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21 **UNITED STATES DISTRICT COURT**
22 **SOUTHERN DISTRICT OF CALIFORNIA**

23 SUZANNE BARE and MICHAEL
24 NICKEL, on behalf of themselves
25 and all others similarly situated,

26 Plaintiffs,

27 v.

SUBARU OF AMERICA, INC.

Defendant.

NO.: '20CV1743 GPC MDD

CLASS ACTION

COMPLAINT FOR DAMAGES,
EQUITABLE, DECLARATORY AND
INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

Plaintiffs Suzanne Bare and Michael Nickel bring this class action against Subaru of America, Inc. on behalf of themselves and all others similarly situated in the state of California, and allege:

1 INTRODUCTION

2 *Sudden acceleration is one of the [deadliest] . . . automotive defects in*
3 *history. It occurs when a car’s electronics cause the throttle to go wide open,*
4 *making it impossible for the driver to return the car to idle if it remains in gear.*
5 *It also severely limits the ability of the brakes to bring the vehicle under control*
6 *– leaving the unsuspecting driver at the mercy of a runaway car. Thousands of*
7 *people, including drivers, passengers, and innocent bystanders, have been*
8 *killed or seriously injured in sudden acceleration accidents.*¹

9 1. Subaru manufactures, markets, distributes and sells a range of
10 vehicles which, upon information and belief, suffer from a defect that results in a
11 non-driver initiated sudden acceleration event wherein the vehicle spontaneously
12 lunges forward, placing the driver, passengers, other drivers and pedestrians at
13 risk of grievous harm.

14 2. Subaru vehicles affected by this defect include the 2015-2019
15 Subaru Legacy, 2012-2018 Subaru Forester, and 2015-2019 Subaru Outback
16 (“Class Vehicles”).

17 3. Upon information and belief, the underlying defect affecting Class
18 Vehicles and causing Sudden Unintended Acceleration (“SUA”) events is
19 twofold. First, the Controller Area Network (“CAN bus”), a staple of all Class
20 Vehicles, contains a software and/or software communication protocol flaw.²

21 _____
22 ¹ Sudden Acceleration Information Group, available at
<https://suddenacceleration.com> (last visited June 6, 2020).

23 ² A Controller Area Network (“CAN bus”) is serial network technology
24 developed for the automotive industry to enable microcontrollers and devices to
25 communicate with each other’s applications without a host computer. It is a
26 message-based protocol system, designed originally for multiplex electrical
27 wiring within automobiles. For each device the data in a frame is transmitted
sequentially but in such a way that if more than one device transmits at the same

1 Second, the Subaru Brake Override System (“BOS”) is faulty and does not work
2 as intended. The BOS was added to Class Vehicles to address and prevent SUA
3 events from occurring. By monitoring both the engine’s electronic accelerator and
4 operation of the vehicle’s brakes, the BOS compares data from both systems to
5 determine whether they are being deployed simultaneously. When working, the
6 BOS is supposed to close the throttle plate to reduce engine speed and
7 simultaneously raise the pressure of the brake fluid high enough to stop the
8 vehicle (“Defect”).

9 4. While Class Vehicles should have been designed free of defects that
10 could result in SUA events, the BOS failsafe system should also operate
11 effectively to mitigate the effects of SUA events when they do occur.

12 5. Hundreds of consumers have lodged complaints with the National
13 Highway Traffic Safety Administration and on consumer websites complaining of
14 SUA events affecting their vehicles. Moreover, many of these drivers who
15 attempted to mitigate the effects of sudden acceleration by depressing the brakes
16 reported that doing so had no effect.

17 6. Despite the significant number of complaints, Subaru has neither
18 offered a recall nor issued a Technical Service Bulletin to address the underlying
19 Defect. Rather, it has ignored this growing and dangerous problem, routinely
20 dismissing complaints and ascribing the SUA to driver error.

21 7. Plaintiffs, on behalf of all others similarly situated, allege claims for
22 breach of express warranty, breach of implied warranty, unjust enrichment,
23 violation of California’s Consumer Legal Remedies Act and its Unfair
24 Competition Law.

25
26 _____
27 time the highest priority device is able to continue while the others back off.
Frames are received by all devices, including by the transmitting device.

PARTIES

1
2 8. Plaintiff Suzanne Bare is a California resident.

3 9. Plaintiff Bare purchased a certified pre-owned 2016 Subaru Legacy
4 in July 2019 from DCH Subaru of Riverside. She also purchased an Extended
5 Warranty from Subaru that provided comprehensive warranty coverage up to 84
6 months and 100,000 miles.

7 10. On January 19, 2020, Ms. Bare was driving her Subaru vehicle.
8 There were about 33,000 miles on the vehicle at the time. She was stopped, with
9 her foot on the brake. As she attempted to put the vehicle into park, she suffered
10 an SUA event. Despite applying her foot forcefully to the brake, the vehicle shot
11 forward, hitting a fence, damaging both the fence and the vehicle.

12 11. Ms. Bare’s vehicle suffered in excess of \$1,600 in damages. Ms.
13 Bare submitted the matter to her insurer which covered the claim except for a
14 \$500.00 deductible which was borne by Ms. Bare.

15 12. On January 20, 2020, Ms. Bare brought her vehicle to Subaru of San
16 Bernardino (“SSB”), a licensed Subaru dealership, for diagnosis and to
17 substantively address the Defect. A day later, SSB returned the vehicle stating
18 only that it was “operating as designed.”³

19 13. Ms. Bare no longer feels the car is safe to drive, and now only does
20 so very reluctantly.

21 14. Ms. Bare purchased her vehicle primarily for personal use. The
22 safety of the vehicle was a material factor in her decision to purchase it.

23 15. Ms. Bare reasonably believed that the vehicle was defect free, safe
24 and reliable. Had Ms. Bare known that the vehicle was subject to sporadic and
25 random SUA events, she would not have purchased the vehicle or would have
26 paid substantially less.

27 ³ Exhibit A Bare packet No 1. pp. 26-29.

1 16. Plaintiff Michael Nickel is a San Diego, California resident.

2 17. He purchased a used 2014 Subaru Forrester Limited 2.5 from a
3 private party in or around November 2019.

4 18. Since taking ownership of the vehicle, Mr. Nickel has suffered
5 several SUA events. Typically, while stopped with his foot on the brake, the car
6 will suddenly go into gear and lunge forward for a couple of seconds. Thus far,
7 Mr. Nickel has been successful in timely applying the brakes until the SUA event
8 subsides and the car returns to normal. Although he has not suffered an accident
9 resulting from a SUA event, he remains concerned that the car is unsafe.

10 19. Subaru of America, Inc. (“SOA”) is a New Jersey corporation
11 headquartered in Camden, New Jersey.

12 JURISDICTION AND VENUE

13 20. This Court has subject matter jurisdiction over this action under the
14 Class Action Fairness Act, 28 U.S.C. section 1332(d)(2). The amount in
15 controversy exceeds \$5 million, exclusive of interest and costs. Plaintiffs are
16 informed and believe that there are thousands of Class Members with different
17 citizenship from Defendant.

18 21. Through its business operations in this District, Defendant
19 intentionally availed itself of the forum so as to render the exercise of jurisdiction
20 by this Court just and proper.

21 22. Venue is proper in this Court pursuant to 28 U.S.C. section
22 1391(a)(1) because a substantial part of the events and omissions giving rise to
23 this action occurred here.

24 STATEMENT OF FACTS

25 *A. Sudden Unintended Acceleration and Throttle Defect*

26 23. Sudden unintended acceleration is the unintended, unexpected,
27 uncontrolled acceleration of a vehicle, often accompanied by an apparent loss of

1 braking effectiveness. It is typically caused by a failure of the electronic throttle
2 control that results in a signal causing the throttle to expand wide open. A vehicle
3 will suddenly accelerate as if the gas pedal were completely depressed, making it
4 difficult for the driver to return the car to idle if it remains in gear. It also severely
5 limits the ability of the brakes to bring the vehicle under control – leaving the
6 driver at the mercy of a fast running uncontrollable car.

7 24. Modern vehicles use an electronic throttle “fly by wire” system for
8 accelerator (throttle) control that does away with the actual physical connection
9 between driver and engine (previously by cable or linkage). This system typically
10 consists of: electronic control module (“ECM”); electronic throttle control;
11 throttle body; throttle position sensor (“TPS”); actuator; accelerator pedal position
12 sensor (APS); and electronic throttle control relay.

13 25. The throttle body contains the actuator, throttle plate, and TPS which
14 are integrated into a single housing. The actuator consists of a DC motor with a 2-
15 stage gear. The TPS provides throttle plate angle feedback to the PCM (“ECM” in
16 Subaru vehicles).

17 26. The electronic throttle control system should provide forced idle
18 under any one of the following scenarios: faulty accelerator position sensor
19 (“APS”); faulty APS and brake; faulty APS and vehicle speed sensor; faulty APS
20 and vehicle speed sensor and brake; faulty electronic throttle control (“ETC”);
21 and faulty powertrain control module (“PCM”).

22 27. Plaintiffs are informed and believe that the Controller Area Network
23 (“CAN bus”) in Class Vehicles contains a software and/or software
24 communication protocol flaw that prevents the electronic throttle control system
25 from operating properly. Second, the Subaru Brake Override System (“BOS”) is
26 faulty and does not work as intended. The BOS was added to Class Vehicles to
27 address and prevent SUA events from occurring. By monitoring both the engine’s

1 electronic accelerator and operation of the vehicle’s brakes, the BOS compares
2 data from both systems to determine whether they are being deployed
3 simultaneously. If so, the BOS is supposed to close the throttle plate to reduce
4 engine speed and simultaneously raise the pressure of the brake fluid high enough
5 to stop the vehicle.

6 28. Sudden unintended acceleration in Class Vehicles can happen
7 anytime there is a disturbance in the electrical current within the throttle body and
8 often occurs when the vehicle is in motion (e.g. shifting gears,
9 engaging/disengaging the cruise control, applying brakes, etc.)

10 29. Because sudden acceleration is caused by an electronic defect, it
11 leaves a much less visible trace, giving automakers such as Subaru the
12 opportunity to blame such events on drivers and deflect from the underlying
13 safety defect.

14 30. Experts have long warned that auto manufacturers lag behind those
15 in other industries whose products rely on electronic systems in understanding the
16 myriad ways their microprocessors and electronics components can fail. When
17 such defects do appear, they should be promptly addressed, rather than reflexively
18 diverting blame to the driver.⁴

19 ***B. Consumer Complaints***

20 31. In addition to the specific events suffered by Plaintiffs, numerous
21 consumers have complained about sudden acceleration events in Subaru vehicles
22 for years, to the point that hundreds of such complaints have been lodged about
23 Class Vehicles with the National Highway Traffic Safety Administration
24 (“NHTSA”) and various consumer websites. These complaints encompass all

25 ⁴ Nash, C et, al, *Sudden Acceleration - The Myth of Driver Error* (2003), ISBN 0-
26 9707174-5-8, CALCE EPSC Press University of Maryland College Park, MD
27 20742.

1 makes and model years of Class Vehicles. By way of example, as reported on
2 www.carproblemzoon.com.⁵

3 **Car Accelerates On Its Own problem of the 2017 Subaru**
4 **Outback**
5 **Failure Date: 08/19/2019**

6 Yesterday morning, I stopped my Subaru in order to back into a
7 parking space. The car was in drive and my foot was on the
8 brake. While my foot was still on the brake and I was changing
9 gears from drive to reverse, the engine started accelerating full-
10 throttle. I had to press the brake pedal very hard to prevent the car
11 from going down the hillside behind the parking lot. I put the car
12 back in park with the engine revving full-throttle and turned the
13 ignition off. After this incident the car operated normally until
14 today. Today, my car was parked in my driveway in front of my
15 garage. When I started the car everything seemed fine until, with
16 my foot on the brake, I attempted to change gears from park to
17 drive. Again the engine immediately and unexpectedly
18 accelerated full-throttle. As I was moving the gear shifter from
19 park to reverse to neutral to drive, I again had to press the brake
20 pedal very hard to prevent the car from backing into my garage
21 door.

22 **Car Accelerates On Its Own problem of the 2019 Subaru**
23 **Outback**
24 **Failure Date: 08/18/2019**

25 The contact owns a 2019 Subaru Outback. While the contact was
26 exiting a car wash, the vehicle suddenly accelerated and drove
27 over a curb. The front driver's side wheel was flattened and the
vehicle stopped after the contact turned to avoid crashing into a
wall. The failure mileage was 4,300.

28 **Car Accelerates On Its Own problem of the 2019 Subaru**
29 **Outback**
30 **Failure Date: 08/13/2019**

31 _____
32 ⁵ [https://www.carproblemzoo.com/subaru/outback/car-accelerates-on-its-own-
33 problems.php](https://www.carproblemzoo.com/subaru/outback/car-accelerates-on-its-own-problems.php) (last visited June 6, 2020).

1 Slowly pulling straight into parking spot at grocery store. Applied
2 brake when car suddenly accelerated. I was able to control
3 steering, but brakes would not work. Steered car into empty
4 parking spot in front of me then turned hard right to avoid hitting
5 parked cars in row across. Subaru hit a pick up truck that was
6 reversing out of a diagonal parking spot. The car didn't stop upon
7 impact, instead both right side wheels climbed up the side of
8 truck at an angle. Air bags didn't deploy on impact. This was a
9 very dangerous situation. The acceleration was uncontrollable
10 and I am afraid to drive the car.

11 **Car Accelerates On Its Own problem of the 2016 Subaru** 12 **Outback**

13 **Failure Date: 12/30/2017**

14 Sudden acceleration: this serious unsafe condition relates to my
15 2016 Outback limited 2. 5l purchased on 2/29/2016 in Tampa[,]
16 Florida. The exact same unsafe condition has happened twice;
17 first in October 2016 at approximately 8800 miles, and second in
18 December 2017 at approximately 24,000 miles. Description of
19 incident: while slowly pulling into a parking space and gently
20 applying the brake, the car's engine rpm accelerated and I had to
21 break hard in order to stop the car. I moved the transmission to
22 park, but the engine continued at high rpm so I moved the
23 transmission to reverse, then to neutral, then I turned off the car
24 off since the engine was still at a high rpm. A notice appeared in
25 my odometer area to put the car in park, which I did. I then
26 restarted it and everything was back to normal again. Note: I did
27 not simultaneously push the break [sic] and the accelerator
together which could possibly cause this situation. I am fortunate
nothing was in front of me either time. I hope no one has been
injured, but it is likely property damage has resulted....

32. NHTSA also provides consumers an opportunity to file a complaint
regarding vehicle safety.⁶ A search of a single model year of Class Vehicles

⁶[https://www.odi.nhtsa.dot.gov/VehicleComplaint/#:~:text=If%20you%20need%20assistance%20with,800%2D424%2D9153\).](https://www.odi.nhtsa.dot.gov/VehicleComplaint/#:~:text=If%20you%20need%20assistance%20with,800%2D424%2D9153).)

1 reveals several complaints detailing the exact same issue.⁷

2 **NHTSA ID Number: 11110715**

3 **Incident Date July 5, 2018**

4 **Consumer Location GROVELAND, CA**

5 **Vehicle Identification Number 4S3BNAL61G3******

6 THE CONTACT OWNS A 2016 SUBARU LEGACY. WHILE
7 REVERSING THE VEHICLE, IT SUDDENLY
8 ACCELERATED. THE CONTACT DEPRESSED THE
9 BRAKE PEDAL, BUT THE VEHICLE FAILED TO STOP. AS
10 A RESULT, THE VEHICLE DROVE THROUGH THE
11 DRIVEWAY BARRIERS AND CRASHED INTO A TREE.
12 THERE WERE NO INJURIES. THE VEHICLE WAS TOWED
13 TO AN INDEPENDENT MECHANIC WHO REPAIRED THE
14 REAR DRIVER SIDE PANEL AND TRUNK. THE CONTACT
15 HAD NOT CALLED THE DEALER. THE MANUFACTURER
16 WAS NOTIFIED AND ADVISED THE CONTACT THAT
17 THEY WOULD TOW THE VEHICLE TO A SUBARU
18 DEALER FOR DIAGNOSTIC TESTING. THE FAILURE
19 MILEAGE WAS 37,000.

20 **NHTSA ID Number: 10956391**

21 **Incident Date February 20, 2017**

22 **Consumer Location WHITTIER, CA**

23 **Vehicle Identification Number 4S3BNAF65G3******

24 AFTER STARTING THE ENGINE, WHEN PULLING OUT
25 FROM MY DRIVEWAY AND PUT THE GEAR IN REVERSE
26 TO PULL OUT, THE VEHICLE ACCELERATES ON ITS
27 OWN WITHOUT MY FOOT PRESSING THE
ACCELERATOR. SO BRAKE HAS TO BE APPLIED
IMMEDIATELY TO SLOW DOWN THE VEHICLE. IT
SHOOTS FORWARD WITH OUT ME ACCELERATING. IT
ACCELERATES AT ABOUT 25-30 MILES PER HOUR
WITHOUT ME ONCE AGAIN ACCELERATING IT SO WE
HAD TO BRAKE ALL THE WAY FROM THE HOUSE TO
THE PLACE OF WORK. WE HAVE HAD SEVERAL NEW
CARS INCLUDING SUBARU BENZ AND NEVER HAVE

⁷ See, NHTSA complaints for the 2016 Subaru Legacy, available at <https://www.nhtsa.gov/vehicle/2016/SUBARU/LEGACY/4%252520DR/AWD>

1 HAD THIS PROBLEM. AS I GO ON THE STREET THE
2 VEHICLE CONTINUES TO ACCELERATE WITHOUT ME
3 ACCELERATING IT. THERE IS ALSO A BURNING SMELL
4 WHEN THE CAR IS STARTED. WE TOOK THE VEHICLE
5 INTO THE DEALER AND THEY WERE NO HELP AT ALL.

6 **NHTSA ID Number: 10986373**

7 **Incident Date April 18, 2017**

8 **Consumer Location NORTH ANDOVER, MA**

9 **Vehicle Identification Number 4S3BNAN6XH3******

10 THE CONTACT OWNS A 2017 SUBARU LEGACY. WHILE
11 PARKING THE VEHICLE, THE CONTACT RELEASED
12 HER FOOT FROM THE ACCELERATOR PEDAL AND THE
13 VEHICLE EXPERIENCED UNINTENDED
14 ACCELERATION. THE FAILURE OCCURRED WITHOUT
15 WARNING. AS A RESULT, THE VEHICLE ACCELERATED
16 UP A HILL AND CRASHED INTO A WALL. THE VEHICLE
17 WAS TOWED TO THE DEALER, BUT THE FAILURE
18 COULD NOT BE REPLICATED. THE VEHICLE WAS
19 REPAIRED. THERE WERE NO INJURIES AND A POLICE
20 REPORT WAS NOT FILED. THE MANUFACTURER WAS
21 NOT NOTIFIED OF THE FAILURE. THE FAILURE
22 MILEAGE WAS APPROXIMATELY 300.

23 **NHTSA ID Number: 11245002**

24 **Incident Date August 19, 2019**

25 **Consumer Location BEAVER FALLS, PA**

26 **Vehicle Identification Number 4S4BSAFC1H3******

27 YESTERDAY MORNING, I STOPPED MY SUBARU IN
ORDER TO BACK INTO A PARKING SPACE. THE CAR
WAS IN DRIVE AND MY FOOT WAS ON THE BRAKE.
WHILE MY FOOT WAS STILL ON THE BRAKE AND I
WAS CHANGING GEARS FROM DRIVE TO REVERSE,
THE ENGINE STARTED ACCELERATING FULL-
THROTTLE. I HAD TO PRESS THE BRAKE PEDAL VERY
HARD TO PREVENT THE CAR FROM GOING DOWN THE
HILLSIDE BEHIND THE PARKING LOT. I PUT THE CAR
BACK IN PARK WITH THE ENGINE REVVING FULL-
THROTTLE AND TURNED THE IGNITION OFF. AFTER

1 THIS INCIDENT THE CAR OPERATED NORMALLY –
2 UNTIL TODAY. TODAY, MY CAR WAS PARKED IN MY
3 DRIVEWAY IN FRONT OF MY GARAGE. WHEN I
4 STARTED THE CAR EVERYTHING SEEMED FINE –
5 UNTIL, WITH MY FOOT ON THE BRAKE, I ATTEMPTED
6 TO CHANGE GEARS FROM PARK TO DRIVE. AGAIN THE
7 ENGINE IMMEDIATELY AND UNEXPECTEDLY
8 ACCELERATED FULL-THROTTLE. AS I WAS MOVING
9 THE GEAR SHIFTER FROM PARK TO REVERSE TO
10 NEUTRAL TO DRIVE, I AGAIN HAD TO PRESS THE
11 BRAKE PEDAL VERY HARD TO PREVENT THE CAR
12 FROM BACKING INTO MY GARAGE DOOR....

13 33. The consumer complaints demonstrate a common fact pattern – a
14 sudden unintended acceleration event that is not initiated by the driver followed
15 by repeated application of the brakes without effective results. These complaints
16 are exemplars of the hundreds lodged with NHTSA and consumer websites.
17 Importantly, they have been lodged across all years and models of Class Vehicles,
18 demonstrating not only the pervasiveness of the Defect but that it has been
19 endemic to Subaru Vehicles for years.

20 ***C. Subaru's Knowledge of the Defect***

21 34. Plaintiffs are informed and believe that the Class Vehicles share the
22 same throttle assemblies, CAN bus, software and related electric componentry.

23 35. Defendant knew that the Class Vehicles suffered from the Defect
24 that results in SUA events, rendering the vehicles unfit for their intended purpose
25 and unsafe to operate.

26 36. Prior to marketing and selling Class Vehicles Defendant and its
27 parent undertook preproduction testing, ostensibly to ensure the Vehicles were
free of defects. Subsequently, Defendant has received or otherwise been made
aware of maintenance records, warranty claims, and consumer complaints that put
Defendant on further notice that Class Vehicles were suffering from SUA events

1 in material numbers.

2 37. Despite this information, Defendant have neither offered to recall the
3 Class Vehicles, nor issued a Technical Service Bulletin to address the Defect.

4 38. Defendant failed to disclose and/or concealed the Defect from
5 Plaintiffs and the other Class Members who, had they known, would not have
6 purchased or leased their vehicles or would have paid substantially less.

7 39. The existence of the Defect is a material fact that a reasonable
8 consumer would consider when deciding whether to purchase or lease a Class
9 Vehicle. That a vehicle suffers from sporadic sudden unintended acceleration is a
10 material safety concern. Consumers reasonably expect that vehicles are free from
11 defects, especially those that result in a significant safety hazard.

12 40. As a result of the Defect, Class Members have been deprived of the
13 benefit of their bargain as the value of their vehicles has materially diminished.

14 41. As a result of their reliance on Defendant' omissions and/or
15 misrepresentations, owners and/or lessees of the Class Vehicles have suffered
16 ascertainable loss of money, property, and/or loss in value of their Class Vehicle.

17 42. Defendant had exclusive knowledge of material facts unknown to
18 consumers which they actively concealed when they sold vehicles to Plaintiffs
19 and Members of the Class. Based on these circumstances, Defendant was
20 obligated to disclose the existence of the Defect to Plaintiffs and the Class. The
21 Defect presents an obvious safety concern. Had Plaintiffs and Class Members
22 known of this Defect they would not have purchased the vehicles, and certainly
23 not at the prices at which they were purchased.

24 **CLASS ACTION ALLEGATIONS**

25 43. Plaintiffs seek relief on behalf of themselves and as representatives
26 of all others who are similarly situated. Pursuant to Fed. R. Civ. P. Rule 23(a),
27 (b)(2), (b)(3) and (c)(4), Plaintiffs seek certification of a Class defined as follows:

1 All persons or entities who purchased or leased a
2 2012-2018 Subaru Forester, 2015-2019 Subaru
3 Legacy, or 2015-2019 Subaru Outback vehicle in the
4 State of California.

5 44. Excluded from the Class are Defendant and any of their affiliates,
6 parents or subsidiaries; all persons who make a timely election to be excluded
7 from the Class; government entities; and the judges to whom this case is assigned,
8 their immediate families, and court staff.

9 45. Plaintiffs hereby reserve the right to amend or modify the class after
10 having had an opportunity to conduct discovery.

11 46. The proposed Class meets the criteria for certification under Rule
12 23(a), (b)(2), (b)(3) and (c)(4).

13 47. **Numerosity. Fed. R. Civ. P. Rule 23(a)(1).** Consistent with Rule
14 23(a)(1), the members of the Class are so numerous that the joinder of all
15 members is impractical. Upon information and belief, the Defect implicates
16 thousands of Subaru owners and lessees.

17 48. **Commonality. Fed. R. Civ. P. Rule 23(a)(2) and (b)(3).**
18 Consistent with Rule 23(a)(2) and with 23(b)(3)'s predominance requirement, this
19 action involves common questions of law and fact that predominate over any
20 questions affecting individual Class members. The common questions include:

- 21 a. Whether Class Vehicles suffer from the Defect;
- 22 b. Whether the Defect poses a safety hazard;
- 23 c. Whether Defendant knew about the Defect;
- 24 d. Whether Defendant had a duty to disclose the Defect to Plaintiffs and
25 Members of the Class;
- 26 e. Whether Defendant violated the Unfair Competition Law;
- 27 f. Whether Defendant violated the Consumers Legal Remedies Act;

- 1 g. Whether Defendant breached their express and implied warranties;
- 2 h. Whether Defendant was unjustly enriched; and
- 3 i. Whether Plaintiff and Class Members are entitled to relief.

4 **49. Typicality. Fed. R. Civ. P. Rule 23(a)(3).** Consistent with Rule
5 23(a)(3), Plaintiffs' claims are typical of those of other Class Members. Plaintiffs
6 are owners/lessees of Subaru Class Vehicles that suffer from a common Defect.
7 Plaintiffs' damages and injuries are akin to other Class Members, and Plaintiffs
8 seek relief consistent with the relief sought by the Class.

9 **50. Adequacy. Fed. R. Civ. P. Rule 23(a)(4).** Consistent with Rule
10 23(a)(4), Plaintiffs are adequate representatives of the Class because Plaintiffs are
11 members of the Class they seek to represent; are committed to pursuing this
12 matter against Defendant to obtain relief for the Class; and have no conflicts of
13 interest with the Class. Moreover, Plaintiffs' Counsel are competent and
14 experienced in litigating class actions, including product defect litigation of this
15 kind. Plaintiffs intend to vigorously prosecute this case and will fairly and
16 adequately protect the Class' interests.

17 **51. Superiority. Fed. R. Civ. P. Rule 23(b)(3).** Consistent with Rule
18 23(b)(3), a class action is superior to any other available means for the fair and
19 efficient adjudication of this controversy, and no unusual difficulties are likely to
20 be encountered in the management of this class action. The quintessential purpose
21 of the class action mechanism is to permit litigation against wrongdoers even
22 when damages to the individual Plaintiffs may not be sufficient to justify
23 individual litigation. Here, the damages suffered by Plaintiffs and the Class are
24 relatively small compared to the burden and expense required to individually
25 litigate their claims against Defendant, and thus, individual litigation to redress
26 Defendant' wrongful conduct would be impracticable. Individual litigation by
27 each Class Member would also strain the court system. Individual litigation

1 creates the potential for inconsistent or contradictory judgments and increases the
 2 delay and expense to all parties and the court system. By contrast, the class action
 3 device presents far fewer management difficulties and provides the benefits of a
 4 single adjudication, economies of scale, and comprehensive supervision by a
 5 single court.

6 **52. Injunctive and Declaratory Relief.** Class certification is also
 7 appropriate under Rule 23(b)(2) and (c). Defendant, through its uniform conduct,
 8 acted or refused to act on grounds generally applicable to the Class as a whole,
 9 making injunctive and declaratory relief appropriate to the Class as a whole.

10 **53.** Likewise, particular issues under Rule 23(c)(4) are appropriate for
 11 certification because such claims present only particular, common issues, the
 12 resolution of which would advance the disposition of this matter and the parties'
 13 interests therein.

14 **54.** Finally, all members of the proposed Class are readily ascertainable.
 15 Defendant has access to vehicle identification numbers as well as sales and lease
 16 records. Using this information, Class Members can be identified and ascertained
 17 for the purpose of providing notice.

FIRST CAUSE OF ACTION

Breach of Express Warranty - California Commercial Code section 2313 (Plaintiff Bare only)

20 **55.** Plaintiffs incorporate by reference the allegations contained in all
 21 preceding paragraphs of this complaint.

22 **56.** Class Vehicles are sold and leased with a New Vehicle Limited
 23 Warranty which provides three-year/36,000 mile warranty coverage for defects in
 24 materials or workmanship and benefits subsequent purchasers throughout the
 25 duration of the Warranty period.⁸ Subaru also offers Extended Warranties that

26 _____
 27 ⁸ See e.g., <https://www.subaru.com/owners/vehicle-warranty/warranties-2016.html>

1 provide the same comprehensive coverage for additional years and mileage.⁹

2 57. These warranties cover any repairs needed to correct defects in
3 material or workmanship reported during the applicable warranty period and
4 which occur under normal use.

5 58. Subaru is, and was at all relevant times, a merchant and seller of
6 motor vehicles within the meaning of the California Commercial Code (“CCC”).

7 59. Class Vehicles are, and were at all relevant times, consumer goods
8 within the meaning of the CCC. Cal. Civ. Code section 1791(a).

9 60. Defendant provided all purchasers and lessees of the Class Vehicles
10 with an express warranty described above, which became a material part of the
11 bargain. Accordingly, Defendant’s warranty is an express warranty under
12 California law.

13 61. Defendant’s Warranties covers any repairs needed to correct defects
14 in material or workmanship that occur under normal use and are reported during
15 the applicable warranty periods.

16 62. This promise formed part of the basis of the bargain on which
17 Plaintiff Bare and Class Members relied.

18 63. Defendant’s failure to acknowledge and remedy the Defect is a
19 breach of the express warranty.

20 64. As a result of Defendant’s breach of the applicable express
21 warranties, owners and/or lessees of the Class Vehicles suffered, and continue to
22 suffer, an ascertainable loss of money, property, and/or value of their Class
23 Vehicles.

24 65. Plaintiffs were not required to notify Subaru of the breach of
25 warranty because affording Subaru a reasonable opportunity to cure its breach

26 _____
27 ⁹ See e.g., <https://www.subaru.com/addedsecurity>

1 would have been futile. Subaru was also on notice of the Defect from the
2 numerous complaints that were posted on NHTSA, on-line, and that it received
3 directly and/or through its dealerships. Plaintiff Bare took her Subaru to a dealer
4 which failed to fix the Defect.

5 66. As a result of Defendant’s breach of the express warranty, Plaintiff
6 Bare and Class Members are entitled to legal and equitable relief against
7 Defendant, including actual damages, specific performance, attorney’s fees, costs
8 of suit, and other relief as appropriate.

9 **SECOND CAUSE OF ACTION**
10 **Breach of Implied Warranty**
11 **(Plaintiff Bare only)**

12 67. Plaintiffs incorporate by reference the allegations contained in all
13 preceding paragraphs of this complaint.

14 68. Subaru is, and was at all relevant times, a merchant and seller of
15 motor vehicles within the meaning of the California Commercial Code and the
16 Song-Beverly Act (“SBA”).

17 69. Class Vehicles are, and were at all relevant times, consumer goods
18 within the meaning of the CCC and SBA. Cal. Civ. Code section 1791(a).
19 Plaintiff Bare’s vehicle was within the warranty period when it failed so she is
20 entitled to the protection of the Song-Beverly Act despite buying it pre-owned.

21 70. The Class Vehicles were sold and leased with an implied warranty
22 that they were in merchantable condition and fit for the ordinary purpose for
23 which vehicles are used.

24 71. Under the SBA, an implied warranty of merchantability guarantees
25 that consumer goods such as the Class Vehicles: (1) pass without objection in the
26 trade under the contract description, and (2) are fit for the ordinary purposes for
27 which such goods are used. Cal. Civ. Code section 1791.1(a).

1 72. Subaru directly sold and marketed Class Vehicles to customers
2 through authorized dealers from whom Plaintiffs and Members of the Class
3 bought or leased their vehicles.

4 73. Subaru provided Plaintiff Bare and Class Members with an implied
5 warranty that the Class Vehicles and their components and parts are merchantable
6 and fit for the ordinary purposes for which they were sold. Any purported
7 disclaimed of implied warranties was not sufficiently conspicuous.

8 74. The Defect, which results in SUA events, renders Class Vehicles
9 unfit for ordinary use and far below the basic performance standards of like
10 products.

11 75. Contrary to the implied warranty, Class Vehicles were not fit for
12 their ordinary and intended purpose of providing Plaintiffs and Class Members
13 with reliable and safe transportation.

14 76. As a result of Subaru's breach of the applicable implied warranties,
15 Plaintiff Bare and members of the Class suffered an ascertainable loss of money,
16 property, and/or value of their Class Vehicles. Additionally, as a result of the
17 Defect, Plaintiff Bare and Class Members were harmed and suffered actual
18 damages in that the Class Vehicles are substantially certain to fail before the
19 expiration of their useful life.

20 77. As a direct and proximate result of Subaru's breach of implied
21 warranty of merchantability, Plaintiff Bare and Class Members have been
22 damaged in an amount to be proven at trial.

23 **THIRD CAUSE OF ACTION**
24 **UNJUST ENRICHMENT**

25 78. Plaintiffs incorporate by reference the allegations contained in all
26 preceding paragraphs of this complaint.
27

1 79. Subaru has received and retained a benefit from Plaintiffs and the
2 Class and an inequity has resulted.

3 80. Subaru has benefitted from selling and leasing Class Vehicles with a
4 known Defect for which Plaintiffs and Class Members have overpaid.

5 81. By means of Defendant's wrongful conduct alleged here, Defendant
6 knowingly sold Class Vehicles to Plaintiffs and Class Members in a manner that
7 was unfair, unconscionable, and oppressive. Specifically, Defendant sold a
8 product with a known safety defect.

9 82. Defendant knowingly received and retained wrongful benefits and
10 funds from Plaintiffs and Class Members. In so doing, Defendant acted with
11 conscious disregard for the rights of Plaintiffs and Class Members.

12 83. Because of Defendant' wrongful conduct, Defendant have been
13 unjustly enriched at the expense of, and to the detriment of, Plaintiffs and Class
14 Members.

15 84. It is inequitable for Defendant to be permitted to retain the benefits
16 they received, from selling Class Vehicles to Plaintiffs and Class Members in an
17 unfair, unconscionable, and oppressive manner. Defendant' retention of such
18 funds under such circumstances makes it inequitable, and constitutes unjust
19 enrichment.

20 85. The financial benefits Defendant derived rightfully belong to
21 Plaintiffs and Class Members. Defendant should be compelled to return all
22 wrongful or inequitable proceeds received by them from the sale of such vehicles
23 into a common fund for the benefit of Plaintiffs and the Class.

24 86. Plaintiffs and Members of the Class allege in the alternative that they
25 have no adequate remedy at law.

FOURTH CAUSE OF ACTION

**Violation of The Consumers Legal Remedies Act
Cal. Civ. Code section 1770(a) *et seq.***

1
2
3 87. Plaintiffs incorporate by reference the allegations contained in all
4 preceding paragraphs of this complaint.

5 88. The Consumers Legal Remedies Act (“CLRA”) makes illegal
6 various “unfair methods of competition and unfair or deceptive acts or practices
7 undertaken by any person in a transaction intended to result or which results in
8 the sale or lease of goods or services to any consumer.” Cal. Civ. Code section
9 1770(a). Conduct that is “likely to mislead a reasonable consumer” violates the
10 CLRA.

11 89. By failing to disclose the material safety Defect, Defendant has
12 violated the following provisions of Cal. Civ. Code section 1750 *et seq.*:

- 13 a. Cal. Civ. Code section 1770(a)(5): by representing that its goods or
14 services have sponsorship, approval, characteristics, ingredients, uses,
15 benefits, or quantities which they do not have;
- 16 b. Cal. Civ. Code section 1770(a)(7): by representing that its goods or
17 services are of a particular standard, quality, or grade, if they are of
18 another;
- 19 c. Cal. Civ. Code section 1770(a)(9): by advertising goods and services
20 with the intent not to sell them as advertised;
- 21 d. Cal. Civ. Code section 1770(a)(16): by representing that the subject of a
22 transaction has been supplied in accordance with a previous
23 representation when it has not.

24 90. Defendant undertook the above acts or practices in transactions
25 intended to result, or which did result, in the sale of its vehicles to customers for
26 personal, family, or household use. Plaintiffs and Class Members relied on
27 Defendant’s material omission. Had Plaintiffs and Class Members known of the

1 material omission they would not have purchased Class Vehicles or would have
2 paid substantially less.

3 91. Defendant's actions in violation of the CLRA injured and harmed the
4 Plaintiffs and the members of the Class, all of whom have been left to drive
5 vehicles with a Defect that results in sudden unintended acceleration and presents
6 a serious safety risk to drivers, passengers and by standards.

7 92. As a result, Class Members had to expend money for the repair of
8 their vehicle and/or were left with a vehicle of diminished value due to its
9 defective nature.

10 93. Plaintiffs pray for declaratory, equitable and injunctive relief, as well
11 as an award of attorneys' fees and costs, as authorized by the CLRA. On
12 September 1, 2020, Plaintiffs sent Subaru a demand letter pursuant to the CLRA.
13 If Subaru does not comply with the demand letter within 30 days, Plaintiffs will
14 amend the Complaint to seek damages for the CLRA cause of action.

15 **FIFTH CAUSE OF ACTION**
16 **Violation of California Unfair Competition Law**
17 **Unlawful Business Practice**

18 94. Plaintiffs incorporate by reference the allegations contained in all
19 preceding paragraphs of this Complaint.

20 95. California Business and Professions Code section 17200 *et seq.*
21 prohibits acts of unfair competition, which includes unlawful business practices.

22 96. Defendant engaged in unlawful business practices in that it omitted
23 to disclose the material safety Defect.

24 97. Defendant's deceptive practices constitute an unlawful business
25 practice in that the practices were specifically designed to induce Plaintiffs and
26 Class Members to purchase Class Vehicles. This violated the CLRA and
27 constituted breach of express and implied warranties and unjust enrichment.

98. To this day, Defendant has engaged and continues to engage in

1 unlawful business practices by concealing the defective nature of the Product and
2 have knowingly misrepresented to Class Members that the Product possesses
3 qualities and characteristics it does not have.

4 99. As a direct and proximate cause of Defendant's unlawful methods of
5 competition and unlawful acts or practices, Plaintiffs and Class Members have
6 suffered actual damages in that they own Class Vehicles with the Defect.

7 100. As a proximate result of its unlawful practices, Defendant has been
8 unjustly enriched and should be required to make restitution to the Plaintiffs and
9 Class Members pursuant to sections 17203 and 17204 of the California Business
10 & Professions Code.

11 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
12 situated, demands judgment against Defendant for restitution and/or disgorgement
13 of funds paid to Defendant by Plaintiffs and Class Members to purchase the Class
14 Vehicles.

15 **SIXTH CAUSE OF ACTION**
16 **Violation of Unfair Competition Law**
17 **Unfair Business Practice**

18 101. Plaintiffs incorporate by reference the allegations contained in all
19 preceding paragraphs of this complaint.

20 102. Defendant engaged in an unfair business practice by failing to
21 disclose the material safety Defect in Class Vehicles.

22 103. Defendant's omission offends an established public policy and is
23 unethical, oppressive, unscrupulous or substantially injurious to customers.

24 104. Defendant's unfair practices were designed to induce Plaintiffs and
25 Class Members to purchase Class Vehicles that were not as represented.

26 105. Defendant's "unfair" practices caused Plaintiffs and the Class
27 Members to suffer substantial injury by purchasing Class Vehicles that were not
as represented and suffer from the material safety Defect. The injury was not

1 outweighed by any benefit the Class Vehicles with the Defect may have provided.
2 Plaintiffs and the Class Members could not have avoided the injury because they
3 reasonably relied on Defendant's omission.

4 106. Defendant's unfair practices have caused actual damages to Plaintiffs
5 and the Class Members because they own Class Vehicles with the material safety
6 Defect. The reasons, justifications and motives of Defendant appear only to be
7 financial gain.

8 107. To this day, Defendant has failed to disclose the material safety
9 Defect.

10 108. As a direct and proximate cause of Defendant's unfair methods of
11 competition and unfair, deceptive or unlawful acts or practices, Plaintiffs and
12 Class Members have suffered actual damages in that they own Class Vehicles
13 with the material safety Defect.

14 109. As a proximate result of its unfair practices, Defendant has been
15 unjustly enriched and should be required to make restitution to the Plaintiffs and
16 Class Members pursuant to sections 17203 and 17204 of the California Business
17 & Professions Code.

18 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
19 situated, demand judgment against Defendant for restitution and/or disgorgement
20 of funds paid to Defendant by Plaintiffs and Class Members to purchase the Class
21 Vehicles.

22 **SEVENTH CAUSE OF ACTION**
23 **Violation of Unfair Competition Law**
24 **Fraudulent Business Practice**

25 110. Plaintiffs incorporate by reference the allegations contained in all
26 preceding paragraphs of this complaint.

27 111. Defendant engaged in a fraudulent business practice by omitting to
disclose the material safety Defect.

1 112. Defendant’s “fraudulent” practices were designed to induce
2 Plaintiffs and Class Members to purchase Class Vehicles.

3 113. Defendant’s “fraudulent” practices caused Plaintiffs and the Class
4 Members to suffer substantial injury by purchasing Class Vehicles with the
5 material safety Defect.

6 114. As a direct and proximate cause of Defendant’s fraudulent practices,
7 Plaintiffs and Class Members have suffered actual damages in that they purchased
8 Class Vehicles with the material safety Defect.

9 115. As a proximate result of its unfair practices, Defendant has been
10 unjustly enriched and should be required to make restitution to the Plaintiffs and
11 Class Members pursuant to section 17203 and 17204 of the California Business &
12 Professions Code.

13 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
14 situated, demands judgment against Defendant for restitution and/or disgorgement
15 of funds paid to Defendant by Plaintiffs and Class Members to purchase the Class
16 Vehicles.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
19 situated, respectfully request the following relief:

- 20 a. For an Order certifying the Class as defined above, and appointing
21 Plaintiffs and their Counsel to represent the Class;
- 22 b. For equitable relief enjoining Defendant from engaging in the wrongful
23 conduct complained of here;
- 24 c. For an award of damages, including actual, nominal, and consequential
25 damages, including interest, as allowed by law in an amount to be
26 determined (Plaintiffs do not yet seek damages under the CLRA but will
27 amend to do so if Subaru does not wholly remedy the breach);

- d. For an award of attorneys’ fees, costs, and litigation expenses, as allowed by law;
- e. For prejudgment interest on all amounts awarded; and
- f. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial as to all issues so triable.

Respectfully submitted,

Dated: September 4, 2020

By: s/ Gayle M. Blatt
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