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and Subaru of America, Inc.

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

**In re Subaru Battery Drain Products
Liability Litigation**

Case No. 1:20-cv-03095-JHR-MJS

SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is entered into between Plaintiffs Amy Burd, Walter Gill, David Hansel, Glen McCartney, Roger Baladi, Tamara O’Shaughnessy, Anthony Franke, Matthew Miller, Steven Stone, Howard Bulgatz, Mary Beck, David Davis, and Colin George (collectively “Plaintiffs” or “Representative Plaintiffs”), individually and as representatives of the Class (as defined below), and Subaru of America, Inc. (“SOA”) and Subaru Corporation (“SBR”) (collectively, with SOA, “Defendants” or “Subaru”). Collectively, Plaintiffs and Defendants shall be referred to as the “Parties.” The Agreement is intended to fully, finally, and forever resolve, discharge, and settle the lawsuit captioned *In re Subaru Battery Drain Products Liability Litigation*, No. 1:20-cv-03095-JHR-MJS pending in the United States District Court for the District of New Jersey (the

“Action”), and all matters raised or that could have been raised therein, subject to the terms and conditions hereof and approval by the Court.

I. RECITALS

1. WHEREAS, Plaintiffs have filed the above referenced Action as a putative class action against Defendants, claiming that due to alleged defects, the Settlement Class Vehicles suffer from parasitic drain of battery power that causes the battery to prematurely fail;

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

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

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

a. Document production and review, including over 11,000 pages produced to date, with further productions pending, regarding:

- (1) Vehicle service and warranty histories for each of the Plaintiffs;
- (2) Original and revised Technical Service Bulletins;
- (3) Settlement Class Vehicle owner’s manuals and warranty and maintenance books;
- (4) Settlement Class Vehicle warranty claims data; and

(5) SOA and SBR's internal investigation, analysis and conclusions.

b. Independent investigations and analyses by Plaintiffs and Defendants, including consultation with class members, and consultation and research by consultants retained for the purposes of the Litigation.

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

d. The 30(b)(6) deposition of a John Gray, Subaru's Director of Field Quality.

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 parasitic drain of the battery power 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 five mediation sessions before the Honorable Joel Schneider, U.S.M.J. (ret.), and in the view of counsel for Parties, based upon the information exchanged to date, is fair, adequate, and reasonable;

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

II. DEFINITIONS

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

1. **“Action”** means the lawsuit captioned *In re Subaru Battery Drain Products Liability Litigation*, No. 1:20-cv-03095-JHR-MJS 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 in connection with the Action. Attorneys’ Fees and Expenses shall not, under any circumstances, exceed the sum of \$4,100,000.00 (“four million, one hundred thousand dollars”). Attorneys’ Fees and Expenses shall be in addition to the benefits provided directly to the Settlement Class, and shall not reduce or otherwise have any effect on the benefits made available to the Settlement Class. Attorneys’ Fees and Expenses shall not include the payment of Service Awards to settlement class representatives by Defendants, as discussed below.

3. **“Authorized Subaru Retailer”** means any authorized Subaru retailer in the continental United States, Hawaii or Alaska.

4. **“Battery Replacement Costs”** means the costs (comprised of the retail charges for parts and labor) for an Authorized Subaru Retailer to replace a Class Vehicle’s battery.

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

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

7. **“Class Counsel”** shall mean Matthew D. Schelkopf of Sauder Schelkopf, Matthew Mendelsohn of Mazie Slater Katz & Freeman, LLC, and Adam Polk of Girard Sharp LLP, who were appointed Interim Co-Lead Counsel by the Court on May 5, 2020 (ECF No. 15).

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

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

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

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

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

13. **“Final Approval Order”** – means the Court’s order granting final approval to the class action settlement and dismissing the Action with prejudice.

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

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

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

17. **“Lemon Law Action”** means any action asserting 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 Battery Failure or Qualifying Battery Condition.

18. **“Notice Date”** means within three days of the date the Settlement Administrator provides the First Class Notice to the Settlement Class Members. Subject to the

Court's approval, the Notice Date shall be within 90 (ninety) days after the Court enters a Preliminary Approval Order, substantially in the form attached hereto as Exhibit E.

19. **"Notice Completion Date"** means the date on which the Settlement Administrator completes the original mailing of the First Class Notice to Settlement Class Members.

20. **"Owner Paid Repair"** means monetary amounts actually paid by a Class Member prior to the Notice Date for a Qualifying Battery Condition.

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

22. **"Proof of Repair Expense"** means reasonable documentation (for example a repair order, receipt, credit card statement, bank statement, invoice, photograph, or historical accounting record, other similar documentation, as well as, any combination of the foregoing), for a Qualifying Repair incurred prior to the Notice Date, 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; 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. If, however, the Settlement Class Member is unable to obtain documents or records relating to the nature and timing of the repair despite a good faith effort to obtain them, the Settlement Class Member may check a box on the claim form stating: good faith efforts that were made to obtain

the records including the person(s) with whom he/she/it communicated in an effort to obtain the records but that they could not locate the records. Subaru of America agrees it will search the records presently in its possession in good faith and, if qualifying records exist to support both the qualifying nature and timing of the repair, and it is consistent with the timing of the payment documentation submitted by the claimant, the claim shall be honored. A class member who attests to an inability to obtain the records despite good faith efforts on the claim form must nevertheless provide proof of the qualifying out of pocket payment. The claim form will further indicate that if the Settlement Class Member elects to have Subaru of America search its records, it may cause a delay in the review or processing of the claim. If Subaru does not have records supporting the claim after it conducts its search, the claim shall be rejected.

23. **“Proof of Repair-Related Expense”** means documentation (for example a repair order, receipt, credit card statement, bank statement, invoice, photograph, or historical accounting records, as well as, any combination of the foregoing) indicating that a Settlement Class Member paid for a rental car, towing service, rideshare, hotel room, meal, or other out-of-pocket expense directly related to obtaining a Qualifying Reimbursable Repair, which was incurred reasonably contemporaneous with the Qualifying Reimbursable Repair and prior to the Notice Date, and identifies the date the expense was incurred and the dollar amount paid.

24. **“Qualifying Battery Failure”** means a Settlement Class Vehicle that does not adequately pass a Subaru retailer administered Midtronics battery test as set forth in the Agreement.

25. **“Qualifying Battery Condition”** means a Settlement Class Vehicle in which the battery died (i.e., the battery was discharged beyond the ability to start the Class Vehicle).

26. **“Qualifying Reimbursable Repair”** means any battery testing, diagnosis, or replacement performed by an Authorized Subaru Retailer or third-party repair center, so long as the Settlement Class Member either previously (1) presented the Settlement Class Vehicle to the Subaru dealership; or (2) contacted Subaru customer service division regarding the battery related issue he or she later paid to have fixed by an independent third party on a Settlement Class Vehicle in connection with a Qualifying Battery Condition prior to the Notice Date, including towing services associated with a Qualifying Battery Condition on a Settlement Class Vehicle prior to the Notice Date.

27. **“Reasonably Related Reimbursable Costs”** means costs incurred by Settlement Class Members who experienced 2 or more Qualifying Battery Conditions within five (5) years and sixty thousand (60,000) miles from the In-Service Date of the Settlement Class Vehicle as per Section V.C., prior to the Notice Date and within 48 hours of such a Qualifying Battery Condition, for reasonably related reimbursable costs including, and without limitation, a hotel stay and related meals, equipment purchased to sustain battery operation, or other such reasonable and necessary expenses that would not have been incurred but for the Qualifying Battery Condition.

28. **“Reflash”** means reprogramming software to optimize the Engine Control Module (“ECM”) to improve battery performance.

29. **“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 Battery Failure or Qualifying Battery Condition of Settlement Class Vehicles including claims for reimbursement for amounts spent on parts or related labor, or diminution in value of the vehicle, that were or could have been raised in the Action related to Qualifying Battery Failure or Qualifying Battery Condition. This applies to claims arising under statute, including a state lemon law, rule, regulation, common law or equity, and including, but not limited to, any and all claims, causes of action, rights or entitlements under any federal, state, local or other statute, law, rule and/or regulation, any claims relating to violation of California Business and Professions Code Sections 17200-17209, California Business and Professions Code Section 17500, or the California Consumer Legal Remedies Act (California Civil Code Section 1750-1784), any consumer protection, consumer fraud, unfair business practices or deceptive trade practices laws, any legal or equitable theories, any claims or causes of action in tort, contract, products liability, negligence, fraud, misrepresentation, concealment, consumer protection, restitution, quasi contract, unjust enrichment, express warranty, implied warranty, secret warranty and/or any injuries, losses, damages or remedies of any kind, in law or in equity, under common law, statute, rule or regulation, including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, restitution, recovery of attorneys' fees or litigation costs, or any other legal or equitable relief. This also includes any related claims or counter claims that Defendants may have against Plaintiffs, the Settlement Class, or Plaintiffs' counsel. This release expressly exempts claims for death, personal injuries and property damage (other than damage to the Settlement Class Vehicle) that were not asserted in the Action. Nothing in this Settlement shall be construed as a waiver, release and/or compromise of any Lemon Law Action pending as of the Notice Date pertaining to parasitic battery drain as alleged in the Action. Settlement Class Members

expressly waive the provisions of Section 1542 of the California Civil Code and understand that such section provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

30. **“Released Parties”** shall mean Subaru of America, Inc., Subaru Corporation, Subaru Tecnica International, Inc., North American Subaru, Inc., Subaru Research & Development, Inc., Subaru of Indiana Automotive, Inc., all designers, manufacturers, assemblers, distributors, importers, marketers, advertisers, testers, inspectors, sellers, suppliers, component suppliers, lessors, warrantors, repairers and servicers of Settlement Class Vehicles and each of their component parts and systems, all dealers, lessors and retailers of Settlement Class Vehicles, and all of the aforementioned persons’ or entities’ past and present directors, officers, shareholders, principals, partners, employees, agents, servants, members, assigns, representatives, attorneys, insurers, trustees, vendors, contractors, heirs, executors, administrators, successor companies, parent companies, subsidiary companies, affiliated companies, divisions, trustees, vendors and representatives.

31. **“Service Awards”** means the \$4,000 (combined total of \$52,000) that Defendants have agreed to pay to each of the thirteen named Plaintiffs Amy Burd, Walter Gill, David Hansel, Glen McCartney, Roger Baladi, Tamara O’Shaughnessy, Anthony Franke, Matthew Miller, Steven Stone, Howard Bulgatz, Mary Beck, David Davis, and Colin George, who have served as putative class representatives in the Action, upon finalization of this Settlement Agreement and approval by the Court.

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

33. **“Settlement Class Vehicle”** and **“Vehicles”** means model year 2015-2020 Outback, 2015-2020 Forester, 2015-2020 Legacy, 2015-2020 WRX, and 2019-2020 Ascent.

34. **“Settlement Class Member”** means, subject to the exclusion in Section III.1, a natural person who is the current or former owner or lessee of a Settlement Class Vehicle, who purchased or leased in the continental United States, including Alaska or Hawaii, who purchased the vehicle for purposes other than for resale, who does not validly and timely opt out of the Settlement Class pursuant to the procedure set forth in the Court’s Preliminary Approval Order. This definition is not intended to exclude military personnel stationed overseas.

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

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

37. **“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 XI below, Settlement Class Members expressly waive all rights to pursue unknown claims and rights conferred upon them by the provisions of Section 1542 of the California Civil Code or any other law that arise from the same facts as were

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

III. ESTABLISHMENT OF A SETTLEMENT CLASS

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

All natural persons, who are residents of the continental United States, including 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.¹ Excluded from the Settlement Class are (a) those claims for personal injury and/or property damage (claims for a Qualifying Battery Condition or Qualifying Battery Failure in a Settlement Class Vehicle are included regardless of whether they additionally experienced personal injury or property damage for which they do not make a claim; however, those additional claims for personal injury and/or property damaged shall be deemed excluded from the Settlement Class) 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 solely 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; (k) any Settlement Class Member that files a timely and proper Request for Exclusion from the Settlement Class; and (l) third party issuers.

¹ This is not intended to exclude military personnel stationed overseas.

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 Amy Burd, Walter Gill, David Hansel, Glen McCartney, Roger Baladi, Tamara O'Shaughnessy, Anthony Franke, Matthew Miller, Steven Stone, Howard Bulgatz, Mary Beck, David Davis, and Colin George as representatives of the Settlement Class, and appointing Class Counsel to serve as counsel for the Settlement Class.

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

4. Solely for the purposes of implementing this Settlement Agreement and effectuating the settlement, Subaru stipulates that Named Plaintiffs Amy Burd, Walter Gill, David Hansel, Glen McCartney, Roger Baladi, Tamara O'Shaughnessy, Anthony Franke, Matthew Miller, Steven Stone, Howard Bulgatz, Mary Beck, David Davis, and Colin George, and Class Counsel are adequate representatives of the Settlement Class.

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

V. SETTLEMENT CONSIDERATION

In consideration of the full and complete Release of all Released Claims against all Released Parties, and the dismissal of the Action with prejudice, Defendants agree to provide the following consideration to the Settlement Class. The availability of settlement consideration upon the Notice Date, is a bargained-for term of the settlement, negotiated by Class Counsel as a direct result of the Class Action Settlement. In the event that a final Judgment is not entered on this Settlement, Subaru reserves the right to revert all warranties back to the limits set forth in the New Vehicle Limited Warranty.

A. Settlement Warranty Extension for Current Owners or Lessees

1. First Battery Replacements

a. Effective on the Notice Date, Subaru will extend its existing express New Vehicle Limited Warranty, as referenced in the owners manual, applicable to the Settlement Class Vehicles, to cover a first battery replacement (parts and labor) for 100% of the Battery Replacement Costs up to a period of five (5) years or sixty thousand (60,000) miles (whichever occurs first) from the In-Service Date of the Settlement Class Vehicle.

b. Effective on the Notice Date, Subaru will extend its existing express New Vehicle Limited Warranty, applicable to the Settlement Class Vehicles, to cover a

first battery replacement (parts and labor) for 50% of the Battery Replacement Costs for Settlement Class Vehicles that have exceeded five (5) years or sixty thousand (60,000) miles on the Notice Date, for a duration of three (3) months from the Notice Date without regard to mileage.

2. Subsequent Battery Replacements

a. Effective on the Notice Date, Subaru will extend its existing express New Vehicle Limited Warranty, applicable to the Settlement Class Vehicle, to cover the replacement of a replacement battery and the parameters of the Settlement Extended Warranty (parts and labor) are to be the greater of Subaru's replacement part warranty or:

- (1) 100% of the Battery Replacement Costs up to a period of five (5) years or sixty thousand (60,000) miles (whichever comes first) from the In-Service Date of the Settlement Class Vehicle regardless of the number of battery replacements the Settlement Class Vehicle has already received; or
- (2) 80% of the Battery Replacement Costs up to a period of seven (7) years or eighty-four thousand (84,000) miles (whichever comes first) from the In-Service Date of the Settlement Class Vehicle; or
- (3) 60% of the Battery Replacement Costs up to a period of eight (8) years or one hundred thousand (100,000) miles (whichever comes first) from the In-Service Date of the Settlement Class Vehicle.

3. **Extended Warranty Customer Reimbursement (Silver Program).**

Class Members who prior to the Notice Date have purchased a Subaru extended service contract (Added Security), who were never entitled to battery coverage through said program, will receive a settlement warranty extension consistent with the time and mileage limitations set forth in Sections V.a.1 & 2 above.

4. **Qualification for Settlement Extended Warranty Repair**

a. Effective on the Notice Date, a Settlement Class Member qualifies to present his or her Class Vehicle to an Authorized Subaru Retailer for diagnosis of whether the battery condition qualifies for Settlement Extended Warranty service if prior to presentment for diagnostic testing, the Settlement Class Member experienced a Qualifying Battery Condition (as defined in Section II.25), as confirmed by visiting <http://www.SubaruBatterySettlement.com> and completing the “Request for Settlement Extended Warranty Battery Service Form,” the terms of which are to be simple, and designed to allow Subaru to immediately assess whether a Class Member has experienced a Qualifying Battery Condition and to assign an appropriate retailer for service. For an owner who is unable to use the website, Subaru shall provide a toll free telephone number that is displayed in the First Class Notice. Subaru shall exercise due diligence to attempt to determine Class Members’ qualifications as soon as practicable, but not to exceed 48 hours from the call or electronic submission. Settlement Class Members shall not be required to visit the Settlement Website or complete the “Request for Settlement Extended Warranty Battery Service Form” after one year from the entry of the Preliminary Approval Order. A list of the questions for the Request for Settlement Extended Warranty Battery Service Form is attached as Exhibit F.

b. If a Settlement Class Member qualifies to present his or her Class Vehicle to an Authorized Subaru Retailer pursuant to Section 4(a), then the diagnostic services are free. A Settlement Class Member's qualification for a Settlement Extended Warranty battery replacement will be determined by the results of the Authorized Subaru Retailer's administration of the test in the "Battery Extended Warranty – Midtronics Protocol," attached as Exhibit G.

5. Related Settlement Extended Warranty Terms

a. As will be fully set forth in the Notice, any repairs performed pursuant to the Settlement Extended Warranty during the notice period shall preclude the Settlement Class Member who received such repairs from opting out of the Settlement Class.

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

c. 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; or if the odometer mileage has been changed so that mileage cannot be readily determined.

d. A Class Vehicle found to have after-modified electronic components, agreed to impair the electronics or battery performance on the list at Exhibit H, shall be precluded from the benefits of this Settlement Agreement.

e. 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 a Qualifying Battery Failure or Qualifying Battery Condition as set forth herein.

f. Reimbursements and extensions of the warranties as described above are contingent upon the Court's final approval of this Settlement Agreement.

g. SOA and its Authorized Retailers may continue to implement any customer satisfaction or goodwill policy, program, or procedure at their 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 Battery Failure or Qualifying Battery Condition during the Settlement Extended Warranty for any Settlement Class Vehicle.

B. Pre-Notice Qualifying Reimbursable Expenses

1. Subject to the proof and conditions required in Section V.B.7 below, a Settlement Class Member who has not already been fully reimbursed by Subaru or a third party, will be entitled to reimbursement of a certain percentage of Owner Paid Repairs incurred prior to the Notice Date.

2. This section applies to out-of-pocket expenses for any battery replacements, battery testing and diagnosis performed by an Authorized Subaru Retailer, on a Settlement Class Vehicle in connection with a Qualifying Battery Condition prior to the Notice Date. This section does not apply to out-of-pocket expenses for equipment purchased to sustain battery operation (*i.e.* a portable battery charger and jumper cables as provided for in section C. titled "Reimbursements for Extraordinary Circumstances").

3. This section additionally applies to out-of-pocket expenses for towing services in connection with a Qualifying Battery Condition on a Settlement Class Vehicle prior to the Notice Date. If a Class Member establishes a Qualifying Battery Condition, that Class Member may also recover, upon Proof of Repair Related Expense, the costs incurred in towing the vehicle to the Authorized Subaru Retailer performing the subject battery repair.

4. Reimbursements are contingent upon the Court’s final approval of this Settlement Agreement.

5. Reimbursements awarded under this Section are limited to Owner Paid Repairs paid by the same owner or lessee. For example, a subsequent owner may not avail his or herself of repairs paid by the previous owner.

6. The reimbursement for a Qualifying Reimbursable Repair under this section, shall be at the following rates:

<u># of Owner Paid Repairs</u>	<u>Within 3/36</u>	<u>5/60</u>	<u>7/84</u>	<u>8/100</u>
1	120%	100%	N/A	N/A
2	140%	125%	100%	55%
3+	165%	140%	120%	100%

a. For one (1) Owner Paid Repair, a Settlement Class Member is entitled to:

- (1) 120% reimbursement when the Owner Paid Repair occurred within three (3) years and thirty-six thousand (36,000) miles from the In-Service Date of the Settlement Class Vehicle; or

(2) 100% reimbursement when the Owner Paid Repair occurred within five (5) years and sixty thousand (60,000) miles from the In-Service Date of the Settlement Class Vehicle.

b. For two (2) Owner Paid Repairs, a Settlement Class Member is entitled to:

(1) 140% reimbursement when all Owner Paid Repairs occurred within three (3) years and thirty-six thousand (36,000) miles from the In-Service Date of the Settlement Class Vehicle; or

(2) 125% reimbursement when all Owner Paid Repairs occurred within five (5) years and sixty thousand (60,000) miles from the In-Service Date of the Settlement Class Vehicle; or

(3) 100% reimbursement when all Owner Paid Repairs occurred within seven (7) years and eighty-four thousand (84,000) miles from the In-Service Date of the Settlement Class Vehicle; or

(4) 55% reimbursement when all Owner Paid Repairs occurred within eight (8) years and one hundred thousand (100,000) miles from the In-Service Date of the Settlement Class Vehicle.

- c. For three (3) or more Owner Paid Repairs, a Settlement Class Member is entitled to:
- (1) 165% reimbursement when all Owner Paid Repairs occurred within three (3) years and thirty-six thousand (36,000) miles from the In-Service Date of the Settlement Class Vehicle; or
 - (2) 140% reimbursement when all Owner Paid Repairs occurred within five (5) years and sixty thousand (60,000) miles from the In-Service Date of the Settlement Class Vehicle; or
 - (3) 120% reimbursement when all Owner Paid Repairs occurred within seven (7) years and eighty-four thousand (84,000) miles from the In-Service Date of the Settlement Class Vehicle; or
 - (4) 100% reimbursement when all Owner Paid Repairs occurred within eight (8) years and one hundred thousand (100,000) miles from the In-Service Date of the Settlement Class Vehicle.

7. The following proof must be submitted, and conditions satisfied, in order for a Settlement Class Member to be eligible for a reimbursement under Sections V.B-D of this Agreement:

- a. A Claim is mailed, emailed, or submitted by electronic submission via the Settlement website, as described in the Full Notice, to Subaru no later than sixty (60)

days after the Effective Date. For claims submitted via regular mail, the mail must be postmarked no later than sixty (60) days after the Effective Date;

b. The Claim contains a properly completed Claim Form.

c. If the claimant is not a person to whom the 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 mailed Claim Form, the Claim contains proof that the claimant is in fact a Settlement Class Member.

d. The Claim contains Proof of Repair Expense and Proof of Repair-Related Expenses demonstrating the Settlement Class Member's right to receive reimbursement under the terms of this Settlement Agreement.

e. The Settlement Class Member has not previously been fully reimbursed by Subaru, an Authorized Subaru Retailer, 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.

f. 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.

8. Reimbursements are contingent upon the Court's final approval of this Settlement Agreement.

9. **Reimbursement for Third-Party Repairs.** If a Settlement Class Member previously presented his or her vehicle to an authorized Subaru dealership or contacted Subaru's customer service division regarding the battery related issue he or she later paid to have fixed by an independent third party, then the Settlement Class Member, subject to the proof and

conditions required in Section V.B.7, is entitled to reimbursements for payments the Settlement Class Member made to independent third parties for (1) battery testing, diagnosis, and replacements on a Settlement Class Vehicle in connection with a Qualifying Battery Condition prior to the Notice Date; and (2) towing services in connection with a Qualifying Battery Condition on a Settlement Class Vehicle prior to the Notice Date. A claimant seeking third-party repair reimbursement pursuant to this section shall not be entitled to submit a Declaration and shall not be excused from providing full documentary support for the prior presentment, repair and out of pocket cost requirements. Third-party repairs, which qualify under this section, shall be counted for purposes of calculating the total paid-for repairs in Section V.B.6.

C. Reimbursements for Extraordinary Circumstances

1. Subject to the proof requirements of Section V.B.7, Subaru will reimburse Settlement Class Members who experienced two (2) or more battery failures within five (5) years and sixty thousand (60,000) miles from the In-Service Date of the Settlement Class Vehicle, for 140% of certain Reasonably Related Reimbursable Costs related to the Class Member being stranded as a result of a battery failure incurred prior to the Notice Date.

2. To recover under this section, a Class Vehicle must have been rendered undrivable as a result of a battery failure and the expenses must have been incurred within 48 hours of the repair for such failure.

3. Qualifying expenses under this section may only be recovered up to and including the day on which the vehicle was returned to the Class Member by the service center. Recoverable expenses include, without limitation, hotel expenses, meals, and equipment purchased to sustain battery operation, and other expenses reasonably related to the battery

failure. Expenses for hotel stays and meals are eligible for reimbursement under this section if they were incurred not less than 50 miles from the vehicle's state registered address.

4. A Settlement Class Member qualifying under this section shall also be entitled to receive a single-use Subaru service voucher with a face value of \$140, which will remain valid for one year from the date the Settlement Class Member's claim is approved. The date of expiration shall be printed on the voucher.

5. Reimbursements for Extraordinary Circumstances under this section shall be available to Settlement Class Members only to the extent Subaru did not previously provide good will for the same Reasonably Related Reimbursable Costs, i.e. Subaru will receive an offset for prior good will provided but Class Members can submit the remaining unreimbursed amount under this section for reimbursement.

6. Reimbursements are contingent upon the Court's final approval of this Settlement Agreement.

D. Free Reflash if Certain Conditions are Satisfied

1. Effective on the Notice Date, any class member presenting a class vehicle to an Authorized Subaru Retailer in satisfaction of the Qualification for Settlement Extended Warranty Repair conditions set forth in Section ____, who has not previously received the Reflash, is entitled to receive the Reflash during the Retailer visit, at no cost through the duration of the Settlement Extended Warranty.

2. Subject to Proof of Repair Expense, Settlement Class Members who already received and paid for the Reflash are entitled to 100% reimbursement for expenses incurred for the Reflash.

E. Costs of Administration and Notice

1. The Parties agree that Defendants shall be responsible for the costs of First Class Notice and settlement administration. The Plaintiffs retain the right to audit and review the First Class Notice and claims administration processes in accordance with paragraph VI.B.6, below

VI. CLAIMS ADMINISTRATION

A. Administration

1. Settlement Administrator shall mail to the Settlement Class Member, at the address listed on the Claim Form or at an address later updated by the Settlement Class Member, the Administrator's decision on the Claim, to be sent within ninety (90) days after receipt of the Claim, or within ninety (90) days of the Effective Date, whichever is later. For each approved Claim for Reimbursement, the Settlement Administrator shall within this time period mail to the Settlement Class Member a reimbursement check for the unreimbursed permissible expenses to which the Settlement Class Member is entitled For any Claim for Reimbursement that qualifies for less than the full amount of the reimbursement sought by the Settlement Class Member (e.g., the Settlement Class Member sought 120% reimbursement for an Owner Paid Repair that occurred within three (3) years and thirty-six thousand (36,000) miles from the In-Service Date of the Settlement Class Vehicle, but only received 100% reimbursement), Settlement Administrator shall, within the period set forth in Section VI.A.1 above, mail to the Settlement Class Member, at the address listed on the Claim Form, a "Claim Decision and Option Letter" (substantially in the form attached hereto as Exhibit I) stating:

- a. That a partial reimbursement has been awarded and/or that the claim has been rejected;
- b. The amount of the proposed reimbursement;

- c. Whether rejection of the reimbursement sought was based on:
 - (1) Lack of or insufficient Proof of Repair Expense, Proof of Repair-Related Expense, and/or other required proof;
 - (2) Error in the Claim Form; or
 - (3) Any other applicable reason impacting payment of the full amount of the reimbursement sought by the Settlement Class Member.

d. The Settlement Class Member's right to a Second Review of the Settlement Administrator's decision, as described in Section VI.B; and

2. Any Settlement Class Member who receives a Claim Decision and Option Letter under Section VI.A.1, may:

a. Initiate a Second Review of the Settlement Administrator's decision by completing and mailing or emailing the Claim Decision and Option Letter along with any additional explanation and/or documents to cure any alleged deficiencies, postmarked within or emailed within forty-five (45) days of the mailing of the Claim Decision and Option Letter; or

b. Accept the reimbursement offered, which no response is required to accept.

3. If a Settlement Class Member accepts the reimbursement offer, Settlement Administrator shall mail the Settlement Class Member a reimbursement check within ninety (90) days of the Effective Date or within ninety (90) days of the mailing of the Claim Decision and Option Letter after receipt of said acceptance by Settlement Administrator (determined either by Settlement Administrator's receipt of the completed Claim Decision and Option Letter from the

Settlement Class Member accepting the reimbursement offered, or by the expiration of the above-referenced period of time in which acceptance will be presumed), whichever occurs later.

B. Second Review

1. A Settlement Class Member who initiates a Second Review may:

- a. rely solely on the documents submitted with the Claim; or
- b. also submit a written statement and/or additional documentation to cure any alleged deficiencies in advance of the Settlement Administrator's Second Review.

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

3. The Second Review will be made by a senior level employee of Settlement Administrator who is a different employee from the one that made the initial determination. His or her Second Review will be independent of the initial review, and will not involve consultation with the employee who made the initial determination.

4. The reviewer will review the Settlement Administrator's initial determination and independently determine, based upon the claim and proof submitted by the Settlement Class Member, whether the initial determination should be adjusted. The reviewer will have the authority to increase the reimbursement amount originally offered up to the full amount of reimbursement sought, if the Settlement Class Member's Claim meets the requirements under this Agreement for justifying that amount. 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 forty-five (45) days of the date in which

the request for a Second review was received by the Settlement Administrator, or within sixty (60) days of the Effective Date, whichever is later, along with any supporting documentation. The Second Review determination will state the reason(s) why the initial determination was either modified or not changed. The Settlement Administrator's decision shall be final and not appealable.

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

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

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

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

VII. Class Notice and Publication

A. To Attorney General

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

B. To Settlement Class

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

a. Within ninety (90) days after entry of the Preliminary Approval Order discussed in Section II.18 of this Agreement, Settlement Administrator shall cause individual notice, substantially in the form attached hereto as Exhibit B, to be mailed, by first class mail, to the current or last known addresses of all reasonably identifiable Settlement Class Members. Notice shall be in made in the form of a postcard, that shall: (1) advise the class member to access the settlement website; or (2) call a toll free number for the Full Notice; including instructions on seeking Extended Warranty Service; the Claim Form and the Request for Exclusion Form. The Parties may format the First Class Notice in such a way as to ensure legibility, and access to the Full Notice. The ability to receive a Full Notice via toll free number is to be prominently displayed. Settlement Administrator shall be responsible for dissemination of the First Class Notice.

b. For purposes of identifying Settlement Class Members, the Settlement Administrator shall obtain from Subaru's records and verify with Experian (or a reasonable substitute agreed to by the Class Counsel) the names and current or last known addresses of Settlement Class Vehicle owners and lessees that can reasonably be obtained, and the Vehicle Identification Numbers (VINs) of Settlement Class Vehicles.

c. Prior to mailing the First Class Notice, an address search through the United States Postal Service's National Change of Address database will be conducted to update the address information for Settlement Class Vehicle owners and lessees. For each individual First Class Notice that is returned as undeliverable, Settlement Administrator shall re-

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

d. Settlement Administrator shall diligently, and/or as reasonably requested by Class Counsel, report to Class Counsel the number of individual First Class Notices originally mailed to Settlement Class Members, the number of individual First Class Notices initially returned as undeliverable, the number of additional individual First Class Notices mailed after receipt of a forwarding address, and the number of those additional individual First Class Notices returned as undeliverable.

e. Settlement Administrator shall, upon request, provide Class Counsel with the names and addresses of all Settlement Class Members to whom Subaru sent a First Class Notice pursuant to this section.

f. Consistent with Section V.A.3.a.2, defendants shall implement a Settlement website containing:

- (1) a copy of the Claim Form, Full Notice, this Settlement Agreement, Court Orders regarding this Settlement, and other relevant Court documents, including Co-Lead Class Counsel's Motion for Approval of Attorneys' Fees, Costs, and Service Awards;
- (2) instructions on how to request Extended Warranty Service;
- (3) instructions on how to submit a Claim for reimbursement;
- (4) information concerning deadlines for filing a Claim and the dates and locations of relevant Court proceedings, including the Final Fairness Hearing;

- (5) instructions on how to contact the Settlement Administrator, Defendants, and Class Counsel for assistance;
- (6) online submissions forms; and
- (7) any other relevant information agreed upon by counsel for the Parties.

g. The Settlement Administrator will also email a hyperlink to the Settlement Website and electronic versions of the Long Form Notice and Claim Form to Class Members for whom the Settlement Administrator may obtain an email address for.

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

VIII. RESPONSE TO NOTICE

A. Objection to Settlement

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

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

Matthew Mendelsohn
Mazie Slater Katz & Freeman, LLC
103 Eisenhower Parkway
Roseland, NJ 07068

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

2. Any objecting Settlement Class Member must include with his or her objection:
- a. the objector's full name, current address, and telephone number,
 - b. the model, model year, date of acquisition and vehicle identification number of the Settlement Class Vehicle, along with proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt);
 - c. a written statement that the objector has reviewed the Settlement Class definition and understands in good faith that he or she is a Settlement Class Member;
 - d. a written statement of all grounds for the objection accompanied by any legal support for such objection sufficient to enable the parties to respond to those specific objections;
 - e. copies of any papers, briefs, or other documents upon which the objection is based and which are pertinent to the objection; and
 - f. a statement whether the Settlement Class Member complained to Defendants or an Authorized Subaru Retailer about a Qualifying Battery Failure or Qualifying Battery Condition or has had any Qualifying Reimbursable Repairs and, if so, provide evidence of any such complaint or repairs.

3. In addition, any Settlement Class Member objecting to the settlement shall provide a list of all other objections submitted by the objector, and/or the objector's counsel, to any class action settlements submitted in any state or federal court in the United States in the previous five (5) years, including the full case name with jurisdiction in which it was filed and the docket number. If the Settlement Class Member or his, her, or its counsel has not objected to any other class action settlement in the United States in the previous five (5) years, he or she shall affirmatively so state in the objection.

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

5. Upon the filing of an objection, Class Counsel and Defendants' Counsel may take the deposition of the objecting Settlement Class Member pursuant to the Federal Rules

of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. 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 J, to Settlement Administrator at the address specified in the Full Notice by the date specified in the Preliminary Approval Order and recited in the Full Notice. To be effective, the Request for Exclusion must be submitted on the settlement website or sent to the specified address and:

- a. include the Settlement Class Member's full name, current address and telephone number;
- b. specifically and unambiguously state in writing his or her desire to be excluded from the Settlement Class and election to be excluded from any judgment entered pursuant to the settlement.

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

3. Any request or exclusion must be submitted online or postmarked on or before the deadline set by the Court, which date shall be approximately forty-five (45) days after the date of the mailing of Notice to Settlement Class Members. Any Settlement Class Member,

who fails to submit a timely and complete Request for Exclusion sent to the proper address, shall be subject to and bound by this Settlement Agreement, the Release and every order or judgment entered relating to this Settlement Agreement.

4. Settlement Administrator will receive Requests for Exclusion and will follow guidelines developed jointly by Class Counsel and Defendants' counsel for determining whether they meet the requirements of a Request for Exclusion. Any communications from Settlement Class Members (whether styled as an exclusion request, an objection or a comment) as to which it is not readily apparent whether the Settlement Class Member meant to exclude himself or herself from the Settlement Class will be evaluated jointly by counsel for the Parties, who will make a good faith evaluation, if possible, and may contact the Settlement Class Member for clarification. Any uncertainties about whether a Settlement Class Member is requesting exclusion from the Settlement Class will be submitted to the Court for resolution. Settlement Administrator will maintain a database of all Requests for Exclusion, and will send the original written communications memorializing those Requests for Exclusion to Class Counsel. Settlement Administrator shall report the names and addresses of all such persons and entities requesting exclusion to the Court and Class Counsel within thirty (30) days prior to the 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 only on behalf of the person who actually submitted the exclusion.

IX. WITHDRAWAL FROM SETTLEMENT

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

a. Any objection to the proposed settlement is sustained and such objection results in changes to this Agreement that the withdrawing party deems in good faith to be material (e.g., because it substantially increases the costs of the Settlement, or deprives the withdrawing party of a material benefit of the Settlement). A mere delay of the approval and/or implementation of the Settlement, including a delay due to an appeal procedure, if any, shall not be deemed material;

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

c. Entry of the Final Order and Judgment described in this Agreement is vacated by the Court or reversed or substantially modified by an appellate court; or

d. If 10,000 or more Class Members properly and timely exercise their right to opt out of the settlement, Defendants or Plaintiffs shall have the right to terminate this Settlement Agreement without penalty or sanctions, without prejudice to its position on the issue of class certification and the amenability of the claims asserted in the Action to class treatment, and the Parties shall be restored to their litigation position existing immediately before the execution of this Settlement Agreement.

2. To withdraw from this Settlement Agreement under this Section, the withdrawing party must provide written notice to the other party's counsel and to the Court within ten (10) business days of receipt of any order or notice of the Court modifying, adding or altering any of the material terms or conditions of this Agreement. In the event either party withdraws from the Settlement, this Settlement Agreement shall be null and void, shall have no further force and effect with respect to any party in the Action, and shall not be offered into evidence or used in the Action or any other litigation for any purpose, including the existence, certification or maintenance of any purported class. In the event of such withdrawal, this Settlement Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be inadmissible as evidence and without prejudice to the Defendants and Plaintiffs, and shall not be deemed or construed to be an admission or confession by any party of any fact, matter or proposition of law, and shall not be used in any manner for any purpose, and all parties to the Action shall stand in the same position as if this Settlement Agreement had not been negotiated, made or filed with the Court. Upon withdrawal, either party may elect to move the Court to vacate any and all orders entered pursuant to the provisions of this Settlement Agreement.

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

X. 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 E.

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 D.

XI. 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.

1. 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.”

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

XII. ATTORNEYS’ FEES, COSTS, AND SERVICE AWARDS

1. Class Counsel may apply to the Court for an award of reasonable attorneys’ fees and expenses, inclusive of costs up to, but not to exceed, the total combined sum of \$4,100,000 (four million one 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 this Agreement. Attorneys' Fees and Expenses shall be in addition to the benefits provided directly to the Settlement Class (and shall be in addition to the Representative Plaintiffs' Service Awards), and shall not reduce or otherwise have any effect on the benefits made available to the Settlement Class.

2. Upon finalization of this Settlement Agreement, the Parties have agreed that Defendants will not oppose Plaintiffs' request, made as part of the Fee and Expense Application, that Defendants separately pay Service Awards of \$4,000.00 (combined total of \$52,000) to each of the named Plaintiffs Amy Burd, Walter Gill, David Hansel, Glen McCartney, Roger Baladi, Tamara O'Shaughnessy, Anthony Franke, Matthew Miller, Steven Stone, Howard Bulgatz, Mary Beck, David Davis, and Colin George, who have served as putative class representatives in the Action. If awarded by the Court, the fee, cost, and expense award shall be payable by Defendants within 30 days after the date of entry of the Final Approval Order, notwithstanding the existence of any Objections, pending or forthcoming appeals, or collateral attack on the Settlement, the fee, cost, and expense Award, or the Service Awards. At least 30 days prior to payment of the fee, cost, and expense Award, Class Counsel shall furnish Defendants' Counsel with all necessary payment and routing information to facilitate the transfer.

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

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

5. Payment to the Class Counsel payee shall fully satisfy and discharge all obligations of Subaru with respect to payment of the Attorneys' Fees and Expenses and settlement class representative Service Awards.

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

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

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

XIII. MISCELLANEOUS PROVISIONS

A. Publicity

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

B. Effect of Exhibits

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 and as an extension of the mediation efforts conducted by the Honorable Joel Schneider (ret). 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 October 5, 2020 (ECF No. 41).

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. Choice of Law

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

N. Captions

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.

APPROVED AND AGREED TO BY AND ON BEHALF OF PLAINTIFFS

Date: 4/29, 2022

SAUDER SCHELKOPF LLC

By:  _____

Matthew Schelkopf

MAZIE SLATER KATZ & FREEMAN, LLC

By:  _____

Matthew Mendelsohn

GIRARD SHARP, LLP

By:  _____

Adam Poik

Interim Co-Lead Counsel for Plaintiffs and the Putative Class

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

Dated: 4/27, 2022

By:  _____

Michael Campbell

Title: Vice President of Service & Quality

EXHIBIT A

REIMBURSEMENT CLAIM FORM
MUST BE SUBMITTED OR POSTMARKED BY [MONTH DAY], 2022

In re: Subaru Battery Drain Products Liability Litigation, No. 1:20-cv-03095-JHR-MJS (D.N.J.)

Only submit this Claim Form if you are seeking reimbursement for prior out-of-pocket expenses. You do not need to submit this Claim Form to receive the Extended Warranty coverage. To receive future Extended Warranty coverage, you must submit the separate Request for Settlement Extended Warranty Battery Service Form.

Submit your claim by email or through the Settlement Website by **[DATE]**. If you are submitting your claim by mail, send your completed Claim Form and all supporting documentation so it is postmarked by **[DATE]** to:

Subaru Battery Settlement
c/o JND Legal Administration
P.O. Box 91305
Seattle, WA 98111

For more information, please consult the Class Notice, contact the Settlement Administrator at info@SubaruBatterySettlement.com or 1-855-606-2625, or visit www.SubaruBatterySettlement.com.

Please review the instructions on page 6 before proceeding. If the pre-printed information below is incorrect or absent, please print, fill out, and submit copies of the pages containing Sections I and II with corrected or completed information.

I. CLAIMANT CONTACT INFORMATION

Full Name

Mailing Address – Line 1

Mailing Address – Line 2 (If Applicable)

City

State

Zip Code

Telephone Number

Email Address

II. VEHICLE INFORMATION

If you are seeking reimbursement for prior out-of-pocket expenses for more than one Vehicle, you must file a separate Claim Form for each Vehicle.

Vehicle Identification Number (VIN)

In-Service Date*

** The In-Service Date means 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.*

Check the box for each cost you want reimbursed:

- Repair costs at Subaru or third-party retailers related to battery failures (including towing expenses).
- Stranding expenses directly related to two or more battery failures within 5 years/60,000 miles (e.g., hotel expenses, meals, or equipment to sustain battery operation).
- Reflash.

Documentation is required for all claimed repair costs, reflash costs, and stranding expenses. Detailed information concerning the types of documentation required and what to do if you are unable to provide documentation of repair costs is included in the instructions at page 6 of this Claim Form.

III. REPAIR INFORMATION

Before entering the amount sought for each repair, please refer to the chart below, which details the reimbursement rates for repairs, which depend on (1) the number of repairs, (2) the mileage at the time of the most recent repair, and (3) the passage of time between the In-Service Date and date of the most recent repair.

If you received a Reflash, enter the date of the service and the amount you paid in the Reflash section below. Do not enter a Reflash as a repair, and do not count it toward the number of Owner Paid Repairs when calculating the applicable reimbursement rate.

# of Owner Paid Repairs	Within 3 years 36,000 miles	Within 5 years 60,000 miles	Within 7 years 84,000 miles	Within 8 years 100,000 miles
1	120%	100%	N/A	N/A
2	140%	125%	100%	55%
3+	165%	140%	120%	100%

Please also refer to the following example, which further explains the above-referenced rates: for two (2) Owner Paid Repairs, a Settlement Class Member is entitled to 140% reimbursement when all Owner Paid Repairs occurred within three (3) years and thirty-six thousand (36,000) miles from the In-Service Date of the Settlement Class Vehicle.

Date of repair (MM/DD/YYYY) <input style="width: 90%; height: 20px;" type="text"/>	Mileage at time of repair <input style="width: 90%; height: 20px;" type="text"/>	Amount sought for this repair \$ <input style="width: 90%; height: 20px;" type="text"/>
Date of repair (MM/DD/YYYY) <input style="width: 90%; height: 20px;" type="text"/>	Mileage at time of repair <input style="width: 90%; height: 20px;" type="text"/>	Amount sought for this repair \$ <input style="width: 90%; height: 20px;" type="text"/>
Date of repair (MM/DD/YYYY) <input style="width: 90%; height: 20px;" type="text"/>	Mileage at time of repair <input style="width: 90%; height: 20px;" type="text"/>	Amount sought for this repair \$ <input style="width: 90%; height: 20px;" type="text"/>
Date of repair (MM/DD/YYYY) <input style="width: 90%; height: 20px;" type="text"/>	Mileage at time of repair <input style="width: 90%; height: 20px;" type="text"/>	Amount sought for this repair \$ <input style="width: 90%; height: 20px;" type="text"/>
Date of repair (MM/DD/YYYY) <input style="width: 90%; height: 20px;" type="text"/>	Mileage at time of repair <input style="width: 90%; height: 20px;" type="text"/>	Amount sought for this repair \$ <input style="width: 90%; height: 20px;" type="text"/>

Stranding Expenses

Complete this section only if you are claiming stranding expenses (e.g., hotel stays, meals, equipment purchased to sustain battery operation, and other expenses reasonably related to the battery failure) incurred as a result of two or more battery failures within 5 years/60,000 miles of the In-Service Date.

Dates of related failures/repairs <input style="width: 95%; height: 25px;" type="text"/>	Amount sought for reimbursement \$ <input style="width: 95%; height: 25px;" type="text"/>
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Reflash

Complete this section only if you are claiming reimbursement for expenses paid for a Reflash service.

Date of Reflash (MM/DD/YYYY) <input style="width: 95%; height: 25px;" type="text"/>	Amount paid for Reflash \$ <input style="width: 95%; height: 25px;" type="text"/>
--	--

Questions? Contact the Settlement Administrator at 1-855-606-2625 or info@SubaruBatterySettlement.com
To view JND's privacy policy, please visit <https://www.jndla.com/privacy-policy>

IV. SIGN & DATE

*By signing this form, you are certifying under oath 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 are submitting a claim for reimbursement of third-party battery repairs, replacements, testing, diagnosis, or towing, by signing this form, you are certifying under oath that before **[INSERT NOTICE DATE]**, you: (1) presented your vehicle to Subaru or an Authorized Subaru Retailer for repair; or (2) contacted Subaru customer service regarding your battery failure before you paid to have it fixed by an independent third party.*

Signature

Date

DECLARATION FORM

MUST BE SUBMITTED BY [REDACTED]

In re Subaru Battery Drain Products Liability Litigation, No. 1:20-cv-03095-JHR-MJS (D.N.J.)

ONLY SUBMIT THIS FORM IF YOU ARE SEEKING REIMBURSEMENT FOR PRIOR-OUT-OF-POCKET EXPENSES FOR REPAIRS PERFORMED AT AN AUTHORIZED SUBARU RETAILER AND DO NOT HAVE THE REQUIRED DOCUMENTATION REGARDING SUCH EXPENSES. YOU DO NOT NEED TO SUBMIT THIS FORM TO RECEIVE THE WARRANTY EXTENSION.

Submit your declaration with your Claim Form by mail, email, or through the Settlement Website by **[DATE]**. If you are submitting your declaration with your Claim Form by mail, send your completed Claim Form and all supporting documentation to:

Subaru Battery Settlement
c/o JND Legal Administration
P.O. Box 91305
Seattle, WA 98111

For more information, please consult the Class Notice, contact the Settlement Administrator at 1-855-606-2625 or info@SubaruBatterySettlement.com, or visit www.SubaruBatterySettlement.com.

[1] Good Faith Effort

Please describe below the good faith effort you made to obtain the required documentation as described in the Claim Form, including who you communicated with to obtain such documentation:

[2] Required Enclosures

Enclose one or more documents to show:

- The timing of the out-of-pocket expense
- The amount of the out-of-pocket expense

[3] Sign & Date

*By signing this form, you are certifying under oath that you **HAVE** made a good faith effort to obtain the required documentation to support your claim request.*

Signature

Date

Questions? Contact the Settlement Administrator at 1-855-606-2625 or info@SubaruBatterySettlement.com
To view JND's privacy policy, please visit <https://www.jndla.com/privacy-policy>

INSTRUCTIONS

Supporting documentation is required for ALL claims. Contact the Settlement Administrator at 1-855-606-2625 or info@SubaruBatterySettlement.com with any questions about completing this Claim Form.

If you are claiming repair costs at Subaru or third-party retailers related to battery failures, you must enclose an invoice or any other combination of document(s) for EACH battery repair, testing, diagnosis, or towing that shows:

- The VIN of the vehicle
- Date of the battery repair, replacement, test, diagnosis, and/or towing
- Vehicle mileage at the time of repair
- A description of the work performed (including, if available, a breakdown of parts and labor costs)
- Proof of total amount paid (for both parts and labor and/or towing costs)
- The facility that performed the repair, replacement, test, or diagnosis
- If the facility that performed the work to your vehicle was not an authorized Subaru retailer, proof that you first presented your vehicle to an authorized Subaru retailer or contacted Subaru's customer service division regarding the battery related issue within ten days of having the work performed
- If you paid to tow your vehicle to an authorized Subaru retailer due to a battery failure, the costs incurred in towing the vehicle to the authorized Subaru retailer

If you would like to claim reimbursement for any of the above costs, but you are unable to obtain the required documentation, you must complete and submit the Declaration Form included with this Claim Form. Please identify the individual(s) you communicated with to obtain such documentation and provide proof of the qualifying out-of-pocket payment. Subaru of America agrees to search their records and, if qualifying records exist to support both the qualifying nature and timing of the repair, and it is consistent with the timing of the payment documentation submitted by you, then the claim will be honored. If Subaru of America does not have records supporting your claim after it conducts its search, your claim will be rejected. By requesting Subaru of America to search its own records, the review or processing of your claim may be delayed. A Declaration may not be submitted for a third-party facility; you must have documentation to support such a claim.

These requirements also apply for any reimbursement you may be seeking for a Reflash service.

If you are claiming stranding expenses directly related to two or more battery failures within 5 years/60,000 miles (e.g. hotel expenses, meals, or equipment to sustain battery operation), you must enclose a receipt or any other combination of document(s) that shows:

- The VIN of the vehicle
- Each battery failure, including date(s) and mileage of such failure(s) for the vehicle
- Evidence that the vehicle was rendered undriveable as a result of a battery failure
- Necessary expenses you paid within 48 hours of the repair related to a battery failure(s), which may include
 - o Hotel stay and related meals if they happened at least 50 miles from the vehicle's registered address;
 - o Equipment purchased to sustain battery operation, such as battery chargers and jumper cables; and
 - o Other expenses reasonably related to the battery failure(s).
- Service facility name
- Date and time the expense(s) were incurred
- For hotel stays and meals, location where purchased and distance to vehicle's registered address
- Date the service center returned your vehicle to you

Only if your name or VIN is NOT pre-printed correctly on the Claim Form, you must also include one or more documents to show:

- You have owned or leased a class vehicle (e.g., copy of an insurance card or repair invoice)
- The VIN of your class vehicle

Questions? Contact the Settlement Administrator at 1-855-606-2625 or info@SubaruBatterySettlement.com
To view JND's privacy policy, please visit <https://www.jndla.com/privacy-policy>

EXHIBIT B

Legal Notice

Subaru Battery Settlement Administrator

c/o JND Legal Administration
P.O. Box 91305
Seattle, WA 98111

FIRST CLASS
MAIL
US POSTAGE
PAID
Permit#__

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**If you bought or
leased certain
Subaru vehicles,
you may benefit
from a class action
settlement**

Questions?
Visit

www.SubaruBatterySettlement.com

or Call 1-855-606-2625

[include Spanish language tag?](#)



Postal Service: Please do not mark barcode

Unique ID: «CF_PRINTED_ID»

«Full_Name»
«CF_CARE_OF_NAME»
«CF_ADDRESS_1»
«CF_ADDRESS_2»
«CF_CITY», «CF_STATE» «CF_ZIP»
«CF_COUNTRY»

A proposed Settlement may have been reached in a class action lawsuit entitled *Pre-Subaru Battery Drain Products Liability Litigation*, No. 1:20-cv-03095-JHR-MJS (the “Settlement”). Records indicate that you may be a Settlement Class Member. This notice summarizes your rights and options. More details are available at www.SubaruBatterySettlement.com.

What is this about? Plaintiffs filed a class action lawsuit against Subaru of America, Inc. (“SOA”) and Subaru Corporation (“SBR”), collectively the “Defendants” or “Subaru,” alleging that Settlement Class Vehicles suffer from a design defect in some vehicles that can cause battery drain; and that Defendants violated certain consumer statutes and breached certain warranties. Defendants deny Plaintiffs’ claims and maintain that the Settlement Class Vehicles are not defective and that they have not violated any warranties, statutes, or laws. The Court has not decided who is right or wrong. Instead, both sides agreed to a Settlement.

Who is affected? Settlement Class Members include residents of the continental United States, including Hawaii and 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 and Hawaii. Settlement Class Vehicles include model year 2015-2020 Outback, 2015-2020 Forester, 2015-2020 Legacy, 2015-2020 WRX, and 2019-2020 Ascent. There are several exclusions to the Settlement Class. However, the Settlement Class is not intended to exclude military personnel stationed overseas. For more details about who is affected, visit www.SubaruBatterySettlement.com.

What does the Settlement provide? The Settlement provides extended warranty coverage for Qualifying Battery Failures experienced on or after the date of this Notice. The Settlement also provides, where applicable, a cash reimbursement for: (1) battery replacements and related battery testing and diagnosis performed by an Authorized Subaru Retailer, or in some situations an independent third party, for qualifying conditions on a Settlement Class Vehicle prior to the date of this Notice (“Pre-Notice”); (2) towing services in connection with a Pre-Notice Qualifying Battery Condition; and (3) Reasonably Reimbursable Costs related to a Settlement Class Member being stranded as a result of a Pre-Notice battery failure.

How do I get the settlement benefits? You may be entitled to automatically receive the extended warranty. However, you must submit a valid claim for cash reimbursement. Go to www.SubaruBatterySettlement.com to file or

download a Claim Form. You can also write Subaru Battery Settlement Administrator, c/o JND Legal Administration, P.O. Box 91305, Seattle, WA 98111, or email: info@SubaruBatterySettlement.com. Claim Forms and supporting documentation must be submitted online or postmarked by **[Month Day], 2022** or they will not be considered. Go to www.SubaruBatterySettlement.com to learn more.

What are my other options? You can do nothing, exclude yourself, or object to the Settlement. Do nothing. You will remain part of the Settlement Class and receive the right to extended warranty coverage, but you must file a claim to receive a cash payment. You will be bound by the Court's decision, and you will give up your right to sue or continue to sue Subaru for the claims in this case. Exclude yourself. You will not receive any cash reimbursements or extended warranty coverage. However, this is the only option that allows you to keep your right to sue Subaru at your own expense and with your own attorney about the legal claims in this case. Object. If you do not exclude yourself from the Settlement Class, you may object or tell the Court what you do not like about the Settlement. The deadline for exclusion requests and objections is **[MONTH, DAY], 2022**. For more details about your rights and options and how to exclude yourself or object, go to www.SubaruBatterySettlement.com.

What happens next? The Court will hold a Fairness Hearing on **[MONTH, DAY] 2022 at [TIME]** to consider whether to approve the Settlement; Class Counsel's attorneys' fees and expenses up to \$4,100,000; and service awards of \$4,000 for each of the thirteen named Plaintiffs (Amy Burd, Walter Gill, David Hansel, Glen McCartney, Roger Baladi, Tamara O'Shaughnessy, Anthony Franke, Matthew Miller, Steven Stone, Howard Bulgatz, Mary Beck, David Davis, and Colin George). Class Counsel fees and expenses and Class Representative service awards will be paid by Defendants and will not reduce any settlement benefits. The Court has appointed the law firms of Sauder Schelkopf, Mazie Slater Katz & Freeman, LLC, and Girard Sharp LLP as Class Counsel. You or your attorney may ask to speak at the hearing at your own expense, but you do not have to.

How do I get more information? For more information, visit www.SubaruBatterySettlement.com, call toll-free 1-855-606-2625, write **Subaru Battery Settlement Administrator, c/o JND Legal Administration, P.O. Box 91305, Seattle, WA 98111**, or email info@SubaruBatterySettlement.com.



Please do not contact the Court regarding this Notice.

Carefully separate this Address Change Form at the perforation

Name: _____

Current Address: _____

Place
Stamp
Here

Address Change Form

To make sure your information remains up-to-date in our records, please confirm your address by filling in the above information and depositing this postcard in the U.S. Mail.

JND Legal Administration

Attn: Subaru Battery Settlement Administrator

P.O. Box **xxxxx**

Seattle, WA 98111

EXHIBIT C

NOTICE OF CLASS SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

If you bought or leased certain Subaru vehicles, you may benefit from a class action settlement

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

include Spanish language tag?

- A proposed Settlement has been reached in a class action lawsuit called *In re Subaru Battery Drain Products Liability Litigation*, No. 1:20-cv-03095-JHR-MJS.
- The Settlement provides *extended warranty* service for Qualifying Battery Conditions experienced on or after the date of this Notice.
- The Settlement also provides, where applicable, a *cash reimbursement* for:
 - Battery replacements and related battery testing and diagnosis performed by an Authorized Subaru Retailer, or in some situations an independent third party, for qualifying conditions on a Settlement Class Vehicle prior to the date of this Notice (“Pre-Notice”);
 - Towing services in connection with a Pre-Notice Qualifying Battery Failure; and/or
 - Reasonably Reimbursable Costs related to a Settlement Class Member being stranded as a result of a Pre-Notice Qualifying Battery Failure.
- To qualify for settlement benefits, you must have bought or leased a model year 2015–2020 Outback, model year 2015–2020 Forester, model year 2015–2020 Legacy, model year 2015–2020 WRX, or model year 2019–2020 Ascent.
- Please read this Notice carefully and in its entirety. Your legal rights are affected whether you act or do not act.

Questions? Visit www.SubaruBatterySettlement.com or Call 1-855-606-2625

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
MAKE A CLAIM FOR CASH REIMBURSEMENT	This is the only way to get a reimbursement. Claims must be submitted online or postmarked by [Month Day], 2022.
GET AN EXTENDED WARRANTY	You do not need to do anything right now to ensure coverage under an extended warranty.
EXCLUDE YOURSELF	Get no reimbursement or extended warranty coverage. This is the only option that allows you to be part of any other lawsuit against Subaru about the legal claims in this case. The deadline to exclude yourself is [Month Day], 2022.
OBJECT	Write to the Court about why you don't like the Settlement. The deadline to object is [Month Day], 2022.
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement. Your notice of intention to appear must be postmarked by [Month Day], 2022.
DO NOTHING	Receive the right to an extended warranty but no right to seek a reimbursement 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 appeals are resolved.

What This Notice Contains

[INSERT TOC]

BASIC INFORMATION

1. Why did I receive a notice?

You received this Notice because Subaru of America, Inc.'s records indicate that you may be a current or past purchaser or lessee of a Settlement Class Vehicle.

This Notice will inform you of the terms of the proposed Settlement and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement. This Notice also describes your rights in connection with the Settlement and what steps you may take in relation to the Settlement.

2. What is this lawsuit about?

A class action lawsuit was filed against Subaru of America, Inc. ("SOA") and Subaru Corporation ("SBR"), collectively the "Defendants" or "Subaru". The lawsuit alleges that the Settlement Class Vehicles suffer from a design defect in some vehicles that can cause battery drain; and that Defendants have violated certain consumer statutes and breached certain warranties. The lawsuit seeks certification of a nationwide class of present and former purchasers and lessees of Settlement Class Vehicles to pursue these claims.

Defendants deny the case claims. Defendants maintain that the Settlement Class Vehicles are not defective and that the Settlement Class Vehicles function(ed) in a proper manner, were properly designed, manufactured, distributed, marketed, advertised, warranted, and sold. Defendants claim that they 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.

3. Why is there a 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 in this lawsuit. 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 settlement benefits that will be given to the Settlement Class Members and balanced these benefits with the risk of continued litigation. They considered the value of the immediate benefit to Settlement Class Members versus the costs and delay of continued litigation through trial and appeals, and the risk that the Court might not certify the proposed class. Even if Plaintiffs were successful in litigation, Settlement Class Members might not have received any benefits for years.

Questions? Visit www.SubaruBatterySettlement.com or Call 1-855-606-2625

The Court will be holding a hearing to approve or disapprove of the Settlement before it becomes final.

WHO IS PART OF THE SETTLEMENT CLASS?

4. Am I a Settlement Class Member?

You are a Settlement Class Member if you are a resident of the continental United States, including Hawaii or Alaska, who currently owns or leases, or previously owned or leased, a Settlement Class Vehicle originally purchased or leased in the continental United States, including Alaska or Hawaii. The Settlement Class is not intended to exclude military personnel stationed overseas. Settlement Class Vehicles include model year 2015-2020 Outback, 2015-2020 Forester, 2015-2020 Legacy, 2015-2020 WRX, and 2019-2020 Ascent.

Excluded from the Settlement Class are (a) those claims for personal injury and/or property damage (claims for a Qualifying Battery Condition or Qualifying Battery Failure in a Settlement Class Vehicle are included regardless of whether they additionally experienced personal injury or property damage for which they do not make a claim; however, those additional claims for personal injury and/or property damaged shall be deemed excluded from the Settlement Class) 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 solely 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; (k) any Settlement Class Member that files a timely and proper Request for Exclusion from the Settlement Class; and (l) third party issuers.

If you received this Notice, Subaru'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 qualify for Extended Warranty coverage, but you must submit a Claim Form **by Month x, 2022** to request reimbursements as part of the Settlement. If you experience a battery failure on or after the date of this Notice, go to www.SubaruBatterySettlement.com to learn more about Extended Warranty coverage.

SETTLEMENT BENEFITS – WHAT YOU GET

5. What does the Settlement provide?

The Settlement provides (1) extended warranty coverage of Qualifying Battery Conditions; and (2) a possible cash reimbursement if a Settlement Class Member paid out-of-pocket costs in connection with a Pre-Notice Qualifying Battery Condition for: battery replacement(s) and related battery testing and diagnosis performed by an Authorized Subaru Retailer, or in some situations an independent third party; related towing service(s); or a Reflash; and (3) for certain class

Questions? Visit www.SubaruBatterySettlement.com or Call 1-855-606-2625

members, cash reimbursements for recoverable expenses, including, without limitation, hotel expenses, meals, and equipment purchased to sustain battery operation.

Extended Warranty Coverage: Subaru will extend its existing express New Vehicle Limited Warranty, applicable to the Settlement Class Vehicles. The duration and coverage will vary for first and subsequent battery replacements.

For first battery replacement, Subaru will cover:

- 100% of the Battery Replacement Costs up to a period of five (5) years or sixty thousand (60,000) miles (whichever occurs first) from the In-Service Date of the Settlement Class Vehicle; or
- 50% of the Battery Replacement Costs for Settlement Class Vehicles that have *exceeded* five (5) years or sixty thousand (60,000) miles on the Notice Date, for a duration of three (3) months from the Notice Date without regard to mileage.

The warranty extension for first battery replacements is non-transferable and limited to the first-time owner/lessee of the Settlement Class Vehicle.

For subsequent battery replacements beyond the original, Subaru will cover:

- 100% of the Battery Replacement Costs up to a period of five (5) years or sixty thousand (60,000) miles (whichever comes first) from the In-Service Date of the Settlement Class Vehicle, regardless of the number of battery replacements the Settlement Class Vehicle has already received;
- 80% of the Battery Replacement Costs up to a period of seven (7) years or eighty-four thousand (84,000) miles (whichever comes first) from the In-Service Date of the Settlement Class Vehicle; or
- 60% of the Battery Replacement Costs up to a period of eight (8) years or one hundred thousand (100,000) miles (whichever comes first) from the In-Service Date of the Settlement Class Vehicle.

The Extended Warranty battery recharge or replacement coverage will be based on the results of the Authorized Subaru Retailer's administration of the test in the "Battery Extended Warranty – Midtronics Protocol." Except as specifically modified in the Settlement Agreement, the Extended Warranty is subject to the same terms and conditions set forth in the New Vehicle Limited Warranty and Warranty and Maintenance Booklet originally provided with your vehicle.

If you have repairs performed on your Settlement Class Vehicle pursuant to the 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.

Pre-Notice Qualifying Reimbursable Expenses: Unless a Pre-Notice repair was previously reimbursed, a cash reimbursement may be available if you paid out-of-pocket costs for (1) Pre-Notice battery replacements and battery testing and diagnosis performed by an Authorized Subaru Retailer, on a Settlement Class Vehicle in connection with a Qualifying Battery Condition; and/or (2) Pre-Notice towing services in connection with a Qualifying Battery Condition on a Settlement Class Vehicle. Reimbursements for Pre-Notice Qualifying Reimbursable Repair(s) under this section will be at the following rates:

Questions? Visit www.SubaruBatterySettlement.com or Call 1-855-606-2625

# of Owner Paid Repairs	Within 3 years 36,000 miles	Within 5 years 60,000 miles	Within 7 years 84,000 miles	Within 8 years 100,000 miles
1	120%	100%	N/A	N/A
2	140%	125%	100%	55%
3+	165%	140%	120%	100%

For one (1) Owner Paid Repair, a Settlement Class Member is entitled to:

- 120% reimbursement when the Owner Paid Repair occurred within three (3) years and thirty-six thousand (36,000) miles from the In-Service Date of the Settlement Class Vehicle; or
- 100% reimbursement when the Owner Paid Repair occurred within five (5) years and sixty thousand (60,000) miles from the In-Service Date of the Settlement Class Vehicle.

For two (2) Owner Paid Repairs, a Settlement Class Member is entitled to:

- 140% reimbursement when all Owner Paid Repairs occurred within three (3) years and thirty-six thousand (36,000) miles from the In-Service Date of the Settlement Class Vehicle;
- 125% reimbursement when all Owner Paid Repairs occurred within five (5) years and sixty thousand (60,000) miles from the In-Service Date of the Settlement Class Vehicle;
- 100% reimbursement when all Owner Paid Repairs occurred within seven (7) years and eighty-four thousand (84,000) miles from the In-Service Date of the Settlement Class Vehicle; or
- 55% reimbursement when all Owner Paid Repairs occurred within eight (8) years and one hundred thousand (100,000) miles from the In-Service Date of the Settlement Class Vehicle.

For three (3) or more Owner Paid Repairs, a Settlement Class Member is entitled to:

- 165% reimbursement when all Owner Paid Repairs occurred within three (3) years and thirty-six thousand (36,000) miles from the In-Service Date of the Settlement Class Vehicle;
- 140% reimbursement when all Owner Paid Repairs occurred within five (5) years and sixty thousand (60,000) miles from the In-Service Date of the Settlement Class Vehicle;
- 120% reimbursement when all Owner Paid Repairs occurred within seven (7) years and eighty-four thousand (84,000) miles from the In-Service Date of the Settlement Class Vehicle; or
- 100% reimbursement when all Owner Paid Repairs occurred within eight (8) years and one hundred thousand (100,000) miles from the In-Service Date of the Settlement Class Vehicle.

Reimbursement of Pre-Notice Third-Party Repairs: If a Settlement Class Member previously presented his or her vehicle to an Authorized Subaru Retailer or contacted Subaru's customers service division regarding the battery-related issue, the Settlement Class Member may be entitled to reimbursements for payments made to independent third parties for (1) Pre-Notice battery

Questions? Visit www.SubaruBatterySettlement.com or Call 1-855-606-2625

testing, diagnosis, and replacements on a Settlement Class Vehicle in connection with a Qualifying Battery Condition; and/or (2) Pre-Notice towing services in connection with a Qualifying Battery Condition on a Settlement Class Vehicle.

Free Reflash: Any Settlement Class Member who experiences a Qualifying Battery Condition and has not already received the Reflash and completes the “Request for Extended Warranty Battery Service Form,” available at <http://www.SubaruBatterySettlement.com/ExtendedWarrantyRequestForm>, is entitled to receive the Reflash during the approved Retailer visit at no charge through the duration of the Extended Warranty period. Settlement Class Members may also call toll-free 1-855-606-2625 or email info@SubaruBatterySettlement.com to assess whether they experienced a Qualifying Battery Condition and if so, to be assigned an appropriate Retailer to receive the Reflash.

Settlement Class Members who already received and paid for the Reflash and were not previously reimbursed, are entitled to 100% reimbursement for expenses incurred for the Reflash.

Reimbursements for Extraordinary Circumstances: Unless you were previously provided good will by Subaru for the same costs, a cash reimbursement may be available if you previously paid out-of-pocket for two (2) or more battery failures within five (5) years and sixty thousand (60,000) miles from the In-Service Date of the Settlement Class Vehicle. This cash reimbursement may be for 140% of certain Reasonably Related Reimbursable Costs related to your being stranded as a result of a battery failure. To receive reimbursement under this section, the expenses must have been incurred within 48 hours of the repair for such failure. Qualifying expenses under this section may only be recovered up to and including the day on which the vehicle was returned to you by the service center. Recoverable expenses include hotel expenses, meals, equipment purchased to sustain battery operation, and other expenses reasonably related to the battery failure. To receive reimbursement under this section for hotel stays and meals, the expenses must have been incurred not less than 50 miles from the vehicle’s state registered address. A Settlement Class Member qualifying under this section will also be entitled to receive as a single-use Subaru service coupon with a face value of \$140, which will remain valid for one year from the Notice Date.

After-modified exclusions: A Class Vehicle found to have after-modified electronic components, agreed to impair the electronics or battery performance on the list at Exhibit H of the Settlement Agreement, shall be precluded from the benefits of the Settlement Agreement.

6. How do I receive the benefits offered under the Extended Warranty?

To qualify for the Extended Warranty, you must (1) experience a Qualifying Battery Condition and (2) complete the “Request for Extended Warranty Battery Service Form,” available at <http://www.SubaruBatterySettlement.com/ExtendedWarrantyRequestForm>. If you are unable to access the form at the website, you may call toll-free 1-855-606-2625 or email info@SubaruBatterySettlement.com to assess whether you experienced a Qualifying Battery Condition and if so, to be assigned an appropriate Retailer for service.

Once you have satisfied the two requirements above, you may present your Settlement Class Vehicle to an Authorized Subaru Retailer for a free diagnosis to determine whether the battery condition qualifies for Extended Warranty service.

Questions? Visit www.SubaruBatterySettlement.com or Call 1-855-606-2625

If you have repairs performed on your vehicle pursuant to the 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.

7. How do I submit a claim for cash reimbursement?

To receive cash reimbursement, you must submit a Claim Form. You may file a claim electronically at <https://secure.SubaruBatterySettlement.com/claim>. You may also download a copy of the Claim Form from the Important Documents page at www.SubaruBatterySettlement.com. Complete, print, sign, and date the Claim Form. Keep a copy of the completed Claim Form for your own records. Mail or email the Claim Form with the required documentation to the Settlement Administrator at:

Subaru Battery Settlement Administrator
c/o JND Legal Administration
P.O. Box 91305
Seattle, WA 98111
info@SubaruBatterySettlement.com

Claim Forms and supporting documentation must be submitted online or postmarked **by [Month Day], 2022** or they will not be considered. If you fail to submit or mail 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. Cash reimbursements will be made only if the Court approves the Settlement.

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

The Claim Form, available at <http://www.SubaruBatterySettlement.com/ClaimForm>, describes in detail the documentation and information that must be submitted in support of your claim. The Settlement Administrator needs documentation showing the specific nature of your out-of-pocket expenses, proving that you are a Settlement Class Member and that your claim satisfies the requirements for a reimbursement. To prove out-of-pocket payment, you must submit genuine and legible copies of any of the following: receipts, credit card statements, bank statements, invoices, or historical accounting records receipts.

9. When will I receive my payment?

The Court will hold a Fairness Hearing on [redacted] at [redacted], 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, so please be patient. Information about the progress of the case will be available at, <http://www.SubaruBatterySettlement.com/CaseStatus>.

10. What am I giving up by staying in the Settlement Class?

Questions? Visit www.SubaruBatterySettlement.com or Call 1-855-606-2625

Unless you exclude yourself, you will be part of the Settlement Class. By staying in the Settlement Class, you will be allowed to participate in any and all settlement benefits 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 a battery failure and related services in your Settlement Class Vehicle. By staying in the Settlement Class, you will give up your right to be a part of any lawsuit or arbitration, or pursue any claim, against Defendants and any Released Parties relating to the claims in this lawsuit. Staying in the Class also means that all of the Court's orders will apply to you and legally bind you.

This Settlement does not release any claims for personal injury or damage to property (other than damage to the Settlement Class Vehicle related to a Qualifying Battery Failure or Qualifying Battery Condition).

The scope of the claims and causes of action being released and the parties being released are outlined in Section [redacted] of the Settlement Agreement, a copy of which is available at <http://www.SubaruBatterySettlement.com/x>, should you wish to review it. You may also contact Class Counsel, listed below, with any questions you may have:

Matthew Mendelsohn
Mazie Slater Katz & Freeman, LLC
103 Eisenhower Parkway
Roseland, NJ 07068
Email:
mrm@mazieslater.com

Matthew D. Schelkopf
Sauder Schelkopf
1109 Lancaster Avenue
Berwyn, PA 19312
Email:
mds@sstrialawyers.com

Adam Polk
Girard Sharp LLP
601 California Street
Suite 1400
San Francisco, CA 94108
Email:
apolk@girardsharp.com

EXCLUDING YOURSELF FROM THE SETTLEMENT

11. How do I exclude myself from the Settlement?

To exclude yourself from the Settlement, you must complete and submit the Request for Exclusion Form available at <http://www.SubaruBatterySettlement.com/RequestforExclusionForm> no later than [redacted]. You may also download and sign and return the Request for Exclusion Form by U.S. mail (or an express mail carrier) so that it is postmarked on or before [redacted] to:

Subaru Battery Settlement Administrator - Exclusions
c/o JND Legal Administration
P.O. Box 91305
Seattle, WA 98111

By submitting a timely and valid 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.

Questions? Visit www.SubaruBatterySettlement.com or Call 1-855-606-2625

12. If I do not exclude myself, can I sue Subaru for the same thing later?

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

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

No. If you exclude yourself from the Settlement 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 the Settlement. You cannot do both.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

Yes. The Court has appointed Matthew D. Schelkopf of Sauder Schelkopf, Matthew Mendelsohn of Mazie Slater Katz & Freeman, LLC, and Adam Polk of Girard Sharp LLP to represent the Settlement 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.

15. How will the lawyers be paid?

Class Counsel will apply to the Court for an award of reasonable attorney fees in an amount up to but not exceeding four million one hundred thousand dollars (\$4,100,000), inclusive of expenses and costs (collectively referred to as “fees and expenses”), 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 this 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 Settlement Class Members.

Class Counsel’s motion for fees and expenses will be made available for review at the Important Documents page of the Settlement Website, www.SubaruBatterySettlement.com, after it is filed with the Court.

16. Will the Settlement Class Representatives receive service payments?

Yes. Class Counsel will also apply to the Court for service awards of \$4,000 for each of the thirteen named Plaintiffs who have conditionally been approved as Settlement Class Representatives (Amy Burd, Walter Gill, David Hansel, Glen McCartney, Roger Baladi, Tamara O’Shaughnessy, Anthony Franke, Matthew Miller, Steven Stone, Howard Bulgatz, Mary Beck, David Davis, and

Questions? Visit www.SubaruBatterySettlement.com or Call 1-855-606-2625

Colin George), for their initiative and effort in pursuing this litigation for the benefit of the Settlement Class. Service awards to the named Class Representatives will be paid by Defendants, and will not reduce any benefits available to Settlement Class Members.

OBJECTING TO THE SETTLEMENT

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

If you are a member of the Settlement Class and do not request to be excluded, you can object to the Settlement if you do not like all or any part of it. The Court will consider all comments from Settlement Class Members. As a Settlement Class Member, you will be bound by the Court's final decision regarding the approval of this Settlement.

To object, you must submit a letter to the Court, with copies to Class Counsel and defense counsel, at the addresses listed below. Your letter must include:

- Your full name, current address, and telephone number;
- The model, model year, date of acquisition, and VIN of your Settlement Class Vehicle and proof that you own(ed) or lease(d) it (i.e., a true copy of a vehicle title, registration, or license receipt);
- A written statement that you have reviewed the Settlement Class definition and understand in good faith that you are a Settlement Class Member;
- A written statement of all grounds for your objection and any legal support for your objection;
- Copies of any papers, briefs, or other documents upon which your objection is based and which are pertinent to the objection;
- A statement whether you complained to Defendants or an Authorized Subaru Retailer about a Qualifying Battery Failure or Qualifying Battery Condition or had any Qualifying Reimbursable Repairs and, if so, provide evidence of any such complaint or repairs
- A statement of whether you intend to appear at the Fairness Hearing;
- The identity of all attorneys representing you, if any, who will appear at the Fairness Hearing;
- A list of all other objections (if any) you, or your counsel, 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 it was filed, and the docket number, OR if you have not made any such prior objection, an affirmative statement to that effect; and
- Your signature.

You must send your objection via the Court's electronic filing system, or by mail to the addresses below, postmarked by :

The Court:

Clerk, United States District
Court
Mitchell H. Cohen Building
& U.S. Courthouse

Class Counsel:

Matthew Mendelsohn
Mazie Slater Katz & Freeman, LLC
103 Eisenhower Parkway

Defense Counsel:

Neal Walters
Ballard Spahr, LLP
700 East Gate Drive
Suite 300

Questions? Visit www.SubaruBatterySettlement.com or Call 1-855-606-2625

4th & Cooper Streets
Camden, NJ 08101

Roseland, NJ 07068

Mount Laurel, NJ 08054

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 Settlement 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 Settlement Class and the Settlement. 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 [REDACTED] on [REDACTED], 2022, in Courtroom [REDACTED] 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. 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. However, 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 your written objection is timely, 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?

Yes. If you do not exclude yourself, you may ask the Court's permission to speak at the hearing. If you intend to appear at the Fairness Hearing personally or through counsel, you or your attorney must file with the Clerk of the Court and serve on all counsel designated in Question 17 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. Your notice of intention to appear must be postmarked by [REDACTED], or it will not be considered, and you will not be allowed to speak at the hearing.

IF YOU DO NOTHING

22. What happens if I do nothing at all?

Questions? Visit www.SubaruBatterySettlement.com or Call 1-855-606-2625

If you do nothing, you will be bound by the Settlement if the Court approves it, and release the claims described under Section [redacted] of the Settlement Agreement. You will also be entitled to Extended Warranty coverage. You must file a claim to seek a reimbursement payment .

23. Will I receive further notices if the Settlement is approved?

No. You will receive no further notice concerning approval of this proposed Settlement.

ADDITIONAL INFORMATION

24. How can I obtain more information?

For more information, visit www.SubaruBatterySettlement.com, call toll-free 1-855-606-2625, write Subaru Battery Settlement Administrator, c/o JND Legal Administration, P.O. Box 91305, Seattle, WA 98111, or email info@SubaruBatterySettlement.com.

For definitions of any capitalized terms used in this Notice, please see the Settlement Agreement, available on the Important Documents page of the Settlement Website, www.SubaruBatterySettlement.com.

DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

EXHIBIT D

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

IN RE SUBARU BATTERY DRAIN PROD.
LIAB. LITIG.

No. 1:20-cv-03095-JHR-MJS

**[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 [REDACTED], 2022 ("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") and approval of attorneys' fees and expenses and incentive awards. 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 [REDACTED], 2022 (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: All natural persons, who are residents of the continental United States, including 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 (a) those claims for personal injury and/or property damage (claims for a Qualifying Battery Condition or Qualifying Battery Failure in a Settlement Class Vehicle are included regardless of whether they additionally experienced personal injury or property damage for which they do not make a claim; however, those additional claims for personal injury and/or property damaged shall be deemed excluded from the Settlement Class) 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 solely 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; (k) any Settlement Class Member that files a timely and proper Request for Exclusion from the Settlement Class; and (l) third party issuers.

4. For purposes of this Order and the Settlement, Settlement Class Vehicles mean model year 2015-2020 Outback, 2015-2020 Forester, 2015-2020 Legacy, 2015-2020 WRX, and 2019-2020 Ascent.

5. 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. Specifically, the Court has analyzed each of the factors set forth in Fed. R. Civ. P. 23(e)(2), *Girsh v. Jepsen*, 521 F.2 153, 157 (3d Cir. 1975) and *In re Prudential Ins. Co. Am. Sales Practice Litig.*, 148 F.3d 283, 323 (3d Cir. 1998) and finds the factors support final approval of the settlement, including, including an assessment of the likelihood that the Class Representatives would prevail at trial; the range of possible recovery; the consideration provided to Settlement Class Members as compared to the range of possible recovery discounted for the inherent risks of litigation; the complexity, expense, and possible duration of litigation in the absence of a settlement; the nature and extent of any objections to the settlement; the stage of the proceedings and the amount of discovery requested; the risk of establishing liability and damages, the ability of the defendants to withstand a greater judgment, the range of reasonableness of the settlement; the underlying substantive issues in the case; the existence and probable outcome of claims by other classes; the results achieved; whether the class can opt-out of the settlement; whether the attorneys' fees are reasonable, and whether the procedure for processing claims is fair and reasonable.

6. The Court finds the factors recently added to Fed. R. Civ. P. 23(e)(2) substantially overlap with the factors the Third Circuit has enumerated in *Girsh* and *In re Prudential*, and that each supports final approval of the settlement.

7. The Court also “finds that the questions of law or fact common to class members predominate over any questions affecting only individual members,” and that “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Here, Settlement Class Members share a common legal grievance arising from Defendants’ alleged failure to disclose or adequately disclose material facts about the Settlement Class Vehicles. Common legal and factual questions predominate over any individual questions that may exist for purposes of this settlement, and the fact that the Parties are able to resolve the case on terms applicable to all Settlement Class Members underscores the predominance of common legal and factual questions for purposes of this settlement. In concluding that the Settlement Class should be certified pursuant to Rule 23(b)(3) for settlement purposes, the Court further finds that a class action is superior for purposes of resolving these claims because individual class members have not shown any interest in individually controlling the prosecution of separate actions. Moreover, the cost of litigation likely outpaces the individual recovery available to any Settlement Class Members. *See* Fed. R. Civ. P. 23(b)(3)(A). Accordingly, the Court finds that, for purposes of this settlement, Rule 23(b)(3) has also been satisfied.

8. 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.

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

10. Upon the Effective Date, the Settlement Class Members shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Released Parties from all Released Claims.

11. 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 the Released Parties in any court, administrative agency, arbitral forum, or other tribunal.

12. 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 addition 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.

13. 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 Released Parties, and to reinstate the Released Claims against the Released Parties.

14. No Settlement Class Member or any other person will have any claim against Plaintiffs, Class Counsel, any person designated by Class Counsel, or the Settlement Administrator arising from or relating to the Settlement or actions, determinations or distributions made substantially in accordance with the Settlement or Orders of the Court.

15. 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.

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

17. 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.

18. 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 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. JOSEPH H. RODRIGUEZ
UNITED STATES DISTRICT JUDGE

EXHIBIT E

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

IN RE SUBARU BATTERY DRAIN
PROD.LIAB. LITIG.

No. 1:20-cv-03095-JHR-JS

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

WHEREAS, pursuant to Rule 23(e) 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 , 2022 (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 Settlement is the product of non-collusive arm's-length negotiations between experienced counsel who were thoroughly informed of the strengths and weaknesses of the Action, including through discovery and motion practice, and whose negotiations were

supervised by an experienced mediator. The Settlement confers substantial benefits upon the Settlement Class and avoids the costs, uncertainty, delays, and other risks associated with continued litigation, trial, and/or appeal. The Settlement falls within the range of possible recovery, compares favorably with the potential recovery when balanced against the risks of continued litigation, does not grant preferential treatment to Plaintiffs, their counsel, or any subgroup of the Settlement Class, and has no obvious deficiencies.

4. 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.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court finds, upon preliminary evaluation and for purposes of Settlement only, that it will likely be able to certify the Settlement Class as follows:

All natural persons, who are residents of the continental United States, including 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 (a) those claims for personal injury and/or property damage (claims for a Qualifying Battery Condition or Qualifying Battery Failure in a Settlement Class Vehicle are included regardless of whether they additionally experienced personal injury or property damage for which they do not make a claim; however, those additional claims for personal injury and/or property damaged shall be deemed excluded from the Settlement Class) 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 solely 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; (k) any Settlement Class Member that files a timely and proper Request for Exclusion from the Settlement Class; and (l) third party issuers.

6. For purposes of this Order and the Settlement, Settlement Class Vehicles mean model year 2015-2020 Outback, 2015-2020 Forester, 2015-2020 Legacy, 2015-2020 WRX, and 2019-2020 Ascent.

7. The Court preliminarily finds that the settlement is likely to receive final approval and the Settlement Class will likely be certified for settlement purposes only. The Court concludes that the Settlement Class satisfies the requirements of Rule 23(a) and (b)(3): (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.

8. The Court appoints Matthew R. Mendelsohn of Mazie Slater Katz & Freeman, LLC, Matthew D. Schelkopf of Sauder Schelkopf LLC and Adam Polk of Girard Sharp, LLP, as Class Counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are satisfied by this appointment.

9. The Court hereby appoints Plaintiffs Amy Burd, Walter Gill, David Hansel, Glen McCartney, Roger Baladi, Tamara O'Shaughnessy, Anthony Franke, Matthew Miller, Steven Stone, Howard Bulgatz, Mary Beck, David Davis, and Colin George to serve as Class Representatives for settlement purposes only on behalf of the Settlement Class.

10. The Court approves the form and content of the Class Notice. The Court finds that the mailing of the Class Notice substantially 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. Within 90 days after entry of the Preliminary Approval Order, Subaru shall – at its expense – cause the First 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.

b. 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.

c. 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.

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

12. The Court hereby appoints JND Legal Administration to serve as the Settlement Administrator to supervise and administer the notice procedures, administer the claims processes, distribute payments according to the processes and criteria set forth in the Settlement Agreement, and perform any other duties of the Settlement Administrator that are reasonably necessary or provided for in the Settlement Agreement.

13. 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 thirty (30) 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.

14. 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; and (b) specifically and unambiguously state in writing his or her desire to be excluded from the

Settlement Class and election to be excluded from any judgment entered pursuant to the settlement. 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.

15. 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 within forty-five (45) days after the date of the mailing of Notice to Settlement Class Members.

1. 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 that the objector has reviewed the Settlement Class definition and understands in good faith that he or she is a Settlement Class Member; (d) a written statement of all grounds for the objection accompanied by any legal support for such objection sufficient to enable the parties to respond to those specific objections; (e) copies of any papers, briefs, or other documents upon which the objection is based and are pertinent to the objection; (f) state whether the Settlement Class

Member complained to Defendants or an Authorized Subaru Retailer about a Qualifying Battery Failure or Qualifying Battery Condition or has had any Qualifying Reimbursable Repairs and, if so, provide evidence of any such complaint or repairs; and (g) shall provide a list of all other objections submitted by the objector, and/or the objector's counsel, to any class action settlements submitted in any state or federal court in the United States in the previous five (5) years, including the full case name with jurisdiction in which it was filed and the docket number (If the Settlement Class Member or his, her, or its counsel has not objected to any other class action settlement in the United States in the previous five (5) years, he or she shall affirmatively so state in the objection). Objections shall be filed via the Court's electronic filing system, and if not filed via the Court's electronic system, must mail, postmarked by the date specified in the Preliminary Approval Order, the objection to the Court and also serve by first-class mail copies of the objection upon:

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

Matthew Mendelsohn
Mazie Slater Katz & Freeman, LLC
103 Eisenhower Parkway
Roseland, NJ 07068

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

16. 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.

17. The Final Fairness Hearing shall be held on or immediately after _____ days following this Order Preliminarily Approving Settlement. The Court hereby schedules the Final Approval Hearing for _____, at _____ a.m./p.m. in Courtroom 5D 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.

18. Class Counsel's application for an award of attorneys' fees, expenses, and costs and for service awards will be considered separately from the fairness, reasonableness, and adequacy of the Settlement. Any appeal from any order relating solely to Class Counsel's application for an award of attorneys' fees, costs, and expenses, and/or to Class Counsel's application for service awards, or any reversal or modification of any such order, shall not operate to terminate or cancel the Settlement or to affect or delay the finality of a judgment approving the Settlement.

19. Papers in support of final approval of the Settlement and Class Counsel's application for attorneys' fees, expenses and costs and for service awards shall be filed no later than ___ days prior to the Final Fairness Hearing and ___ days prior to the objection and exclusion deadline, respectively.

20. Settlement Class Members shall have until sixty (60) days after the Effective Date to submit claim forms. Claim forms must be postmarked by that date to be considered timely.

21. If the Settlement fails to become effective in accordance with its terms, or if the Final Order and Judgment is not entered or is reversed or vacated on appeal, this Order shall be null and void, the Settlement Agreement shall be deemed terminated, and the Parties shall return to their positions without any prejudice, as provided for in the Settlement Agreement.

22. The fact and terms of this Order or the Settlement, all negotiations, discussions, drafts and proceedings in connection with this Order or the Settlement, and any act performed or document signed in connection with this Order or the Settlement, shall not, in this or any other Court, administrative agency, arbitration forum, or other tribunal, constitute an admission, or evidence, or be deemed to create any inference (i) of any acts of wrongdoing or lack of wrongdoing, (ii) of any liability on the part of Defendant to Plaintiffs, the Settlement Class, or anyone else, (iii) of any deficiency of any claim or defense that has been or could have been asserted in this Action, (iv) of any damages or absence of damages suffered by Plaintiffs, the Settlement Class, or anyone else, or (v) that any benefits obtained by the Settlement Class under the Settlement represent the amount that could or would have been recovered from Defendant in this Action if it were not settled at this time. The fact and terms of this Order or the Settlement, and all negotiations, discussions, drafts, and proceedings associated with this Order or the Settlement, including the judgment and the release of the Released Claims provided for in the Settlement Agreement, shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum, or other tribunal, except as necessary to enforce the terms of this Order, the Final Order and Judgment, and/or the Settlement.

23. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

24. Pending further order of the Court, all litigation activity and events, except those contemplated by this Order or in the Settlement Agreement, are hereby STAYED, and all hearings, deadlines, and other proceedings in the Litigation, except the Final Fairness Hearing and the matters set forth in this Order, are VACATED.

IT IS SO ORDERED on this _____ day of _____, 2022.

HONORABLE JOSEPH H. RODRIGUEZ
UNITED STATES DISTRICT JUDGE

EXHIBIT F

SUBARU BATTERY SETTLEMENT

Request for Settlement Extended Warranty Battery Service Form

If your Settlement Class Vehicle suffered from a dead battery (i.e., the Vehicle's battery has been discharged beyond the ability to start the Class Vehicle) in the last six (6) months, you may be entitled to free battery diagnostics at a pre-designated Authorized Subaru Retailer (the "Retailer").

Please enter the Unique ID and PIN from the Notice packet you received to file a Request for Settlement Extended Warranty Battery Service Form. If you do not have your Unique ID and PIN, enter the VIN of your Settlement Class Vehicle.

Unique ID:

PIN:

The Unique ID and/or PIN you entered is not valid. Please try again.

VIN:

The VIN you entered does not belong to a Settlement Class Vehicle. Please try again.

The VIN provided is Not Eligible: Exceeded Limits of Extended Warranty Coverage.

[File an Extended Warranty Form](#)

SECTION I: CLAIMANT CONTACT INFORMATION

Please review the information below and confirm that it is accurate. If the name and/or VIN listed is not correct, please return [here](#) and enter the VIN of your Settlement Class Vehicle to continue.

Full Name:

VIN:

In-Service Date

Mailing Address – Line 1:

Mailing Address – Line 2:

City:

State:

 ▼

Zip Code:

Next

SECTION I: CLAIMANT CONTACT INFORMATION

Please provide your name, address, and contact information below.

VIN:

In-Service Date

Pre-populated

Pre-populated

Full Name: *This is required.*

Mailing Address – Line 1: *This is required.*

Mailing Address – Line 2:

City: *This is required.*

State: *This is required.*

Zip Code: *This is required.*

Next

SECTION II: VEHICLE INFORMATION

Has your Class Vehicle suffered from a dead battery (i.e., the Vehicle’s battery has been discharged beyond the ability to start the Class Vehicle) in the last six (6) months?

- Yes No I don’t know

Not Eligible: Settlement Class Vehicle not in need of battery repair/replacement. If your vehicle suffers from a dead battery in the future, please return to this page and submit another form.

What date did your battery fail? If your Class Vehicle’s battery had subsequent failures, please add the dates of failure using the Add Date button.

04/22/2022 

Add Date

How was the issue addressed?

What is the actual or estimated mileage currently on the Class Vehicle’s odometer?

Not Eligible: Exceeded Limits of Extended Warranty Coverage.

Will this be the first time that the battery on your Class Vehicle has been serviced?

- Yes No I don’t know

How many service events has your battery undergone?

Back

Submit

SUCCESS

Your Request for Settlement Extended Warranty Battery Service Form has been submitted with Extended Warranty Number: PFWX2-4JFN4. Please print out a copy of this form and take it with you to an [Authorized Subaru Dealership](#).

Based on the information provided, your vehicle may be:

- Eligible for 100% coverage of Battery Replacement Costs./
- Eligible for 50% coverage of Battery Replacement Costs./
- Eligible for 80% coverage of Battery Replacement Costs./
- Eligible for 60% coverage of Battery Replacement Costs.

SUMMARY

Full Name:

VIN:

Mailing Address – Line 1:

Mailing Address – Line 2:

City:

State:

Zip:

Email Address:

Phone:

Has your Class Vehicle suffered from a dead battery?:

Date(s) of battery failure:

How was the issue addressed?:

Current mileage:

Will this be your first time servicing?:

Number of previous service events:

Print

EXHIBIT G

Battery Extended Warranty – Midtronics Protocol

1. A customer who qualifies for extended battery warranty services under the Settlement shall be entitled to free battery diagnostics at a pre-designated Authorized Subaru Retailer (the “Retailer”).

Battery Testing for Class Vehicles without EFBs

2. For Class Vehicles with a battery other than an Enhanced Flooded Battery (“EFB”), the Retailer shall first administer the Midtronics DSS-5000 battery test to assess the condition of the battery.

3. Retailers will manually input into the Midtronics DSS-5000 the agreed upon maximum Cold Cranking Amps (CCA) from the battery label for the model of Class Vehicle being tested:

Model Year	Carline	Original Equipment Battery Designation	Original Equipment Battery CCA Rating	Genuine Subaru Replacement Battery Part Number	Genuine Subaru Replacement Battery CCA Rating	Optional Genuine Subaru Replacement Battery Part Number	Optional Genuine Subaru Replacement Battery CCA Rating
2015	Legacy 2.5	55D23R	356	SOA8218400	550		
2015	Legacy 3.6	75D23R	490	SOA8218400	550		
2016	Legacy 2.5	55D23R	356	SOA8218400	550		
2016	Legacy 3.6	75D23R	490	SOA8218400	550		
2017	Legacy 2.5	55D23R	356	SOA8218400	550		
2017	Legacy 3.6	75D23R	490	SOA8218400	550		
2018	Legacy	75D23R	490	SOA8218400	550		
2019	Legacy	75D23R	490	SOA8218400	550		
2020	Legacy	LN2	620	SOA8218700	640		
2015	Outback 2.5	55D23R	356	SOA8218400	550		
2015	Outback 3.6	75D23R	490	SOA8218400	550		
2016	Outback 2.5	55D23R	356	SOA8218400	550		
2016	Outback 3.6	75D23R	490	SOA8218400	550		
2017	Outback 2.5	55D23R	356	SOA8218400	550		
2017	Outback 3.6	75D23R	490	SOA8218400	550		
2018	Outback	75D23R	490	SOA8218400	550		
2019	Outback	75D23R	490	SOA8218400	550		
2020	Outback	LN2	620	SOA8218700	640		
2015	WRX	55D23L	390	SOA8218200	550		
2016	WRX	55D23L	390	SOA8218200	550		
2017	WRX	55D23L	390	SOA8218200	550		
2018	WRX	75D23L	470	SOA8218200	550		
2019	WRX	75D23L	470	SOA8218200	550		
2020	WRX	75D23L	470	SOA8218200	550		
2015	Forester	55D23L	390	SOA8218200	550		
2016	Forester	55D23L	390	SOA8218200	550		
2017	Forester	55D23L	490	SOA8218200	550		
2018	Forester	75D23L	470	SOA8218200	550		
2019	Forester	Q-85	620	SOA8218600	620		
2020	Forester	Q-85	620	SOA8218600	620		
2019	Ascent	75D23L	530	SOA8218200	550	SOA8218600	620
2020	Ascent	75D23L	530	SOA8218200	550	SOA8218600	620

4. The Midtronics DSS-5000 battery test module is designed to generate 1 of 5 different results that will determine the customer’s entitlement to an extended warranty service (“the Midtronics DSS-5000 Result(s)”). The five options are as follows:

Number	Overall/Cranking
1	Good Battery
2	Good Recharge
3	Charge & Retest
4	Replace Battery
5	Bad-cell Replace

5. A Midtronics DSS-5000 Result of “4. Replace Battery” or “5. Bad-cell Replace” reflects an issue detected with the battery, and shall entitle the customer to a replacement battery, the percentage warranty coverage for which is addressed in Sections V.A.1-2 of the Settlement Agreement.

6. A Midtronics DSS-5000 Result of “1. Good Battery” reflects that the battery is operating properly for its rated size and electrical capacity and there shall be no entitlement to extended warranty relief, for which the customer will not be charged for diagnostic services.

7. In the event of a Midtronics DSS-5000 Result of “2. Good Recharge,” the Retailer shall charge the battery with the Midtronics DCA-8000—at no cost to class member.

8. In the event of a Midtronics DSS-5000 Result of “3. Charge & Retest,” the Retailer shall charge the battery and administer a separate test with the Midtronics DCA-8000 outlined in steps 10-15 of this Protocol.

Battery Testing for Class Vehicles with EFBs

9. For Class Vehicles with an Enhanced Flooded Battery (“EFB”), the Retailer shall first administer the Midtronics DCA-8000 battery test to assess the condition of the battery.

10. Retailers will manually input into the Midtronics DCA-8000 the agreed upon maximum Cold Cranking Amps (CCA) from the battery label for the model of Class Vehicle being tested:

Model Year	Carline	Original Equipment Battery Designation	Original Equipment Battery CCA Rating	Genuine Subaru Replacement Battery Part Number	Genuine Subaru Replacement Battery CCA Rating	Optional Genuine Subaru Replacement Battery Part Number	Optional Genuine Subaru Replacement Battery CCA Rating
2015	Legacy 2.5	55D23R	356	SOA821B400	550		
2015	Legacy 3.6	75D23R	490	SOA821B400	550		
2016	Legacy 2.5	55D23R	356	SOA821B400	550		
2016	Legacy 3.6	75D23R	490	SOA821B400	550		
2017	Legacy 2.5	55D23R	356	SOA821B400	550		
2017	Legacy 3.6	75D23R	490	SOA821B400	550		
2018	Legacy	75D23R	490	SOA821B400	550		
2019	Legacy	75D23R	490	SOA821B400	550		
2020	Legacy	LN2	620	SOA821B700	640		
2015	Outback 2.5	55D23R	356	SOA821B400	550		
2015	Outback 3.6	75D23R	490	SOA821B400	550		
2016	Outback 2.5	55D23R	356	SOA821B400	550		
2016	Outback 3.6	75D23R	490	SOA821B400	550		
2017	Outback 2.5	55D23R	356	SOA821B400	550		
2017	Outback 3.6	75D23R	490	SOA821B400	550		
2018	Outback	75D23R	490	SOA821B400	550		
2019	Outback	75D23R	490	SOA821B400	550		
2020	Outback	LN2	620	SOA821B700	640		
2015	WRX	55D23L	390	SOA821B200	550		
2016	WRX	55D23L	390	SOA821B200	550		
2017	WRX	55D23L	390	SOA821B200	550		
2018	WRX	75D23L	470	SOA821B200	550		
2019	WRX	75D23L	470	SOA821B200	550		
2020	WRX	75D23L	470	SOA821B200	550		
2015	Forester	55D23L	390	SOA821B200	550		
2016	Forester	55D23L	390	SOA821B200	550		
2017	Forester	55D23L	490	SOA821B200	550		
2018	Forester	75D23L	470	SOA821B200	550		
2019	Forester	Q-85	620	SOA821B600	620		
2020	Forester	Q-85	620	SOA821B600	620		
2019	Ascent	75D23L	530	SOA821B200	550	SOA821B600	620
2020	Ascent	75D23L	530	SOA821B200	550	SOA821B600	620

11. The Midtronics DCA-8000 battery test module is also designed to generate 1 of 5 different results that will determine the customer’s entitlement to extended warranty service (“the Midtronics DCA-8000 Result(s)”). The five options are as follows:

Number	Overall/Cranking
--------	------------------

1	Good Battery
2	Good Recharge
3	Charge & Retest
4	Replace Battery
5	Bad-cell Replace

12. A Midtronics DCA-8000 Result of “4. Replace Battery” or “5. Bad-cell Replace” reflects an issue detected with the battery, and shall entitle the customer to a replacement battery, for which the percentage warranty coverage is addressed in Sections V.A.1-2 of the Settlement Agreement.

13. A Midtronics DCA-8000 Result of “1. Good Battery” or “2. Good Recharge” reflects that the battery is operating properly for its rated size and electrical capacity and there shall be no entitlement to extended warranty relief, for which the customer will not be charged for diagnostic services.

14. In the event of a Midtronics DCA-8000 Result of “2. Good Recharge” the Retailer shall charge the battery with the Midtronics DCA-8000—at no cost to class member.

15. In the event of a Midtronics DCA-8000 Result of “3. Charge & Retest,” the Retailer shall charge the battery using the DCA-8000 Diagnostic Charger for a final decision. In the event of a second Midtronics DCA-8000 Result of “3. Charge & Retest,” the Retailer shall replace the battery and the class member shall be entitled to the percentage warranty coverage addressed in Sections V.A.1-2 of the Settlement Agreement.

16. For Class Vehicles with an EFB, the Retailer shall only administer the Midtronics DCA-8000 battery test to assess the condition of the battery. In administering the test, the Retailer shall follow the procedures identified in Nos. 9-15 of this Protocol.

17. In light of the current global microchip shortage, the Parties hereby agree to meet and confer in good faith to identify such a shortage if it occurs, and about the suitability of such alternative tests and their administration.

EXHIBIT H

**Exclusions for Certain After-Modified Electronic
Components and Owner Caused Failures**

The parties agree that a Class Vehicle with any of the following after-modified electronic components shall be precluded from the benefits of the Settlement Agreement:

1. Aftermarket audio components including audio systems, equalizers, amplifiers, and subwoofers
2. Aftermarket remote engine starter or remote keyless entry
3. Aftermarket security or immobilizer devices
4. Aftermarket air suspension systems
5. Aftermarket video entertainment systems

For purposes of the Settlement Agreement and this exhibit, the term “Aftermarket” shall mean items not installed at a Subaru retailer. If the component or item was installed at a Subaru retailer then it cannot be used as an exclusion under the settlement.

The parties further agree that Class Vehicles shall be precluded from the benefits of the Settlement Agreement where the service records provide evidence that the Settlement Class Member caused the battery issue by (1) leaving vehicle exterior/interior lights on overnight; and or (2) leaving powered devices connected to any vehicle power outlet overnight while the vehicle is not operated.

EXHIBIT I

Subaru Battery Settlement
c/o JND Legal Administration
PO Box 91305
Seattle, WA 98111
www.SubaruBatterySettlement.com
info@SubaruBatterySettlement.com
Toll-free: 1-855-606-2625

Claim Number: XXXXX-XXXXX
VIN: XXXXXXXXXXXXXXXXXXXX

[Month Day], 2022

Claim Decision and Option Letter

Your claim in the Subaru Battery Settlement for the vehicle identified above was reviewed and [approved for reimbursement in the amount of \$_____/rejected]. [The reasons for this rejection are detailed below.]

- Not a Class Vehicle
- Insufficient Proof of Claimed Expenses
- Missing Proof of Ownership or Lease [only if required for claims where owner name/VIN not pre-populated]
- Missing Signature

You have a right to a Second Review of this decision if you disagree with it. To exercise this option and initiate a Second Review, you must return a copy of this letter by mail or email, along with any additional explanation and/or documents [to support your claim for reimbursement/to cure the deficiencies detailed above], postmarked or emailed by [Month Day], 2022.

Subaru Battery Settlement
c/o JND Legal Administration
PO Box 91305
Seattle, WA 98111
info@SubaruBatterySettlement.com

This decision will become final if you do not timely respond to initiate a Second Review. You do not need to respond if you accept this determination. [A check will be issued to you in the amount specified above.]

If you have any questions about this decision, please contact the Settlement Administrator by calling toll-free 1-855-606-2625 or emailing info@SubaruBatterySettlement.com.

EXHIBIT J

SUBARU BATTERY SETTLEMENT

REQUEST FOR EXCLUSION FORM

Please enter the Unique ID and PIN from the Notice packet you received to file a Request for Exclusion Form. If you do not have your Unique ID and PIN, enter the VIN of your Class Vehicle.

Unique ID:

PIN:

The Unique ID and/or PIN you entered is not valid. Please try again.

VIN:

The VIN you entered does not belong to a Settlement Class Vehicle. Please try again.

[File a Request for Exclusion Form](#)

Please review the information below and confirm that it is accurate. If the name and/or VIN listed is not correct, please return [here](#) and enter the VIN of your Settlement Class Vehicle to continue.

Full Name:

VIN:

In-Service Date

Mailing Address – Line 1:

Mailing Address – Line 2:

City:

State:

 ▼

Zip Code:

Phone Number: *This is required.*

By signing below, I affirm my desire to be excluded from the Settlement Class and from any judgement entered pursuant to the settlement.

Signature: *This is required.*

4/22/2022

SECTION I: CLAIMANT CONTACT INFORMATION

Please provide your name, address, and contact information below.

VIN:

In-Service Date

Full Name: *This is required.*

Mailing Address – Line 1: *This is required.*

Mailing Address – Line 2:

City: *This is required.*

State: *This is required.*

Zip Code: *This is required.*

Phone Number: *This is required.*

By signing below, I affirm my desire to be excluded from the Settlement Class and from any judgement entered pursuant to the settlement.

Signature: *This is required.*

4/22/2022

SUCCESS

Your Request for Exclusion Form has been submitted. Your Exclusion Number is: PFWX2-4JFN4.
Please save your Exclusion Number for recordkeeping purposes.

SUMMARY

Full Name:

VIN:

Mailing Address – Line 1:

Mailing Address – Line 2:

City:

State:

Zip:

Phone:

Print