereto.

3. The Court reaffirms and makes final its provisional findings, rendered in the Preliminary Approval Order, that, for purposes of the Settlement, all prerequisites for maintenance of a class action set forth in Federal Rules of Civil Procedure 23(a) and (b) are satisfied. The Court hereby makes final its appointments of Class Counsel and the Class Representatives and certifies the following Settlement Class: individuals who currently own or lease, or previously owned or leased, any of the following Subaru vehicles: 2017 Impreza, 2018 Impreza, 2018 Forester, 2018 Outback, 2018 Legacy, 2018 Crosstrek or a 2018 BRZ vehicles equipped with the Generation 3.0 head unit manufactured by Harman International Industries, Inc. (“Settlement Class Vehicle”).

4. Pursuant to Federal Rule of Civil Procedure 23(e), the Court hereby grants final approval of the Settlement and finds that it is, in all respects, fair, reasonable, and adequate and in the best interests of the Settlement Class.

5. The Court finds that notice of this Settlement was given to Settlement Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Settlement, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.

6. The Court directs the Parties and the Settlement Administrator to implement the Settlement according to its terms and conditions.

7. Upon the Effective Date, Releasing Named Plaintiffs and all Releasing Class Members shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Releasees from all Released Claims.

8. The Persons identified in **Exhibit 1** hereto requested exclusion from the Settlement Class as of the Exclusion Deadline. These Persons shall not share in the benefits of the Settlement, and this Final Order and Judgment does not affect their legal rights to pursue any claims they may have against Defendants. All other members of the Settlement Class are hereinafter barred and permanently enjoined from prosecuting any Released Claims against Defendants in any court, administrative agency, arbitral forum, or other tribunal.

9. Neither Class Counsel's application for attorneys' fees, reimbursement of litigation expenses, and service awards for Plaintiffs, nor any order entered by this Court thereon, shall in any way disturb or affect this Judgment, and all such matters shall be treated as separate from this Judgment.

10. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement, is or may be deemed to be or may be used as an admission of, or evidence of, (a) the validity of any Released Claim, (b) any wrongdoing or liability of Defendants, or (c) any fault or omission of Defendants in any proceeding in any court, administrative agency, arbitral forum, or other tribunal.

11. Without affecting the finality of this Judgment, this Court reserves exclusive jurisdiction over all matters related to administration, consummation, enforcement, and interpretation of the Settlement, and this Final Order and Judgment, including (a) distribution or disposition of the Settlement Fund; (b) further proceedings, if necessary, on the application for attorneys' fees, reimbursement of litigation expenses, and service awards for Plaintiffs; and (c) the Parties for the purpose of construing, enforcing, and administering the Settlement. If any Party fail(s) to fulfill its or their obligations under the Settlement, the Court retains authority to vacate the provisions of this Judgment releasing, relinquishing,

discharging, barring and enjoining the prosecution of, the Released Claims against the Releasees, and to reinstate the Released Claims against the Releasees.

12. If the Settlement does not become effective, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Agreement and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Agreement.

13. The Court has considered each of the objections, and finds that they are unpersuasive and therefor overrules all of them.

14. The Court hereby enters a judgment of dismissal, pursuant to Fed. R. Civ. P. 54(b), of the claims by the Settlement Class Members, with prejudice and without costs, except as specified in this order, and except as provided in the Court's order related to Plaintiffs' motion for attorneys' fees, expenses, and incentive awards. The Clerk of the Court is directed to close this docket.

IT IS SO ORDERED.

DATED: _____

HON. ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE

EXHIBIT D

**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

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, pursuant to Rule 23(a) and 23(b) of the Federal Rules of Civil Procedure, the parties seek entry of an order preliminarily approving the settlement of this action pursuant to the Settlement Agreement fully executed on August 30, 2019 (the "Settlement Agreement" or "Agreement"), which, together with its attached exhibits, sets forth the terms and conditions for a proposed Settlement of the Action and dismissal of the Action with prejudice; and

WHEREAS, the Court having read and considered the Agreement and its exhibits, and Plaintiffs' Unopposed Motion for Preliminary Approval, Plaintiffs' motion is GRANTED.

IT IS HEREBY ORDERED as follows:

1. This Order incorporates by reference the definitions in the Agreement, and all terms used in this Order shall have the same meanings as set forth in the Agreement.

2. This Court has jurisdiction over this litigation, Plaintiffs, all Settlement Class Members, Defendants Subaru of America, Inc. and Subaru Corporation (together, “Subaru” or “Defendants”), and any party to any agreement that is part of or related to the Settlement.

3. The Court preliminarily approves the Settlement as being fair, reasonable, and adequate, and finds that it otherwise meets the criteria for approval, subject to further consideration at the Final Approval Hearing described below, and warrants issuance of notice to the Settlement Class. Accordingly, the proposed Settlement is preliminarily approved.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the Settlement, the Settlement Class 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. For purposes of this Order and the Settlement, Class Vehicles means model year 2018 Subaru Outback, 2018 Subaru Forester, 2018 Subaru Legacy, 2018 Subaru Crosstrek, 2017-2018 Subaru Imprezas, and 2018 Subaru BRZ.

5. The Court preliminarily finds, solely for purposes of the Settlement, that the settlement is likely to receive final approval and class certification, specifically that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class; (d) Plaintiffs and Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

6. The Court appoints Benjamin F. Johns and Andrew W. Ferich of Chimicles Schwartz Kriner & Donaldson-Smith LLP, Daniel R. Lapinski of Motley Rice LLP, and Kevin P. Roddy of Wilentz, Goldman & Spitzer, PA, as

Class Counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are satisfied by this appointment.

7. The Court hereby appoints Plaintiffs Chad Udeen, Mary Jane Jeffery, Lydia Runkel, Michael Bolick, Gary Gilpin, Alicia Smith, and Susan Williams to serve as Class Representatives for settlement purposes only on behalf of the Settlement Class.

8. The Court approves the form and content of the Class Notice. The Court finds that the mailing of the Class Notice in the manner and form set forth in the Agreement satisfies due process. The foregoing is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Settlement Class Members entitled to such Class Notice.

a. Subaru shall cause to be sent Notice as required under the Class Action Fairness Act (“CAFA”) within 10 days after the date on which the Plaintiffs’ Motion for Preliminary Approval of the Settlement is filed.

b. Within 60 days after entry of the Preliminary Approval Order, Subaru shall – at its expense – cause the Class Notice to be disseminated to Settlement Class Members in the form and manner set forth in the Agreement. The Court authorizes the Parties to make non-material modifications to the Class Notice prior to publication if they jointly agree that any such changes are necessary under the circumstances.

c. Subaru shall also provide through the Settlement Administrator—also at its expense—a toll-free number with live operators to field questions from Settlement Class Members; set up a dedicated website that will include the notice, claim form, Settlement Agreement and other relevant materials; and notify its dealers of the Settlement.

d. No later than ten (10) days before the Fairness Hearing, Subaru shall file with the Court an affidavit setting forth the details of the notice provided pursuant to this Order and the Settlement Agreement.

9. The Claim Form is approved for dissemination to the Settlement Class Members, subject to any non-material changes to which the parties may agree.

10. If Settlement Class Members do not wish to participate in the Settlement Class, Settlement Class Members may exclude themselves by filling out and returning the Request for Exclusion Form. All requests by Settlement Class Members to be excluded from the Settlement Class must be in writing and postmarked on or before forty-five (45) days after the date of the mailing of Notice to Settlement Class Members. The Settlement Administrator shall report the names and addresses of all such persons and entities requesting exclusion to the Court and Class Counsel within seven (7) 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.

11. If a Settlement Class Member wishes to be excluded from the Settlement Class, the Settlement Class Member's written Request for Exclusion shall state in writing (a) the Settlement Class Member'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; 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. No Request for Exclusion will be valid unless all of the information described above is included. All Settlement Class Members who exclude themselves from the Settlement Class will not be eligible to receive any benefits under the Settlement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against Defendants.

12. Any Settlement Class Member who has not previously submitted a Request for Exclusion in accordance with the terms of this Agreement may appear at the Final Approval Hearing to argue that the proposed Settlement should not be approved. However, in order to be heard at the Final Approval Hearing, the Settlement Class Member must make an objection in writing and file it, along with

a notice of intention to appear at the Fairness Hearing (“Notice of Intention to Appear”), with the Court no later than twenty (20) days before the hearing.

13. To state a valid objection to the Settlement, an objecting Settlement Class Member must: (a) set forth 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) state whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (d) state that the objector has reviewed the Settlement Class definition and understand 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 are pertinent to the objection; and (g) state 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. Objections must be filed with the Court, served by first-class mail, and any objecting Class Member must provide a list of all proposed settlements they objected to in the last 5 years. Any objecting Class

Member also must provide copies of any other documents offered in support of the objection.

14. In addition to providing a copy of the objection to the Court, objections must also be mailed to each of the following, postmarked on or before forty-five (45) days after the last mailing of class notice: Benjamin F. Johns, Chimicles Schwartz Kriner & Donaldson-Smith, LLP, 361 West Lancaster Avenue, Haverford, PA 19041; and Neal D. Walters, Ballard Spahr, LLP, 210 Lake Drive East, Suite 200, Cherry Hill, NJ 08002.

15. Any Settlement Class Member who does not make his or her objections in the manner provided herein shall be deemed to have waived such objections and shall forever be foreclosed from making any objections to the fairness, reasonableness, or adequacy of the proposed Settlement and the judgment approving the Settlement.

16. The Final Approval Hearing shall be held on or immediately after one hundred (100) days following this Order Preliminarily Approving Settlement. The Court hereby schedules the Final Approval Hearing for _____, at _____ a.m./p.m. in Courtroom 4A of the United States District Court for the District of New Jersey, Camden Division, Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101, to determine whether the proposed Settlement should be

approved as fair, reasonable and adequate, whether a judgment should be entered approving such Settlement, and whether Class Counsel's application for attorneys' fees and for service awards to the class representatives should be approved. The Court may adjourn the Final Approval Hearing without further notice to Settlement Class Members.

17. Settlement Class Members shall have ninety days (90) days after the Notice Date to submit claim forms. Claim forms must be postmarked by that date to be considered timely.

IT IS SO ORDERED on this _____ day of _____, 2019.

HONORABLE ROBERT B. KUGLER
UNITED STATES DISTRICT JUDGE

EXHIBIT E

CLAIM DECISION AND OPTION SELECTION FORM

Udeen, et al. v. Subaru of America, Inc., et al., No. 1:18-CV-17334-RBK-JS (D.N.J.)

You submitted a claim reflecting a total claim amount of \$ _____.

Your reimbursement award in the class action settlement is \$ _____.

You were awarded less than full reimbursement for the following reason(s):

YOUR OPTIONS (*Check Only One Box*):

Accept the reimbursement award listed above:

To accept this award, you may either do nothing or, for faster processing, visit www.website.com/extension and complete the Option Selection Form or check this first box and mail this form to Subaru at the address below. If you accept the offer, *you may not later contest the amount of the reimbursement award.*

Submit additional information:

If the Settlement Administrator denied your claim in whole or in part because you did not submit sufficient proof, and you have additional documents that contain the information missing from your original claim (listed above), you can attempt to “cure” your claim, within 30 days of receiving this letter, by visiting www.website.com/extension, completing the Option Selection Form, and uploading the documents, or by checking this second box and mailing the documents and this form to the Settlement Administrator at the address below. If the paperwork contains the needed information (and you are otherwise eligible) you may receive a greater or full reimbursement. If not, *you will still have the option of requesting a second review.*

Request second review:

You can request to have a second review by the Settlement Administrator, which will decide whether to adjust your reimbursement amount. To request a second review, you should, *within 30 days of receiving this letter*, visit www.website.com/extension and complete the Option Selection Form or check this third box and mail this form to Subaru at the address below. You may submit a written statement with the form stating why you believe the decision on your claim should be different.

Mail To: [\[Settlement Administrator Address\]](#)

Signature and Print Name

Date

EXHIBIT F

**COMPLETE THIS FORM ONLY IF YOU CHOOSE
NOT TO PARTICIPATE IN THIS SETTLEMENT**

REQUEST FOR EXCLUSION FROM CLASS ACTION SETTLEMENT

United States District Court for the District of New Jersey
Udeen, et al. v. Subaru of America, Inc., et al., No. 1:18-CV-17334-RBK-JS

You can use this form to exclude yourself from the Settlement Class. If you wish to remain a member of the Class, do not complete or return this form. Before deciding whether to remain in the Settlement Class or to request exclusion, make sure you have read and understood the enclosed Class Notice.

If you want to opt out of the class, please fully complete this Request for Exclusion form and return it via First Class U.S. Mail or the equivalent to: **[Starlink Consumer Litigation] c/o JND Legal Administration, [Address]**. The envelope must be post-marked on or before **DATE**. You may also fill out the online exclusion form at **www.website.com**.

If you exclude yourself from the class: (1) You will not share in any recovery that might be paid by any party as a result of any settlement of this lawsuit; (2) You will not be bound by any decision in this lawsuit; and (3) You may pursue any claims you have against the parties by filing your own lawsuit.

Please fill in all of the following information:

Name (first, middle, last): _____

Address: _____

City: _____

State: _____ Zip Code: _____

Phone #: _____

Vehicle Model: _____

Vehicle Model Year: _____

Vehicle ID Number (VIN-17 digits): _____

Date You Acquired the Settlement Class Vehicle: _____

By signing and returning this form, I confirm that I do *not* want to be included in the settlement of the lawsuit *Udeen, et al. v. Subaru of America, Inc., et al.*, No. 1:18-CV-17334-RBK-JS (D.N.J.), I understand that by opting out, I am giving up my right to receive any recovery under the settlement. I also understand that by opting out, I retain the right to file my own individual lawsuit. I want to *opt out* of this Class. I affirm under penalty of perjury that the foregoing information is true and correct.

Signature: _____ Date: _____

EXHIBIT 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Civil Action No. 1:18-CV-17334-RBK-JS

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,

vs.

SUBARU OF AMERICA, INC., and SUBARU CORPORATION,

Defendants.

TRANSCRIPT OF

DEPOSITION OF JOHN GRAY

TRANSCRIPT of the stenographic notes of
the proceedings in the above-entitled matter, as
taken by and before TAB PREWETT, a Registered
Professional Reporter, a Certified LiveNote
Reporter, Certified Shorthand Reporter and Notary
Public, held at THE OFFICES OF BALLARD SPAHR
LLP, 210 Lake Drive East, Suite 200, Cherry Hill,
New Jersey 08002-1163 , on Friday, July 12,
2019, commencing at 10 a.m.

1 John Gray

2 A Can I refer to my notes?

3 Q Yes.

4 A Let's see. We have had six
5 releases after the initial software version that
6 was used in 2017 to present.

7 Q Okay. We will discuss those in
8 more detail later.

9 A Okay.

10 Q One other very general question:
11 How many total class vehicles were
12 sold in the United States, sold or leased in the
13 United States?

14 A My understanding is -- I have
15 514,699.

16 Q And is Subaru still selling those
17 vehicles new, or is it --

18 A No, they have been sold.

19 Q Okay. Where is that number? Where
20 do you get that number?

21 A I actually had Vanessa Carrow on
22 our team pull it from one of our systems.

23 Q So are you confident that's the
24 correct number?

25 A I am confident.

1 John Gray

2 Q Okay.

3 A It's just they -- there was an
4 internal conflict on how to refer to it. Some
5 groups were calling it 4.1. Other groups were
6 calling it 4.5, so we settled on 4.5.

7 Q Okay. And that -- when was that
8 software update released?

9 A That one was up -- that release
10 was -- that was with the -- January 3rd of 2019.
11 It was part of the WTZ recall and the WUA service
12 campaign.

13 Q So that was part of the backup --
14 the second backup camera recall, correct?

15 A Yes, correct.

16 Q Okay. When was version 5.2
17 released?

18 A 5.2 was just released June 25th of
19 this year.

20 Q Okay. And is -- are Subaru
21 Corporation and Harman working on additional
22 updates?

23 A At this point we believe there is a
24 version six that will probably come later this
25 year or early next year. Software development is

1 John Gray

2 form. Can you be more specific? Can you
3 refer to the actual version you're talking
4 about?

5 Q Yeah, yes, sorry.

6 What did version one do?

7 A Version one basically addressed a
8 software exit or software conflict that resulted
9 in the rearview camera either not appearing at
10 all -- so it would be blank or black -- or the
11 rearview camera image appeared, but the image
12 could have been frozen. So in other words, when
13 the vehicle moved, the image would not change.

14 Q And this is only when the car is in
15 reverse and the backup camera is engaged?

16 A That's correct.

17 Q Okay. What caused those problems
18 with the backup camera?

19 A There was a software -- there's a
20 software exit -- they call it -- which means the
21 software stopped operating basically, or there
22 was a conflict. So there were a couple of
23 different causes that were addressed.

24 Q Okay. And how -- how did version
25 one address those problems?

1 John Gray

2 instead of showing the time, the same time the
3 head unit was displaying, the MFD was defaulting
4 back to the default setting.

5 Q Okay. And where in the vehicle is
6 the MFD located?

7 A MFD is generally located in the
8 center stack of the vehicle above the
9 infotainment system, above the audio system.

10 Q Okay. And that's an electronic
11 screen, also?

12 A Yes. It's an electronic display
13 screen. It has different features. We call it
14 multifunction because it -- not only does it get
15 information from the head unit. There's other
16 vehicle systems that provide inputs to it so the
17 customer can view different things about the
18 vehicle.

19 Q Okay. So, again, this chart
20 generally shows that the problems went down after
21 the version one?

22 A Significantly, yes.

23 Q And, again, this chart -- this
24 chart would only relate to 2017 Imprezas,
25 correct?

1 John Gray

2 Pandora.

3 Q Okay. Are any of those problems
4 reflected in the charts which we marked as
5 Exhibit 3?

6 A Yes. The media loading is covered
7 on -- page number -- right here -- on the fifth
8 page in, symptom number four.

9 Q Okay. I'm sorry. What page?

10 A It's -- well, it's the numbers at
11 the bottom here -- it's SUB 00006364.

12 Q Okay. So can you walk me through
13 this page, please.

14 A Yes. This is just showing the --
15 there were several issues including the media
16 loading, which is the one you asked about, that
17 were addressed with the software update.

18 And we can see that the number of
19 issues related to that significantly decreased
20 after that software element was incorporated, so
21 it dropped down to 0.037 percent.

22 Q Again, that means that, after
23 version three was released, 0.037 percent of
24 vehicles came in for that repair?

25 A Or something similar, something

1 John Gray

2 how were -- how and when were customers notified
3 that there was a new software update available?

4 A Customers were only notified in the
5 event of recalls. In the recalls, there would
6 have been a mailing that would have gone to each
7 customer notifying them of a software update for
8 the particular condition that the recall
9 addressed.

10 Q And what about the software
11 updates? That would -- that would just -- if
12 they presented to the dealership with a problem,
13 they would then be given the update?

14 A That's correct.

15 Q So just to be clear, when a new
16 software update was issued, the customer wouldn't
17 know about it unless they went to speak to a
18 dealership?

19 A That's correct. There would have
20 been a service bulletin issued that would have
21 gone to the retailer notifying them that the
22 software was available. And at that point the
23 customer's presented with those symptoms. Then
24 they can address them with the software update.

25 Q So dealers wouldn't typically

1 John Gray

2 out and get it, which is at this scale a
3 very costly and burdensome process.

4 So SoA would not have that
5 information by and large.

6 Is that correct, Mr. Gray, what I
7 have just said?

8 THE WITNESS: That is correct.

9 Yes.

10 CONTINUED EXAMINATION

11 BY MR. KASHURBA:

12 Q But there are records out there
13 that should show for every person who waited
14 during the backorder period for a replacement
15 unit that they did that?

16 A That is my understanding, yes.

17 Q Is it possible that some customers
18 would have had their head unit go black during
19 the backorder period, presented it to a dealer,
20 and the dealer, knowing that there was a
21 significant backorder, would have just told them
22 to check back in a few weeks without actually
23 ordering a head unit?

24 A No, that's not standard practice at
25 retailers. Anytime a customer presents with a

1 John Gray

2 (There was a discussion off the
3 record.)

4 (A break is taken.)

5 CONTINUED EXAMINATION

6 BY MR. KASHURBA:

7 Q The rest of the questions might
8 jump around pretty frequently.

9 A Okay.

10 Q Are you aware of anyone who has
11 gotten the most recent update, the 5.2, and is
12 still experiencing problems?

13 A No.

14 Q Okay. I am now going to mark what
15 would be Exhibit 12, which is a copy of the most
16 recent version of the term sheet, as part of the
17 lawsuit?

18 (Exhibit No. S 12, Term Sheet,
19 Document is marked by the reporter for
20 identification.)

21 (There was a discussion off the
22 record.)

23 Q So for the record have you seen
24 this document before?

25 A No, I have not.

1 John Gray

2 coverage, and a Gold coverage, so --

3 Q Can you name those again?

4 A The Power Train, Classic, and Gold
5 coverage.

6 Most customers tend to opt for the
7 Gold coverage, which gives them the most
8 protection.

9 Q Under how many of those three would
10 the infotainment system be covered?

11 A It would definitely be covered
12 under the Gold. I would have to confirm whether
13 it's covered under Classic or not. I'm not sure.

14 Q And it would not be covered under
15 Power Train?

16 A Not under Power Train, correct.

17 Q How many class vehicle owners
18 purchased an extended warranty from Subaru?

19 A The information I have is 278,280.

20 Q And for the record, you are getting
21 that information from your notes?

22 A From my notes, yes.

23 Q And where did that number come
24 from?

25 A It came from discussion I had with

1 John Gray

2 by our retailers or independent franchisees so
3 there can be some adjustment.

4 Q Can you pull up the term sheet
5 again, page three.

6 A Okay.

7 Got it.

8 Q Under C.4 and then I.1, it says --
9 it talks about the coupons for the settlement
10 that can be used "toward service or merchandise
11 at Subaru retailers"?

12 A Correct, these would be coupons
13 that could be used in the retailer's parts and
14 service department, so they could be used for
15 anything from basic maintenance services to tires
16 to oil -- accessories, those types of things.

17 Q And what -- what types of
18 merchandise would that include?

19 A Again, accessory merchandise. If
20 the retailer is selling Subaru gear products,
21 they would be able to probably use them for
22 Subaru gear products as well, Subaru gear being
23 like shirts, hats, tents, cots, all kinds of
24 different things.

25 Q And you mean like trailer hitches?