

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

**Vicente Salcedo, Gerald Linden, and  
Brian Mervin**, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

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

Defendants.

CIVIL ACTION NO. 1:17-CV-  
08173

**SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release (the “Agreement”) is entered into as of August 13, 2018 by and between Vincente Salcedo, Gerald Linden, and Brian Mervin (collectively, “**Plaintiffs**” or “**Representative Plaintiffs**”), individually and as representatives of the Class (as defined below), and Subaru of America, Inc. (“**SOA**”) and Subaru Corporation (“**SBR**”) (collectively, with SOA, “**Defendants**” or “**Subaru**”). Collectively, Plaintiffs and Defendants shall be referred to as the “**Parties.**” This Agreement is intended to fully, finally, and forever resolve, discharge, and settle the consolidated lawsuits captioned *Salcedo v. Subaru of America, Inc.*, No. 1:17-CV-08173-JHR-AMD and *Augustine v. Subaru of America, Inc.*, No. 1:17-cv-13099-JHR-AMD, pending in

the United States District Court for the District of New Jersey (together, 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, the Settlement Class Vehicles suffer from premature engine connecting rod and main bearing failure;

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

3. WHEREAS, Defendants deny Plaintiffs’ allegations and claims and maintain that the Settlement Class Vehicles’ engine connecting rods and main bearings do not fail prematurely; that the Settlement Class Vehicles are not defective; that no applicable warranties were breached nor applicable statutes violated; that the Settlement Class Vehicles were properly designed, manufactured, distributed, marketed, advertised, warranted, and sold; and that Defendants have not engaged in any wrongdoing;

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

- a. Document production and review, including 3,332 pages produced to date, with further productions pending, regarding:
  - i. Vehicle service and warranty histories for each of the Representative Plaintiffs;
  - ii. Settlement Class Vehicle owner's manuals and warranty and maintenance books;
  - iii. Settlement Class Vehicle warranty claims data; and
  - iv. Subaru's and SBR's internal investigation, analysis and conclusions.
- b. Independent investigations and analyses by Plaintiffs and Defendants, including consultation with and research by experts and consultants retained for the purposes of the Litigation.
- c. The 30(b)(6) deposition of a Subaru 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 premature engine connecting rod and main bearing failure 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 (ret.), and is fair, adequate, and reasonable;

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

## II. DEFINITIONS

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

1. **"Action"** means the consolidated lawsuits captioned *Salcedo v. Subaru of America, Inc.*, No. 1:17-CV-08173-JHR-AMD (lead action) and

*Augustine v. Subaru of America, Inc.*, No. 1:17-cv-13099-JHR-AMD

(administratively terminated action), 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 \$625,000. 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 be meant to include the payment of service awards to Representative Plaintiffs by Defendants, as discussed below.

3. **“Authorized Subaru Dealer”** means any Subaru retailer in the continental United States, including Alaska, that is a signatory to Subaru’s Dealer Agreement and Standard Provisions.

4. **“Claim”** or **“Claim for Reimbursement”** shall mean the timely submission of the required form and proof in which a Settlement Class Member seeks to claim the reimbursement available under this Settlement Agreement.

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

6. **“Class Counsel”** shall mean Joseph G. Sauder, Esq. and Matthew D. Schelkopf, Esq. of Sauder Schelkopf, 555 Lancaster Avenue, Berwyn, PA 19312, who were appointed Interim Lead Counsel by the Court on February 22, 2018.

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.

10. **“Effective Date”** means ten business days after the later of (a) the date upon which the time for seeking appellate review of the Judgment (by appeal or otherwise) shall have expired; or (b) the date upon which the time for seeking appellate review of any appellate decision affirming the Judgment (by appeal or otherwise) shall have expired and all appellate challenges to the Judgment shall

have been dismissed with prejudice without any person having further right to seek appellate review thereof (by appeal or otherwise).

11. **“Excluding Conditions”** means the following vehicle conditions or modifications, which, if currently present or previously existing in the vehicle, exclude the Settlement Class Vehicle from receiving a repair under the terms of the Extended Warranty:

- a. Any modifications to the Engine Control Unit (ECU) or any ECU “tune,” whether currently installed or “unmarried” (e.g., COBB Accessport, RomRaider, etc.);
- b. Any “piggyback” device designed to intercept and alter ECU signals or standalone ECU (e.g., UTEC, Apexi, Megasquirt);
- c. Aftermarket air-fuel controller;
- d. Any device designed to increase boost from the turbocharger;
- e. Manual Boost Controller;
- f. Aftermarket boost control solenoid;
- g. Use of aftermarket or modified mass air flow (MAF) or manifold absolute pressure (MAP) sensor (or other electrical circuits);
- h. Use of wastegate pressure restrictors;
- i. Aftermarket or modified turbocharger;
- j. Front mounted intercooler with aftermarket hot or cold side intake piping;
- k. Modification of OEM boost control system and control hoses;
- l. Non-factory specification camshaft;

- m. Connecting rod broken (e.g., broken from revving beyond redline);
- n. Use of Nitrous Oxide injection systems;
- o. Use of E85 fuel;
- p. Use of alcohol injection;
- q. Use of water injection;
- r. Use of aftermarket fuel injectors with nonfactory specification flow rate;
- s. Modification of OEM exhaust system components and emission controls, including catalytic converters;
- t. Max Data well over set limits. (e.g., excessive RPMs caused by miss-shift);
- u. Evidence of non-sanctioned drag racing and or street racing from a “stop” or a “rolling start”;
- v. Evidence of any **Excluding Conditions** having been removed prior to arrival at retailer;
- w. Multiple engine oil changes greater than 8,000 miles apart; and
- x. Evidence of use in a competitive automotive event other than for static display only.

The following vehicle conditions or modifications, which, if currently present or previously existing in the vehicle, shall not alone or collectively exclude the Settlement Class Vehicle from receiving a repair under the terms of the Extended Warranty:

- a. Installation of aftermarket Cat-Back exhaust (e.g., aftermarket exhaust installed after (or downstream of) the factory catalytic converter);



- b. Installation of atmospheric blow-off valve;
- c. Installation of aftermarket cold-air intake; and/or
- d. Installation of aftermarket top-mounted intercooler.

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

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

14. **“Independent Repair Shop”** any registered business offering automotive repair services to the public other than an Authorized Subaru Retailer.

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

16. **“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 Agreement and dismissing the Action with prejudice.

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

18. **“Notice Date”** means the date by which Defendants first initiate the mailing of the Class Notice to the Settlement Class. Subject to the Court’s approval, the Notice Date shall be within 100 days after the Court enters a Preliminary Approval Order, substantially in the form attached hereto as Exhibit D.

19. **“Notice Completion Date”** means the date on which SOA completes the original mailing the Class Notice to Settlement Class Members.

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

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

22. **“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 the date of repair; the make and model of the vehicle; the vehicle identification number; the mileage of the vehicle at the time of repair; the facility that performed the repair; a description of the work performed, including a breakdown of parts and labor costs; the reason for the repair; and 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.

23. **“Qualifying Failure”** means the failure of a Settlement Class Vehicle’s engine connecting rod bearings or main bearings. A Qualifying Failure does not include, among other failures, engine failures caused by overheating, lack of lubrication from abuse or poor maintenance, detonation, hydrostatic lock

(“hydrolock”) or water damage, head gasket failure, turbocharger failure, camshaft failure, timing belt failure, water pump failure, idler pulley failure, or any piston or piston ringland failure in the absence of a connecting rod or main bearing failure.

24. **“Qualifying Repair”** means any type of repair, replacement, diagnosis, or inspection of the Settlement Class Vehicle to address a Qualifying Failure. A Qualifying Repair does not include repair work performed to address a condition that was unrelated to a Qualifying Failure.

25. **“Released Claims”** or **“Settled Claims”** means any and all claims, causes of action, demands, debts, suits, liabilities, obligations, damages, actions, rights of action, remedies of any kind and/or causes of action of every nature and description, whether known or unknown, asserted or unasserted, foreseen or unforeseen, regardless of any legal theory, existing now or arising in the future, by Plaintiffs and any and all Settlement Class Members based on a Qualifying Failure of Settlement Class Vehicles including claims for reimbursement for amounts spent on parts or related labor, the engines and their components, or the emissions components, or diminution in value of the vehicle, as relating to a Qualifying Failure. This applies to claims arising under statute, including a state lemon law, rule, regulation, common law or equity, and including, but not limited to, any and all claims, causes of action, rights or entitlements under any federal, state, local or

other statute, law, rule and/or regulation, any claims relating to violation of California Business and Professions Code Sections 17200-17209, California Business and Professions Code Section 17500, or the California Consumer Legal Remedies Act (California Civil Code Section 1750-1784), any consumer protection, consumer fraud, unfair business practices or deceptive trade practices laws, any legal or equitable theories, any claims or causes of action in tort, contract, products liability, negligence, fraud, misrepresentation, concealment, consumer protection, restitution, quasi contract, unjust enrichment, express warranty, implied warranty, secret warranty and/or any injuries, losses, damages or remedies of any kind, in law or in equity, under common law, statute, rule or regulation, including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, restitution, recovery of attorneys' fees or litigation costs, or any other legal or equitable relief. This 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 pending automobile lemon law lawsuit pending as of the Notice Completion Date pertaining to engine connecting rod and/or main bearing failure as alleged in the Action.

26. **“Released Parties”** shall mean Subaru of America, Inc., Subaru Corporation, Subaru Tecnica International Inc., North American Subaru, Inc., Subaru Research & Development, Inc., Subaru of Indiana Automotive, Inc., all designers, manufacturers, assemblers, distributors, importers, marketers, advertisers, testers, inspectors, sellers, suppliers, component suppliers, lessors, warrantors, dealers, 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.

27. **“Service Awards”** means the \$3,500 that Defendants have agreed to pay to each Vincente Salcedo, Gerald Linden, and Brian Mervin, who have served as putative Representative Plaintiffs in the Action, upon finalization of this agreement and approval by the Court.

28. **“Settlement Class Vehicle”** and **“Vehicles”** means model year 2012 through 2017 Subaru Impreza WRX and STi vehicles equipped with an EJ-series

2.5-liter turbocharged engine, manufactured between October 11, 2011, and November 16, 2016, and bearing vehicle identification numbers (VIN) ending with CG203168 and up for 5-door models, and CG006225 through H9826807 for 4-door models.

Excluded from this class action settlement are model year(s): 2012–2017 Impreza 2.0i, 2.0i Premium, 2.0i Limited, 2.0i Sport Premium, and 2.0i Sport Limited; 2011–2017 Forester 2.5i, 2.5i Premium, 2.5X, 2.5X Premium, 2.0XT Premium, and 2.0XT Touring; 2012–2017 Legacy 2.5i, 2.5i Premium, 2.5i Sport, 2.5i Limited, 3.6R, and 3.6R Limited; 2012–2017 Outback 2.5i, 2.5i Premium, 2.5i Limited 3.6R, and 3.6R Limited; 2013–2017 Crosstrek 2.0i Premium, 2.0i Limited, 2.0i Hybrid, and 2.0i Hybrid Touring, all BRZ models, and all Tribeca models.

29. **“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.

30. **“Unknown Claims”** means any Released Claim that any Plaintiff or Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release provided for herein, including without limitation those that, if known to him, her or it, might have affected his, her or its settlement and

release pursuant to the terms of this Agreement, or might have affected his, her or its decision not to object to the settlement terms memorialized herein. As more fully discussed in Section V below, Settlement Class members expressly waive all rights to pursue unknown claims and rights conferred upon them by the provisions of Section 1542 of the California Civil Code or any other law.

### **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 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. 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 Vincente Salcedo, Gerald Linden, and Brian Mervin as representatives of the Settlement



Class, and appointing Joseph G. Sauder and Matthew D. Schelkopf 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 SOA will be appointed as “**Settlement Administrator**,” subject to the approval of the Court.

4. Solely for the purposes of implementing this Agreement and effectuating the settlement, Defendants stipulate that Named Plaintiffs Vincente Salcedo, Gerald Linden, and Brian Mervin, and Class Counsel are adequate representatives of 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 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 Agreement, nor the negotiations that preceded it, shall be offered or be

admissible in evidence against Defendants, the Released Parties, the Plaintiffs, or the Settlement Class Members, or cited or referred to in the Action or any action or proceeding, except in an action or proceeding brought to enforce the terms of this Agreement, or to raise the release provisions of this Agreement as a defense.

## **V. RELEASE AND WAIVER**

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

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

3. Plaintiffs, Representative Plaintiffs, and Settlement Class Members who have not validly and timely excluded themselves from this Settlement, 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 Failure.

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

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

6. 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.

7. Representative Plaintiffs, Plaintiffs and Settlement Class Members who have not validly and timely excluded themselves from this Settlement 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.

8. In connection with this 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 Actions and/or the Release herein. Nevertheless, it is the intention of Class Counsel and Settlement Class Members in executing this 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 Actions, except as otherwise stated in this Agreement.

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.

9. Representative Plaintiffs represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under this 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 Actions, including without limitation, any claim for benefits, proceeds or value under the Actions, and that Representative Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Actions or in any benefits, proceeds or values under the Actions. 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 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 Actions, including without limitation, any claim for benefits, proceeds or value under the Actions, and that such Settlement Class Member(s) 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 Actions.

10. Representative Plaintiffs, Plaintiffs' Class Counsel and any other attorneys who receive attorneys' fees and costs from this Settlement 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 (ret.). By executing this 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.

11. The Parties specifically understand that there may be further pleadings, discovery requests and responses, testimony, or other matters or materials owed by the Parties pursuant to existing pleading requirements, discovery requests, or pretrial rules, procedures, or orders, and that, by entering into this Agreement, the Parties expressly agree that all duties associated with any such outstanding items are terminated.

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

13. Representative Plaintiffs and Plaintiffs' Class Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential

and material term of the 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. Warranty Extension for Current Owners or Lessees.**

1. Effective on the Notice Date, Subaru will extend its existing express Powertrain Limited Warranty, applicable to the Settlement Class Vehicles, to cover Qualifying Repairs performed by an Authorized Subaru Dealer, to a period of eight 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 Extended Warranty shall be governed by the same terms as the Powertrain Limited Warranty.

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

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

4. 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.

5. The Extended Warranty is subject to the same terms and conditions set forth in the Settlement Class Vehicle's Powertrain Limited Warranty and Warranty and Maintenance Booklet, except as specifically modified herein. Consistent with those original terms and limitations, SOA will not repair any Class Vehicles that, prior to the connecting rod bearing or main bearing failure, contained certain Excluding Conditions, or other conditions typically disqualifying the vehicle for coverage. For example, as set forth in the original Powertrain Limited Warranty:

These warranties do not cover any part which malfunctions, fails or is damaged due to any unauthorized alteration or modification made to the vehicle such as the removal of parts or the installation of parts, equipment or accessories or improper repairs or adjustments not approved or recommended by SOA.

These warranties do not cover any part which malfunctions, fails or is damaged due to objects striking the vehicle, road hazards, whether on or off the road, accident, fire, neglect, abuse or any other cause beyond the control of SOA.

6. Additionally, vehicles are ineligible for warranty coverage if the vehicle identification number is altered or cannot be read; 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, it shall be excluded and not covered by the Extended Warranty.

7. 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 SOA in connection with the Settlement Class Vehicles, except as it relates to Qualifying Failures and Qualifying Repairs as set forth herein.

8. 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 (i.e., any goodwill or other payment will reduce or eliminate the right to recover for the same benefit previously provided) for any Qualifying Failure during the Extended Warranty for any Settlement Class Vehicle. No such goodwill

decision by SOA shall act to deprive a Settlement Class Member of benefits available under the Settlement Agreement that were not provided as goodwill.

**B. Reimbursement 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.4. below, a Settlement Class Member who has not already been reimbursed by SOA or a third party will be entitled to 100% reimbursement of the out-of-pocket expenses (parts and labor) that he or she actually paid to an Authorized Subaru Dealer, on a claims made basis, for the cost of a Qualifying Repair performed during the 8-year or 100,000-mile Extended Warranty period following the Settlement Class Vehicle's In-Service Date.

2. Repairs Performed by Independent Repair Shop. Subject to the proof and conditions required in Section VI.B.4. below—and *only if* the Settlement Class Vehicle was first presented to an Authorized Subaru Dealer—a Settlement Class Member who has not already been reimbursed by SOA or a third party will be entitled to reimbursement of the out-of-pocket expenses (parts and labor) that he or she actually paid to an Independent Repair Shop, on a claims made basis, for the cost of a Qualifying Repair performed during the initial 8-year or 100,000-mile Extended Warranty period following the Settlement Class Vehicle's In-Service Date. All reimbursements for repairs performed by an Independent Repair Shop shall be subject to the Repair Cost Caps in Section VI.B.6. A Settlement Class

Member shall not be entitled to recover the costs of repair charged by an Independent Repair Shop for an otherwise Qualifying Repair if the repair is conducted after two (2) days following the Notice Completion Date.

3. Reimbursement Caps for Independent Shop Repairs. Subject to Section VI.B.2., where a Settlement Class Member seeks reimbursement for a Qualifying Repair performed by an independent repair shop, any such reimbursements must be capped as follows:

<b>Repair</b>	<b>Reimbursement Amount Cap</b>
Shortblock Replacement with No Additional Component Replacements	\$3,500
Shortblock Replacement with Turbocharger Replacement or Turbocharger Rebuild	\$4,500
Shortblock Replacement with Cylinder Head and Camshaft Replacement (No Turbocharger Replacement or Rebuild)	\$5,500
Shortblock Replacement with Cylinder Head, Camshaft, and Turbocharger Replacement or Turbocharger Rebuild	\$6,500

4. No Warranty for Repairs Performed by Independent Repair Shops. Defendants do not warrant or guarantee any repairs performed at independent repair shops and, should any such repairs fail after a Settlement Class Member has made a claim under the Settlement, the Class Member will not be entitled to submit

an additional claim. Defendants will not reimburse any work performed at independent repair shops after the Notice Date.

5. Exclusions and Limitations. A Settlement Class Member will not be eligible for reimbursement under this Section if Excluding Conditions are present or if the Vehicle's service documentation indicates that the Qualifying Repair was due to lack of, or insufficient, engine maintenance or failure to comply with the oil and oil filter and other maintenance requirements and time/mileage schedule of the vehicle's Warranty Maintenance Booklet and Owners' Manual.

6. Required Proof. The following proof must be submitted, and conditions satisfied, in order for a Settlement Class Member to be eligible for a reimbursement under Section VI.B.1. or B.2. of this Agreement:

- a. A Claim is submitted online, no later than 90 days after the Notice Date, or mailed to SOA, 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, the Claim contains proof that the claimant is in fact a Settlement Class Member.
- d. The Claim contains the proper Proof of Repair Expense demonstrating the Settlement Class Member's right to receive a 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. If a Settlement Class Member has previously received partial reimbursement for such expenses, then a claim may be made pursuant to this Settlement for only the unreimbursed portion of those expenses.
- f. The Qualifying Repair was not performed because of engine damage due to abuse, alteration or modification, a collision or crash, vandalism and/or other impact, and the vehicle does not contain any other Excluding Conditions.

7. Reimbursements Contingent on Final Approval. Reimbursements are contingent upon the Court's final approval of this Agreement.

**C. Reimbursement to Settlement Class Members who Sold or Traded In Settlement Class Vehicle with a Qualifying Failure.**

1. Settlement Class Members who experienced a Qualifying Failure and who sold or traded in the class vehicle prior to obtaining a repair are eligible to submit Claims for payment as part of this Settlement. To be eligible for such a claim, the Settlement Class Member must comply with the Claims requirements of this Agreement and demonstrate in their online or mailed Claim Forms that they (a) presented the Settlement Class Vehicle to an Authorized Subaru Retailer with a Qualifying Failure, (b) subsequently sold or traded in the Class Settlement Vehicle with an unrepaired Qualifying Failure within the Extended Warranty period following the Settlement Class Vehicle's In-Service Date, and (c) received less than fair market value for the trade-in or sale as compared to the prevailing Kelly

Blue Book value at the time of the transaction. No reimbursement under this section will be provided for any sale or trade that occurred after the Notice Date. Such payment will be determined on a case-by-case basis by SOA, acting as the claims administrator, and is subject to claims administration procedures set forth in Section VII of this Agreement. In no event shall such payment exceed \$4,000.00.

**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 towing costs and/or rental car expenses related to a Qualifying Repair performed prior to the conclusion of the Extended Warranty period, as set forth below.

2. Towing Expenses. If a Settlement Class Member previously incurred unreimbursed out-of-pocket expenses for towing the vehicle to an Authorized Subaru Dealer, which were necessitated by a Qualifying Failure, then the Settlement Class Member, upon sufficient Proof of Repair-Related Expenses, may be reimbursed for those towing expenses. Coverage for any future towing expenses shall be governed by the same terms as the Powertrain Limited Warranty.

3. Rental Car Expenses. If, prior to the Notice Date, a Settlement Class Vehicle required a Qualifying Repair from an Authorized Subaru Dealer, and that

repair required more than two full days 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, starting on the third day, up to \$45 dollars 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 towing rental car expenses shall be governed by the same terms as the Powertrain Limited Warranty.

4. 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 this Agreement.

**E. Costs of Administration and Notice.**

1. The Parties agree that Defendants shall be responsible for the costs of Class Notice and settlement administration. Plaintiffs retain the right to audit and review the handling of the claims by Defendants.

**VII. CLAIMS ADMINISTRATION**

**A. Administration.**

1. For each approved Claim for Reimbursement, SOA 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 paid by (or on behalf of) the Settlement Class Member, 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 Reimbursement that qualifies for less than the full amount of the reimbursement sought by the Settlement Class Member, SOA 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 a partial reimbursement has been awarded;
- b. The amount of the proposed reimbursement;
- c. Whether rejection of the reimbursement sought was based on:
  - i. Lack of or insufficient Proof of Repair Expense and/or other required proof;
  - ii. Error in the Claim Form; or
  - iii. Any other applicable reason impacting payment of the full amount of the reimbursement sought by the Settlement Class Member.



- d. the Settlement Class Member's right to a Second Review of SOA'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 this Agreement, or 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 SOA'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 Subaru within 30 days of receipt of the letter.
4. If a Settlement Class Member accepts the reimbursement offer under Section VII.A.3.c., SOA 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 SOA (determined either by SOA'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 SOA's Second Review, signed by the claimant, that includes an oath that the information submitted is true and accurate.
2. In each Second Review, SOA shall review the decision with regard to the reimbursement, including the criteria required under this Settlement Agreement.
3. The Second Review will be made by a supervisor level employee of SOA 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 SOA'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 this 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 SOA, 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. SOA'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 this Agreement.

6. Class Counsel will have the right to reasonably monitor the claims administration process and ensure that SOA 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 SOA'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 SOA'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. SOA, as the claims administrator, shall be responsible for the following Settlement Class Notice program:

- a. Within one hundred (100) days after entry of the Preliminary Approval Order discussed in Section XII.A of this Agreement, Subaru

shall cause individual notice, substantially in the form attached hereto as Exhibit B, together with the Claim Form and Request for Exclusion Form, to be mailed, by first class mail, to the current or last known addresses of all reasonably identifiable Settlement Class Members. 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. SOA 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, SOA 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, SOA 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. SOA 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. SOA 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 this Agreement or those required by the Court.

## **IX. RESPONSE TO NOTICE**

### **A. Objection to Settlement.**

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



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

Matthew D. Schelkopf  
Sauder Schelkopf  
555 Lancaster Avenue  
Berwyn, Pennsylvania 19312

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. state that the objector has reviewed the Settlement Class definition and understand in good faith that he or she is a Settlement Class Member;
- d. a written statement of all grounds for the objection accompanied by any legal support for such objection;

- e. copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection; and
- f. state whether the Settlement Class Member complained to Defendants or a Subaru dealer about a Qualifying Failure or has had any Qualifying Repairs and, if so, provide evidence of any such complaint or repairs.

3. In addition, any Settlement Class Member objecting to the settlement shall provide a list of all other objections submitted by the objector, 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 final 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 final 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 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, 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. Failure by an objector to make himself or herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

**B. Request for Exclusion from the Settlement.**

1. Any Settlement Class Member who wishes to be excluded from the Settlement Class must submit a request for exclusion (“**Request for Exclusion**”), online at the settlement website or mailed, substantially in the form attached hereto as Exhibit F, to SOA 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. SOA 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. SOA will maintain a database of all Requests for Exclusion, and will send the original written communications memorializing those Requests for Exclusion to Class Counsel. SOA 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 this Agreement that the withdrawing party deems in good faith to be material (e.g., because it substantially increases the costs of the Settlement, or deprives the withdrawing party of a material benefit of the Settlement; a mere delay of the approval and/or implementation of the Settlement including a delay due to an appeal procedure, if any, shall not be deemed material);

- b. The preliminary or final approval of this Settlement Agreement is not obtained without 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 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 this Agreement is vacated by the Court or reversed or substantially modified by an appellate court; or
- d. If 1,000 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 paragraph, 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 this agreement. In the event either party withdraws from the Settlement, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Action, and shall not be offered in evidence or used in the Action or any other litigation for any purpose, including the existence, certification or maintenance of any purported class. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be inadmissible as evidence and without prejudice to the Defendants and Plaintiffs, and shall not be deemed or construed to be an admission or confession by any party of any fact, matter or proposition of law, and shall not be used in any manner for any purpose, and all parties to the Action shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court. Upon withdrawal, either party may elect to move the Court to vacate any and all orders entered pursuant to the provisions of this Settlement Agreement.

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



## **XI. ADMINISTRATIVE OBLIGATIONS**

### **A. Preliminary Approval of Settlement.**

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

### **B. Final Approval of Settlement.**

1. If this 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 \$625,000 (“six hundred and twenty-five thousand dollars”). Defendants will not oppose Class Counsel’s application for Attorneys’ Fees and Expenses up to and not exceeding the above amounts, and Class Counsel may not be awarded, and shall not accept, any amount for attorneys’ fees and expenses in excess of the above amounts. Each party shall have the right of appeal to the extent the award is inconsistent with this Agreement. Attorneys’ Fees and Expenses shall be in addition to the benefits provided directly to the Settlement Class (and shall be in addition to the class representative 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 Vincente Salcedo, Gerald Linden, and Brian Mervin, 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, Plaintiffs, Settlement Class Members, or others may be required to pay as a result of the receipt of 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 press releases or other publicity will be prepared or proceed by the Parties or counsel. Nothing in this Agreement shall preclude Class Counsel from establishing and maintaining, at their own expense, an internet presence referencing their role as Class Counsel in the Action and that a settlement has been reached with a hyperlink to the settlement website. Class counsel may only reference the Action to the extent and in the manner for which they received Defendants' prior written approval, which approval shall be reasonably provided within 5 business days. In no event shall any reference be made to information designated as "Confidential."

**B. Effect of Exhibits**

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

**C. Entire Agreement**

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

**D. Arm's-Length Negotiations and Good Faith**

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

upon by the Parties in entering into this Agreement. The Parties agree to act in good faith during the claims administration process.

**E. Continuing Jurisdiction**

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 this Agreement.

**F. Binding Effect of Settlement Agreement**

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

**G. Extensions of Time**

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

**H. Authority to Execute Settlement Agreement**

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

**I. Return of Confidential Materials**

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 May 18, 2018.

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

**L. Construction**

1. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement and, therefore, the terms and conditions of this

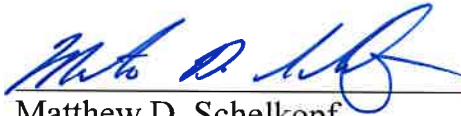
Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

**M. Captions**

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



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



Matthew D. Schelkopf  
Joseph G. Sauder  
Joseph B. Kenney  
Sauder Schelkopf  
555 Lancaster Avenue  
Berwyn, Pennsylvania 19312  
Telephone: (610) 200-0581  
Facsimile: (610) 421-1326  
MDS@sstrialawyers.com  
JGS@sstrialawyers.com  
JBK@sstrialawyers.com

Date: *August 20, 2018*

Attorneys for Plaintiffs and the Class

---

Neal D. Walters  
Casey G. Watkins  
Ballard Spahr LLP  
210 Lake Drive East, Ste. 200  
Cherry Hill, New Jersey 08002  
Telephone: 856.761.3400  
Facsimile: 856.761.1020  
waltersn@ballardspahr.com  
watkinsc@ballardspahr.com

Date:

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.

---

Matthew D. Schelkopf  
Joseph G. Sauder  
Joseph B. Kenney  
Sauder Schelkopf  
555 Lancaster Avenue  
Berwyn, Pennsylvania 19312  
Telephone: (610) 200-0581  
Facsimile: (610) 421-1326  
MDS@sstrialawyers.com  
JGS@sstrialawyers.com  
JBK@sstrialawyers.com

Date:

Attorneys for Plaintiffs and the Class



---

Neal D. Walters  
Casey G. Watkins  
Ballard Spahr LLP  
210 Lake Drive East, Ste. 200  
Cherry Hill, New Jersey 08002  
Telephone: 856.761.3400  
Facsimile: 856.761.1020  
waltersn@ballardspahr.com  
watkinsc@ballardspahr.com

Date: 8-20-18

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

**IN WITNESS WHEREOF**, Plaintiffs and Class Representatives, Vincente Salcedo, Gerald Linden, and Brian Mervin, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: 8/19/2018 12:30:09 AM PDT

DocuSigned by:  
  
52B593C060F442...  
\_\_\_\_\_  
VINCENTE SALCEDO

DATED: \_\_\_\_\_

\_\_\_\_\_  
GERALD LINDEN

DATED: \_\_\_\_\_

\_\_\_\_\_  
BRIAN MERVIN

**IN WITNESS WHEREOF**, Plaintiffs and Class Representatives, Vincente Salcedo, Gerald Linden, and Brian Mervin, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: \_\_\_\_\_

\_\_\_\_\_  
VINCENTE SALCEDO

DATED: 8/20/2018 9:35:40 AM PDT  
\_\_\_\_\_

DocuSigned by:  
  
6DCCBFF3616649C...  
\_\_\_\_\_  
GERALD LINDEN

DATED: \_\_\_\_\_

\_\_\_\_\_  
BRIAN MERVIN

**IN WITNESS WHEREOF**, Plaintiffs and Class Representatives, Vincente Salcedo, Gerald Linden, and Brian Mervin, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: \_\_\_\_\_

\_\_\_\_\_  
VINCENTE SALCEDO

DATED: \_\_\_\_\_

\_\_\_\_\_  
GERALD LINDEN

DATED: 8/14/2018 11:07:14 AM PDT

DocuSigned by:  
  
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\_\_\_\_\_  
BRIAN MERVIN