

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

AIMEE HICKMAN, *et al.*, individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:21-CV-02100-NLH-
AMD

Motion Date: April 16, 2024

**PLAINTIFFS' MOTION FOR AN
ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

PLEASE TAKE NOTICE that on April 16, 2024, at 2:00 P.M., or as soon thereafter as the matter can be heard, Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode (“Plaintiffs”), individually and on behalf of all others similarly situated, will move this Court before Hon. Noel L. Hillman, U.S.D.J., pursuant to Federal Rule of Civil Procedure 23 to enter the proposed Order Granting Plaintiffs’ Motion for Final Approval of Class Action Settlement.

In support of this motion, Plaintiffs rely upon the accompanying Memorandum of Law and the authorities cited therein; the declaration of Russell D. Paul; the declaration of Jennifer M. Keough of JND Legal Administration, with Exhibits A-D; the Settlement Agreement and Release; the proposed Final Approval

Order and Judgment, submitted at ECF No. 67-7; and all files, records, and proceedings in this matter.

Plaintiffs state as follows:

1. The Parties have entered into a Settlement Agreement (ECF No. 67-3), to which the Court previously granted preliminary approval. ECF No. 98.
2. This motion is not opposed by Defendants Subaru of America, Inc. and Subaru Corporation.
3. Plaintiffs respectfully request that the Court:
 - a) Grant final approval to the Settlement Agreement as fair, adequate and reasonable;
 - b) Finally certify the Class as defined in the Settlement Agreement for purposes of settlement;
 - c) Finally appoint Plaintiffs as Representative Plaintiffs of the class and Berger Montague PC as Class Counsel;
 - d) Enter the proposed Final Approval Order and Judgment; and
 - e) Grant such other and further relief as the Court deems equitable and just.

Dated: January 30, 2024

Respectfully submitted,

/s/ Russell D. Paul

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR AN ORDER GRANTING FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

TABLE OF CONTENTS

I. INTRODUCTION1

II. LITIGATION AND SETTLEMENT HISTORY3

 A. Plaintiffs’ Pre-Suit Investigation and Description of the Action3

 B. Discovery and Settlement Negotiations6

 C. The Settlement Agreement and the Reaction of the Class8

 1. Benefits to the Settlement Class8

 2. Attorneys’ Fees, Costs and Service Awards for Plaintiffs11

 3. Release of Claims12

 4. Notice to Settlement Class Members13

 5. Response by Settlement Class Members15

III. ARGUMENT16

 A. Final Certification of the Settlement Class16

 1. The Settlement Class Meets the Requirements of Rule 23(a)16

 2. The Settlement Class Should Be Certified Under Rule 23(b)(3)23

 B. The Settlement Is Fair, Reasonable, and Adequate25

 1. The Complexity, Expense and Likely Duration of the Litigation29

 2. The Reaction of the Class to the Settlement29

 3. The Stage of the Proceedings and Amount of Discovery Completed30

 4. The Risks of Establishing Liability31

 5. The Risks of Establishing Damages33

 6. The Risks of Maintaining the Class Action Through Trial33

 7. The Ability of Defendants to Withstand a Greater Judgement34

 8. The Range of Reasonableness of Settlement in Light of the Best Possible Recovery and All Attendant Risks of Litigation34

 C. The Class Notice Satisfied Due Process and Rule 2335

IV. CONCLUSION36

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Alin v. Honda Motor Co.</i> , 2012 WL 8751045 (D.N.J. April 13, 2012)	21, 25
<i>Amchem Prod., Inc. v. Windsor</i> , 521 U.S. 591 (1997)	30
<i>Baby Neal for & by Kanter v. Casey</i> , 43 F.3d 48 (3d Cir. 1994)	19, 20, 23
<i>Bell Atl. Corp. v. Bolger</i> , 2 F.3d 1304 (3d Cir. 1993)	39
<i>Boyd v. May Trucking Co.</i> , 2019 WL 12763009 (C.D. Cal. July 1, 2019)	45
<i>Bredbenner v. Liberty Travel, Inc.</i> , 2010 WL 11693610 (D.N.J. Nov. 19, 2010).....	27
<i>Dewey v. Volkswagen Aktiengesellschaft</i> , 681 F.3d 170 (3d Cir. 2012)	26
<i>Ehrheart v. Verizon Wireless</i> , 609 F.3d 590 (3d Cir. 2010)	34
<i>Girsh v. Jepson</i> , 521 F.2d 153 (3d Cir. 1975)	37
<i>Good v. Am. Water Works Co., Inc.</i> , 2016 WL 5746347 (S.D.W. Va. Sept. 30, 2016)	45
<i>Hassine v. Jeffes</i> , 846 F.2d 169 (3d Cir. 1988)	26
<i>Henderson v. Volvo Cars of N. Am., LLC</i> , 2013 WL 1192479 (D.N.J. Mar. 22, 2013)	21, 31, 32, 45
<i>Huffman v. Prudential Ins. Co. of Am.</i> , 2019 WL 1499475 (E.D. Pa. Apr. 5, 2019).....	33

In re Cendant Corp. Litig.,
 264 F.3d 201 (3d Cir. 2001) 35, 39, 42

In re Centocor, Inc.,
 1999 WL 54530 (E.D. Pa. Jan. 27, 1999) 20, 23

In re CertainTeed Corp. Roofing Shingle Prod. Liab. Litig.,
 269 F.R.D. 468 (E.D. Pa. 2010)43

In re Constar Int'l Inc. Sec. Litig.,
 585 F.3d 774 (3d Cir. 2009)17

In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.,
 55 F.3d 768 (3d Cir. 1995) 34, 37, 38

In re Ins. Brokerage Antitrust Litig.,
 579 F.3d 241 (3d Cir. 2009)32

In re Nat'l Football League Players Concussion Inj. Litig.,
 821 F.3d 410 (3d Cir. 2016) 22, 35, 37

In re Pet Food Prod. Liab. Litig.,
 629 F.3d 333 (3d Cir. 2010)37

In re Philips/Magnavox Television Litig.,
 2012 WL 1677244 (D.N.J. May 14, 2012)29

In re Processed Egg Prod. Antitrust Litig.,
 284 F.R.D. 249 (E.D. Pa. 2012)40

In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions,
 148 F.3d 283 (3d Cir. 1998) 16, 37, 40, 43

In re Prudential Ins. Co. of Am. Sales Pracs. Litig.,
 962 F. Supp. 450 (D.N.J. 1997).....27

In re Sch. Asbestos Litig.,
 921 F.2d 1330 (3d Cir. 1990)38

In re Schering Plough Corp. ERISA Litig.,
 589 F.3d 585 (3d Cir. 2009)24

In re Warfarin Sodium Antitrust Litig.,
391 F.3d 516 (3d Cir. 2004) 37, 39, 40

Marchese v. Cablevision Sys. Corp.,
2016 WL 7228739 (D.N.J. Mar. 9, 2016) 30, 32

Mullane v. Cent. Hanover Bank & Tr. Co.,
339 U.S. 306 (1950)44

New Directions Treatment Servs. v. City of Reading,
490 F.3d 293 (3d Cir. 2007)26

Schwartz v. Dana Corp./Par. Div.,
196 F.R.D. 275 (E.D. Pa. 2000)19

Sheinberg v. Sorensen,
606 F.3d 130 (3d Cir. 2010)26

Skeen v. BMW of N. Am., LLC,
2016 WL 70817 (D.N.J. Jan. 6, 2016)24

Skeen v. BMW of N. Am., LLC,
2016 WL 4033969 (D.N.J. July 26, 2016)43

Stewart v. Abraham,
275 F.3d 220 (3d Cir. 2001)18

Sullivan v. DB Invs., Inc.,
667 F.3d 273 (3d Cir. 2011)19

Udeen v. Subaru of Am., Inc.,
2019 WL 4894568 (D.N.J. Oct. 4, 2019)21

Wallace v. Powell,
288 F.R.D. 347 (M.D. Pa. 2012)40

Wal-Mart Stores, Inc. v. Dukes,
131 S. Ct. 2541 (2011) 18, 19, 20, 22

Weiss v. Mercedes-Benz of N. Am., Inc.,
899 F. Supp. 1297 (D.N.J. 1995).....39

Weiss v. York Hosp.,
745 F.2d 786 (3d Cir. 1984)24

Yaeger v. Subaru of Am., Inc.,
2016 WL 4541861 (D.N.J. Aug. 31, 2016)39

Statutes

28 U.S.C. § 171515

Rules

Fed. R. Civ. P. 23 17, 18, 22

Fed. R. Civ. P. 23(a).....16

Fed. R. Civ. P. 23(a)(1)17

Fed. R. Civ. P. 23(a)(2)18

Fed. R. Civ. P. 23(a)(3) 22, 23

Fed. R. Civ. P. 23(a)(4)25

Fed. R. Civ. P. 23(b)(3)..... 29, 30, 31, 44

Fed. R. Civ. P. 23(c)(2)(B)44

Fed. R. Civ. P. 23(e).....44

Fed. R. Civ. P. 23(e)(2).....33

Fed. R. Civ. P. 23(g)26

Other Authorities

Manual for Complex Litigation, Fourth, § 30.21244

I. INTRODUCTION

Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode (“Plaintiffs”), individually and on behalf of all others similarly situated, hereby move the Court for final approval of the class action settlement (“Settlement”) set forth in the Settlement Agreement (“Settlement Agreement” or “S.A.”)¹, as supported by the Declaration of Russell D. Paul In Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement (“Paul Decl.”). Plaintiffs request that the Court: enter a Final Approval Order and Judgment (1) granting final approval of the proposed Settlement; (2) granting final appointment of Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode as Settlement Class Representatives, Russell Paul, Abigail Gertner, Amey Park, and Natalie Lessor as Settlement Class Counsel, and JND Legal Administration (“JND” or “Claims Administrator”) as the Settlement Claim Administrator; (3) directing the implementation of the Settlement in accordance with the terms and conditions the terms of the Settlement Agreement; and (4) dismissing the Action with prejudice upon the Effective Date.

¹ All capitalized terms used throughout this brief shall have the meanings ascribed to them in the Settlement Agreement and Release, ECF 67-3.

The proposed Settlement resolves the above-captioned class action lawsuit wherein Plaintiffs alleged that the respective Settlement Class Vehicles contain one or more defects in the design, workmanship, materials, and/or manufacturing of the transmission installed in the Class Vehicles that causes hesitation, jerking, shuddering, lurching, squeaking, whining, or other loud noises; delays in acceleration; inconsistent shifting; stalling; and a loss of power or ability to accelerate at all. Plaintiffs pursued claims under theories of, *inter alia*, breach of warranty and statutory and common law fraud. Defendants maintain that the subject vehicles are not defective, were properly designed, manufactured, marketed, distributed and sold, and function properly. Defendants further maintain that no express or implied warranties were breached, and no consumer statutes or common law duties were violated.

The proposed Settlement, if approved, will end litigation spanning over two years and, in exchange for the release of claims described herein, will provide monetary reimbursement for paid out-of-pocket expenses for qualifying covered repairs for Settlement Class Members. As set forth below, the Settlement is the product of a detailed investigation into the underlying claims and facts, review of key documents, and arm's-length negotiations between experienced counsel following the assistance of a respected neutral mediator who is highly experienced in class action settlements. The proposed Settlement has been diligently

implemented since the Court's Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), ECF 68.

Pursuant to the Preliminary Approval Order, JND, the Claims Administrator, mailed the Court-approved notice of the proposed Settlement to Settlement Class Members on January 15, 2024. The settlement website and toll-free telephone assistance line went live the same date. Class Counsel has worked closely with Defendants and JND to ensure timely and accurate delivery of the Class Notices, and to respond to inquiries from Settlement Class Members. To date, not a single Settlement Class Member has objected to the settlement.² The proposed Settlement is fair, reasonable, and adequate, has been administered in accordance with the Preliminary Approval Order, is an appropriate resolution of the Action, and as such, should be granted final approval.

II. LITIGATION AND SETTLEMENT HISTORY

A. Plaintiffs' Pre-Suit Investigation and Description of the Action

Plaintiffs each purchased or leased 2019-2020 Subaru Ascent vehicles. All of these owners complained that their vehicles experienced hesitation, jerking, shuddering, lurching, squeaking, whining, or other loud noises, delays in

² The deadline for a Settlement Class Member to object to the Settlement is February 29, 2024, after Plaintiffs' deadline to file the instant Motion. Plaintiffs will file any supplemental papers addressing any objections by April 16, 2024.

acceleration, inconsistent shifting, stalling, and/or a loss of power or ability to accelerate at all.

Class Counsel thoroughly investigated the alleged defect prior to filing the lawsuit, including, beginning in July 2018, analyzing the nature of the alleged defect; studied complaints made to the National Highway Traffic Safety Administration (“NHTSA”) as well as on third-party websites; researched publicly available technical information regarding the transmission in Class Vehicles including through technical service bulletins regarding the transmission, and recall information provided to NHTSA; interviewed and collected documents from over one hundred Settlement Class Members; and investigated potential claims. *See* Declaration of Russell D. Paul in Support of Preliminary Approval of Class Action Settlement (“Paul Prelim. Approval Decl.”), ECF 67-2, at ¶¶9-14.

On February 4, 2021, Class Counsel mailed a notice letter to Defendants on behalf of Plaintiffs Aimee and Kelly and Frank Drogowski. On February 5, 2021, Class Counsel mailed a notice letter to Defendants on behalf of William Treasurer. On February 15, 2021, Class Counsel mailed a notice letter to Defendants on behalf of Plaintiffs John Taitano, Richard Palermo, and Cassandra and Steven Sember. On February 26, 2021, Class Counsel mailed a notice letter to Defendants on behalf of Plaintiffs Shawn and Lori Woiwode. These letters specified the problems related to the transmission and regarding their experiences with their vehicles, seeking

remedies for the Plaintiffs and a Class of similarly situated car owners. Plaintiffs filed their initial complaint on February 28, 2021, alleging that their vehicles were defective and asserting claims against Defendants for, *inter alia*, alleged violation of the consumer statutes of their states of residence, including the Maryland Consumer Protection Act, North Carolina Unfair and Deceptive Acts and Practices Act, Pennsylvania Unfair Trade Practices and Consumer Protection Law, Fraud by Omission or Fraudulent Concealment, Unjust Enrichment, along with a nationwide class, as well as breach of express and implied warranties. *Id.* at ¶¶15-17.

SOA filed its Motion to Dismiss the Class Action Complaint on April 12, 2021. ECF 14. In response, on May 14, 2021, Plaintiffs filed their First Amended Class Action Complaint, adding the remaining Plaintiffs and their state-specific causes of action under the consumer statutes of their states of residence as well as breach of express and implied warranties. ECF 16. On July 6, 2021, SOA filed its Motion to Dismiss the First Amended Class Action Complaint. ECF 18. On December 2, 2021, SBR filed its Motion to Dismiss the First Amended Class Action Complaint. ECF 28.

On January 21, 2022, Plaintiffs filed their opposition brief to SBR's Motion to Dismiss and to a separate Motion for Judicial Notice of a new Part 573 Safety Recall Report filed by SOA on December 9, 2021, indicating an intent to initiate a voluntary recall of certain 2019 and 2020 Subaru Ascents, commencing with a

notification to vehicle owners in February 2022. ECF 33, 36. As result of this new recall, the Court permitted additional briefing related to the pending Motions to Dismiss. Defendants filed their reply briefs in support of their Motions to Dismission on February 18, 2022, Plaintiffs filed a Sur-Reply on March 11, 2022, and SBR filed a Sur-Sur Reply on March 18, 2023. ECF 38, 39, 43.

On October 19, 2022, the Court issued its Opinion and Order granting in part and denying in part each of SOA's and SBR's Motions to Dismiss. ECF 48, 49.

B. Discovery and Settlement Negotiations

The Parties began negotiations of a potential class settlement simultaneously with conducting discovery. The Court entered a Confidentiality Order and a Scheduling Order on December 6, 2022. ECF 56, 58. The parties then both propounded discovery requests.

Plaintiffs sent a Settlement Proposal Letter to Defendants on October 20, 2022. On December 19, 2022, counsel for Defendants initiated settlement discussions with Plaintiffs. Paul Prelim. Approval Decl., ECF 67-2, at ¶24. Thereafter, on January 11, 2023, the Parties engaged Bradley A. Winters, Esq., of JAMS, as mediator. The Parties conferred in January and February 2023, beginning negotiations for a potential class settlement. *Id.* at ¶25. They held a pre-mediation conference on February 22, 2023, at which time Defendants provided details regarding Defendants' 2019 and 2021 Recalls related to the Class Vehicles' drive

train and the separate clutch plate-related issue detailed in Service Bulletin 16-136-22 dated January 20, 2022 and subsequent revisions to the Recalls. *Id.* at ¶26. The Parties also exchanged confidential engineering information as well as other information regarding the alleged defective transmission in the Settlement Class Vehicles. *Id.* at ¶27. This enabled Class Counsel to gain an understanding of the strengths and weaknesses of Plaintiffs' claims.

The Parties attended two mediation sessions with Mr. Winters on February 24, 2023 and March 1, 2023. After months of vigorous, arm's length settlement negotiations, the Parties were eventually able to negotiate a Class Settlement of this action. *Id.* at ¶¶29-30.

Plaintiffs subsequently conducted confirmatory discovery by serving requests for production of documents and interrogatories on SOA and SBR on May 9, 2023. Plaintiff reviewed Defendants' responses and production beginning on June 23, 2023 and further took the deposition of SOA employee Davis Jose on August 15, 2023. This discovery confirmed scope of the Class Vehicles involved, as well as the extent and sufficiency of the Recalls performed by the Defendants. *Id.* at ¶31.

On October 17, 2023, the Court granted Preliminary Approval of Class Action Settlement to provide reimbursement of certain past paid expenses for Covered Repairs, specifically certifying a Settlement Class consisting of:

A natural person who is the current or former owner or lessee of a Settlement Class Vehicle, who purchased or leased the continental

United States, including Alaska or Hawaii, who purchased the vehicle for purposes other than for resale.

Settlement Class Vehicles were identified as approximately 160,000 2019 and 2020 Subaru Ascents. *Id.* at ¶32; Order Granting Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement, ECF 68.

On January 15, 2024, the Class Notice was mailed to the Settlement Class in accordance with the approved Notice Plan. *See* Declaration of Jennifer M. Keough (“JND Decl.”) at ¶9. On the same day, the dedicated settlement website and toll-free number with live operators went live. *Id.* at ¶15.

C. The Settlement Agreement and the Reaction of the Class

1. Benefits to the Settlement Class

a. Hesitation and Slippage Related to the CVT Chain

i. Warranty Extension for Replaced CVTs Under Any Recall

SOA has initiated several voluntary safety and emissions recalls that were supervised by the National Highway Traffic Safety Administration (NHTSA) and that relate to the Continuously Variable Transmission (CVT) in the Settlement Class Vehicles, including Recall Nos. 21V-955 and 21V-485, Manufacturer Recall Nos. WRK-21 and WRK-22, and the earlier WUV-07 recall, which was superseded by WRK-21 and WRK-22. These recalls target specific Subaru vehicles, such as the Class Vehicles, where the CVT chain may slip and/or break and/or the vehicle may experience hesitation or slipping.

As part of the Settlement, Subaru will extend its Limited Warranty for Genuine Subaru Replacement Parts and Accessories for CVTs replaced under, or prior to, any recall to two years with no mileage limitation. This extension of the Limited Warranty follows the same terms as Subaru's Limited Warranty for Genuine Subaru Replacement Parts and Accessories, except for the extended duration.

ii. Voucher For Class Members Who Made Visits to An Authorized Subaru Dealer to Address a Malfunction Associated with a Recall

The Settlement provides that a class member may receive a voucher with a value of \$400 if they made two visits to an Authorized Subaru Dealer for a repair, attempted repair, replacement, diagnosis or inspection in which the primary purpose was to address a malfunction associated with a recall, which addresses symptoms such as the CVT chain slipping and/or breaking that can result in the vehicle experiencing hesitation or slipping. This excludes any repairs or visits related to an Authorized Subaru Dealer implementing a recall. For three or more such visits, the Voucher value is \$750. Vouchers must be used within one year from the date of issuance, after which they will expire and no longer be valid.

b. Malfunctioning MPT Clutch and Shudder, Judder or Vibration

The Settlement provides the following benefits for a specific type of malfunction within the CVT of the Settlement Class Vehicles, as addressed in Service Bulletin 16-136-22 (including all revisions), that is characterized by the

potential failure of the multiple plate transfer (MPT) clutch and can result in the vehicle experiencing judder, shudder and vibration.

i. Extended Warranty

Where shudder, judder, and vibration issues related to the MPT clutch, as specified in Service Bulletin 16-136-22 occur, or where there is damage to any component (such as the engine shaft, transmission shaft, etc.) caused by a malfunctioning MPT clutch in Settlement Class Vehicles, Subaru will extend its Powertrain Limited Warranty for Settlement Class Vehicles to eight years or 100,000 miles, whichever occurs first, from the In-Service Date. Apart from the extended duration, this Settlement Extended Warranty adheres to the Powertrain Limited Warranty terms. This extended warranty covers a onetime repair of any component damaged by a damaged or malfunctioning MPT clutch (i.e., the engine shaft, transmission shaft, etc.), and a onetime MPT clutch replacement if the one-time repair is not effective.

ii. Reimbursement for Expenses

Under the Settlement, Subaru agrees to reimburse former and current owners and lessees of Settlement Class Vehicles upon providing sufficient proof for certain unreimbursed out-of-pocket expenses related to any repair, attempted repair, replacement, or inspection performed by an Authorized Subaru Dealer prior to the Notice Date in which the primary purpose was to address the occurrence of shudder,

judder and vibration issues related to the MPT clutch, as specified in Service Bulletin 16-136-22 (including all revisions), or damage to any component (such as the engine shaft or transmission shaft) caused by a malfunctioning MPT clutch in Settlement Class Vehicles. Expenses related to other discrete component failures of the CVT not related to the occurrence of vibration, shudder, and/or judder or failures caused by misuse, abuse, or neglect do not qualify for reimbursement.

iii. Voucher For Class Members Who Made Visits to an Authorized Subaru Dealer to Address Malfunctioning MPT Clutch and Shudder, Judder or Vibration

The Settlement provides that a class member may receive a voucher with a value of \$400 if they made two visits to an Authorized Subaru Dealer for a repair, attempted repair, replacement, diagnosis or inspection in which the primary purpose was to address a malfunction within the CVT of the Settlement Class Vehicles, as addressed in Service Bulletin 16-136-22 (including all revisions), characterized by the potential failure of the MPT clutch that can result in the vehicle experiencing judder, shudder and vibration. For three or more such visits, the Voucher value is \$750. Vouchers must be used within one year from the date of issuance, after which they will expire and no longer be valid.

2. Attorneys' Fees, Costs and Service Awards for Plaintiffs

After the Parties had already agreed upon the Settlement relief, the Parties negotiated, and eventually resolved, the issues of Settlement Representative Plaintiff

service awards and Class Counsel reasonable attorneys' fees and expenses. Defendants have agreed to not oppose (a) Class Counsel's request for attorneys' fees and expenses in the combined aggregate amount of up to (and not exceeding) \$750,000, and (b) service awards of \$3,750 to each of the eight named Plaintiffs/ Representative Plaintiffs (for a total combined service award of \$30,000), such that there will be one payment per vehicle owned or leased by the named Representative Plaintiffs, i.e. eight payments, as indicated in the operative complaint of the Action. Plaintiffs will seek Court approval of these payments before the deadline for Settlement Class Members to file objections, as described in the schedule below. Significantly, the awards for class counsel's reasonable fees/expenses and for the class representatives, up to the amounts agreed by the Parties, will not reduce or otherwise have any effect on the benefits the Settlement Class Members will receive. The requested Class Counsel Fees and Expenses and Representative Plaintiff Service Awards are the subject of a separate fee motion, filed contemporaneously herewith.

3. Release of Claims

In consideration of the Settlement benefits, Defendants and their related entities and affiliates (the "Released Parties," as defined in S.A. II.¶ 26) will receive a release of claims and potential claims based on (1) a specific type of malfunction within the CVT of the Settlement Class Vehicles, as addressed in Service Bulletin 16-136-22 (including all revisions), characterized by the potential failure of the MPT

clutch that can result in the vehicle experiencing judder, shudder and vibration; and (2) a malfunction associated with a Recall, which addresses symptoms such as the CVT chain slipping and/or breaking that can result in a Settlement Class Vehicle experiencing hesitation or slipping, which are the subject of this litigation and Settlement, including the claims that were or could have been asserted in the litigation related to these two malfunctions (the “Released Claims,” as defined in S.A. ¶ II.25). The scope of the release properly reflects the issues, allegations and claims in this case and specifically excludes claims for death, personal injury and property damage (other than damage to the Settlement Class Vehicle itself).

4. Notice to Settlement Class Members

Notice has been disseminated to Settlement Class Members pursuant to the Notice Plan as described in Settlement Agreement, § VIII, and approved by this Court in the Preliminary Approval Order. *See* ECF 68; *see also* JND Decl. at ¶¶9-14.

On January 15, 2024, JND completed mailing 229,381 Court-approved Postcard Notices via first-class U.S. mail to potential Class Members. JND Decl. at ¶9. Settlement Class Members were located based on the Settlement Class Vehicles’ VINs (vehicle identification numbers) and using the services of a third-party data aggregation service. S.A. ¶ VIII.B.1.b; JND Decl. at ¶6. Thus, JND obtained the names and addresses of record of the Settlement Class Members state through DMV

title and registration records. JND then checked the provided address against the National Change of Address Database, as well as using email append and matching schema processes to obtain and verify email addresses for as many potential Class Members as possible. In addition, for any individual mailed Notice that was returned as undeliverable, JND will re-mail the Notice to any provided forwarding address. For any undeliverable notice packets where no forwarding address was provided, JND will perform an advanced address search (e.g., a skip trace) and re-mail any undeliverable Class Notice packets to the resultant new and current addresses located. S.A. ¶ VIII.B.1c; JND Decl. at ¶6.

In addition to the mailed Class Notice, and with input from the Parties, JND also established a dedicated Settlement website, www.cvtclassactionsettlement.com, which includes details regarding the lawsuit, the Settlement and its benefits, and the Settlement Class Members' legal rights and options including objecting to or requesting to be excluded from the Settlement and/or not doing anything; instructions on how and when to submit a claim for reimbursement; instructions on how to contact the Claim Administrator by e-mail, mail or (toll-free) telephone; copies of the Class Notice, Claim Form, the Settlement Agreement, Motions and Orders relating to the Preliminary and Final Approval processes and determinations, and important submissions and documents relating thereto; important dates pertaining to the Settlement including the procedures and deadlines to opt-out of or

object to the Settlement, the procedure and deadline to submit a claim for reimbursement, and the date, place and time of the Final Fairness Hearing; and answers to Frequently Asked Questions (FAQs). *See* S.A. ¶ VIII.B.1.f; JND Decl. at ¶15. To date, , the Settlement website has received 44,879 page views by 12,996 unique users. *See* JND Decl. at ¶16. The Court approved previously the Notice Plan, holding that this notice “satisfies Rule 23, due process, and constitutes the best notice practicable under the circumstances.” ECF 68, at ¶10.

Pursuant to 28 U.S.C. § 1715, the Class Action Fairness Act of 2005, JND also provided timely notice of this Settlement to the U.S. Attorney General and the applicable State Attorneys General (“CAFA Notice”) so that they may review the proposed Settlement and raise any comments or concerns to the Court’s attention prior to final approval. S.A. § VIII.A; JND Decl. at ¶¶3-4.

5. Response by Settlement Class Members

Pursuant to the Preliminary Approval Orders, Settlement Class Members have until February 29, 2024 to object or to request exclusion from the Settlement Class. Settlement Class Members have until April 15, 2024 to submit Reimbursement Claims.

To date, there have been no objections to the Settlement. *See* Paul Decl. at ¶10. Only 15 Settlement Class Members have submitted requests to be excluded

from the Settlement. *Id.* Plaintiffs and Defendant will file any supplemental papers addressing any objections by April 16, 2023.

III. ARGUMENT

A. Final Certification of the Settlement Class

In order for a lawsuit to be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, a named plaintiff must establish each of the four threshold requirements of subsection (a) of the rule, which provides:

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative will fairly and adequately protect the interest of the class.

Fed. R. Civ. P. 23(a). *See also In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 308–09 (3d Cir. 1998) (“*Prudential II*”). These four elements are referred to in the shorthand as (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See In re Constar Int’l Inc. Sec. Litig.*, 585 F.3d 774, 780 (3d Cir. 2009). As recognized by this Court previously, the proposed settlement meets each element of Rule 23. *See* ECF 68 at ¶7. Nothing has changed since that time to warrant a different finding. Accordingly, the Settlement merits final settlement class certification.

1. The Settlement Class Meets the Requirements of Rule 23(a)

a. 23(a)(1) – “Numerosity”

The proposed Settlement Class is sufficiently numerous. Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23. In the Third Circuit, where the number of potential class members exceeds forty, the numerosity requirement is generally met. *See Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001). Here, there are 160,000 Settlement Class Vehicles, more than the minimum requirements for numerosity.

b. Rule 23(a)(2) – “Commonality”

The Settlement Class satisfies the commonality requirement for settlement purposes. *See generally Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2550-2551 (2011). Rule 23(a)(2) requires that there be “questions of law or fact common to the class,” and that the class members “have suffered the same injury.” *Id.* at 2548, 2551; *see also Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994) (holding that the test for commonality is “easily met”). The commonality inquiry focuses on the defendant’s conduct. *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 297 (3d Cir. 2011) (“commonality is informed by the defendant’s conduct as to all class members and any resulting injuries common to all class members”).

“Commonality exists when proposed class members challenge the same conduct of the defendants.” *Schwartz v. Dana Corp./Par. Div.*, 196 F.R.D. 275, 279 (E.D. Pa. 2000). Indeed, a single common question is sufficient to satisfy the requirements of Rule 23(a)(2). *See Baby Neal for and by Kanter*, 43 F.3d at 56; *see*

also 1 A. Conte & H. Newberg, *Newberg on Class Actions (Fourth)*, § 3.10 at 272-74 (2002).

Here, commonality exists because Plaintiffs are alleging a uniform and common course of conduct on the part of Defendants with respect to the marketing and sale of the Settlement Class Vehicles. As with *In re Centocor, Inc.*, 1999 WL 54530, at *2 (E.D. Pa. Jan. 27, 1999), the allegations arise from the same common nucleus of operative facts, and all members of the proposed Settlement Class can cite the same common evidence to prove their identical claims. As a result, a “classwide proceeding [will] generate common answers apt to drive the resolution of the litigation,” *Wal-Mart Stores, Inc.*, 564 U.S. 338, such as whether the Settlement Class Vehicles contain a defect which causes the vehicles’ transmissions to malfunction and whether Defendants had the requisite notice of and a duty to disclose the alleged defect. These questions, which are common to automobile class settlements such as this,³ are common to the Settlement Class, capable of class-wide

³ See e.g., *Udeen v. Subaru of Am., Inc.*, 2019 WL 4894568, at *5 (D.N.J. Oct. 4, 2019) (commonality satisfied where there were numerous common questions regarding whether the class vehicles were defective); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 WL 1192479, at *4 (D.N.J. Mar. 22, 2013) (commonality satisfied where there were several common questions, “including whether the transmissions in the Class Vehicles suffered from a design defect, whether Volvo had a duty to disclose the alleged defect, whether the warranty limitations on Class Vehicles are unconscionable or otherwise unenforceable, and whether Plaintiffs have actionable claims”); *Alin v. Honda Motor Co.*, 2012 WL 8751045, at*5 (D.N.J. April 13, 2012)(finding commonality and predominance satisfied where “class vehicles

resolution, and “will resolve an issue that is central to the validity of each one of the claims in one stroke.” *In re Nat’l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 427 (3d Cir. 2016) (citing *Wal-Mart Stores, Inc.*, 564 U.S. at 350).

c. Rule 23(a)(3) – “Typicality”

Rule 23(a)(3) requires that a representative plaintiff’s claims be “typical” of those of other class members. Fed. R. Civ. P. 23. Whereas commonality evaluates the sufficiency of the class, typicality judges the sufficiency of the named plaintiffs as representatives of the class. *Baby Neal for and by Kanter*, 43 F.3d at 57. A plaintiff’s claim is typical of class claims if it challenges the same conduct that would be challenged by the class. *See In re Centocor, Inc.*, 1999 WL 54530, at *2 (noting that typicality requirement of Rule 23(a)(3) is satisfied where “litigation of the named plaintiffs’ claims can reasonably be expected to advance the interests of absent class members”). “This investigation properly focuses on the similarity of the legal theory and legal claims; the similarity of the individual circumstances on which those theories and claims are based; and the extent to which the proposed representative may face significant unique or atypical defenses to her claims.” *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 597-98 (3d Cir. 2009). In other words, typicality is demonstrated where a plaintiff can “show that two issues of law

allegedly suffer from defects that cause their air conditioning systems to break down, although there are differences as to how the breakdowns occur”).

or fact he or she shares in common with the class occupy the same degree of centrality to his or her claims as those of the unnamed class members.” *Weiss v. York Hosp.*, 745 F.2d 786 (3d Cir. 1984).

Here, for settlement purposes the claims of Plaintiffs and all Settlement Class Members are typical because they arise under substantially similar warranty and consumer protection laws and stem from a common alleged defect and course of conduct by Defendants. *See, e.g., Skeen v. BMW of N. Am., LLC*, 2016 WL 70817, at *6 (D.N.J. Jan. 6, 2016) (typicality satisfied where class suit alleged defendants “knowingly placed Class Vehicles containing the alleged defect into the stream of commerce and refused to honor its warranty obligations”); *Alin*, 2012 WL 8751045, at *6 (typicality established where the named plaintiffs each owned or leased one of the vehicles at issue and sought damages as a result of the alleged defect).

d. Rule 23(a)(4) – “Adequacy”

Representative parties must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). To evaluate adequacy, the Court considers whether the named plaintiffs have “the ability and the incentive to represent the claims of the class vigorously, that [they have] obtained adequate counsel, and there is no conflict between the [named plaintiffs’] claims and those asserted on behalf of the class.” *Hassine v. Jeffes*, 846 F.2d 169, 179 (3d Cir. 1988); *see also Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 182 (3d Cir. 2012).

The core analysis for plaintiff's conduct is whether plaintiff has diligently pursued the action and whether plaintiff has interests antagonistic to those of the Settlement Class. The capabilities and performance of Class Counsel under Rule 23(a)(4) is evaluated based upon factors set forth in Rule 23(g). *See New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 313 (3d Cir. 2007); *Sheinberg v. Sorensen*, 606 F.3d 130, 132 (3d Cir. 2010). Here, adequacy is readily met as previously recognized by the Court. *See* ECF 68, at ¶7.

First, the proposed Class Representatives have retained counsel with significant experience in federal class actions, in particular, consumer and automotive class actions. *See* ECF 67-2 at ¶¶3-6; *Bredbenner v. Liberty Travel, Inc.*, 2010 WL 11693610, at *4 (D.N.J. Nov. 19, 2010) ("Plaintiffs' attorneys are qualified, experienced, and generally able to conduct the proposed litigation..."); *In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 962 F. Supp. 450, 519 (D.N.J. 1997) ("Plaintiffs" team of legal counsel is comprised of preeminent class action attorneys from throughout the country, many of whom have been qualified as lead counsel in other nationwide class actions.") Furthermore, Class Counsel has spent a significant amount of time investigating the issues in this action including reviewing the class member inquiries and then interviewing scores of Settlement Class Members, as well as performing research into the technical specifications of the Settlement Class

Vehicles, the nature of the alleged condition and its remedy, and the costs of repair. ECF 67-2 ¶¶9-14.

Class Counsel have significant experience litigating consumer class-actions, including automobile-defect class actions. ECF 67-2 at ¶¶3-6. 2. By way of example, Class Counsel were finally appointed class counsel in *Gioffe v. Volkswagen Group of Am., Inc.*, 1:22-cv-00193 (D.N.J.) (J. Hillman); *Parrish v. Volkswagen Grp. of Am., Inc.*, No. 8:19-cv-01148 (C.D. Cal.); *Patrick v. Volkswagen Grp. of Am., Inc.*, No. 8:19-cv-01908 (C.D. Cal.); *Weckwerth v. Nissan N.A.*, 3:18-cv00588 (M.D. Tenn); and *Norman v. Nissan N. Am., Inc.*, No. 18-cv-00588-EJR (M.D. Tenn.) and appointed to the Executive Committee for *Stringer v. Nissan N.A.*, 3:21-cv-00099 (M.D. Tenn.) ECF 67-2 ¶4. In addition to the above, Class Counsel were preliminary appointed class counsel recently in *Dack v. Volkswagen Grp. of Am., Inc.*, No. 4:20-CV-00615-RK (W.D. Mo. Jan. 18, 2024), ECF 77; *Gjonbalaj v. Volkswagen Group of Am., Inc.*, No. 2:19-cv-07165-BMC (E.D.N.Y. Dec. 11, 2023), ECF 101; and *Rieger v. Volkswagen Grp. of Am., Inc.*, No. 1:21-cv-10546-NLH-MJS (D.N.J. Oct. 20, 2023), ECF 84. The extensive experience of Class Counsel is discussed more fully in the Declaration of Mr. Paul filed concurrently with the Motion for Preliminary Approval of Class Action Settlement. *See* ECF 67-2.

Second, Plaintiffs have no interest adverse or “antagonistic” to the absent Class Members. Each of the Plaintiffs is an owner of a Settlement Class Vehicle who

claims to have experienced a malfunctioning of the transmission, including hesitation, juddering, shuddering, or total failure, which is the condition at issue. Plaintiffs have no interests antagonistic to the other Settlement Class Members and will continue to vigorously represent the Settlement Class's interests. The interests of Plaintiffs and other Class Members are aligned in seeking to assert the Class's recovery relating to the alleged defect. *See In re Philips/Magnavox Television Litig.*, 2012 WL 1677244, at *6 (D.N.J. May 14, 2012) (plaintiffs adequately represent the interests of class where they purchased the same allegedly defective televisions as the rest of the class and were allegedly injured in the same manner).

2. The Settlement Class Should Be Certified Under Rule 23(b)(3)

Rule 23(b)(3)'s predominance inquiry “tests whether [a] proposed class [] [is] sufficiently cohesive to warrant adjudication by representation.” *Marchese v. Cablevision Sys. Corp.*, 2016 WL 7228739, at *2 (D.N.J. Mar. 9, 2016) (citation omitted). There is “a ‘key’ distinction between certification for settlement purposes and certification for litigation: when taking a proposed settlement into consideration, individual issues which are normally present in litigation usually become irrelevant, allowing the common issues to predominate.” *Id.*; *see Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 618 (1997).

For settlement purposes, common questions of law and fact, such as whether the Settlement Class Vehicles which contain the same alleged condition were

defective, whether Defendants breached any duty to disclose, and whether Settlement Class Members sustained cognizable harm, predominate over questions that may affect individual Settlement Class Members. *See, e.g., Henderson*, 2013 WL 1192479, at *6 (predominance met where “[t]he Class Members share common questions of law and fact, such as whether Volvo knowingly manufactured and sold defective automobiles without informing consumers...[and] liability in this case depends on Volvo’s alleged conduct in manufacturing and selling the Class Vehicles”).

Rule 23(b)(3) also requires a showing that a class action is “superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The superiority requirement is met when—as here—adjudicating claims in one action is “far more desirable than numerous separate actions litigating the same issues.” *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 259 (3d Cir. 2009); *see Marchese*, 2016 WL 7228739, at *2 (finding that certification of a class for settlement purposes is more efficient than separate litigation of numerous individual claims).

The proposed Settlement delivers prompt, certain benefits while avoiding the substantial judicial burdens and the risk of inconsistent rulings that would arise from repeated adjudication of the same issues in individual actions. *See Henderson*, 2013 WL 1192479, at *6 (“To litigate the individual claims of even a tiny fraction of the

potential Class Members would place a heavy burden on the judicial system and require unnecessary duplication of effort by all parties. It would not be economically feasible for the Class Members to seek individual redress.”).

B. The Settlement Is Fair, Reasonable, and Adequate

To give final approval, the court must determine that a settlement is “fair, reasonable, and adequate,” using the criteria set out in Fed. R. Civ. P. 23(e)(2): that the class representatives and class counsel have adequately represented the class; the proposal was negotiated at arm’s length; the relief provided for is adequate, taking into account costs, risks, and delay of trial and appeal; there is an effective method of distribution of relief to the class; the terms of the proposed attorney’s fees; and the settlement treats class members equitably. These factors do not displace the Third Circuit’s common law factors, discussed below, but are intended to “focus the parties [on] the ‘core concerns’ that motivate the fairness determination.” *Huffman v. Prudential Ins. Co. of Am.*, 2019 WL 1499475, at *3 (E.D. Pa. Apr. 5, 2019) (citing Fed. R. Civ. 23(e)(2), Advisory Committee Notes to 2018 Amendments). This determination is guided by a “strong judicial policy in favor of class action settlement.” *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010). By entering into a voluntary settlement, the parties can benefit substantially by avoiding “costs and risks of a lengthy and complex trial.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995). This concern

over the cost and complexity of proceeding is particularly true with class action trials. *Id.*

Moreover, there is a presumption of fairness where: “(1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In re National Football League Players Concussion Injury Litig.*, 821 F.3d at 436 (citing and quoting in part *In re Cendant Corp. Litig.*, 264 F.3d 201, 232 n.18 (3d Cir. 2001)).

The Settlement is the product of vigorous arm’s length negotiations of highly disputed claims that lasted approximately three months. *See* Paul Prelim. Approval Decl. at ¶¶29-30. Moreover, before reaching the Settlement, Class Counsel independently analyzed the nature of the alleged defect, studied complaints and technical information made available to NHTSA as well as on third-party websites, researched the publicly available technical information regarding the CVT transmissions in Class Vehicles, and interviewed and collected documents from nearly one hundred Settlement Class Members. *Id.* at ¶¶9-14. Class Counsel also engaged in confirmatory discovery to assess the Settlement and Defendants’ contention that the recalls substantially resolved any issue with the Class Vehicles’ transmission. *Id.* at ¶31. The discovery conducted, and Class Counsel’s own

independent investigation and analyses, enabled Plaintiffs to gain “a clear understanding of the strengths and weaknesses of their case,” *Udeen*, at *8.

Class Counsel are experienced class action litigators and represented their clients vigorously through the litigation, including the months of settlement negotiations. Further, the Settlement has received overwhelming support from Settlement Class Members. There are 160,000 Settlement Class Vehicles, and notices were mailed to 229,381 potential Settlement Class Members. *See* Paul Prelim. Approval Decl. at ¶32; JND Decl. at ¶9. To date, there have been no objections, and only 15 requests for exclusion from the Settlement. Paul Decl. at ¶10. Taken together, these factors give rise to a strong presumption that the Settlement is fair, reasonable, and adequate.

In the Third Circuit, there are nine factors that the district court should consider in evaluating the fairness and adequacy of settlement: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendant to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of the all the attendant risks of

litigation. *See Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). *See also In re Natl. Football League Players Concussion Injury Litig.*, 821 F.3d at 437 (affirming continued use of *Girsh* factors)⁴. “The decision of whether to approve a proposed settlement of a class action is left to the sound discretion of the district court.” *Girsh*, 521 F.2d at 156. In exercising this discretion, courts are mindful that “[t]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d at 784 ; *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) (“[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged”); *In re Sch. Asbestos Litig.*, 921 F.2d 1330, 1333 (3d Cir. 1990) (the court “encourage[s] settlement of complex litigation ‘that otherwise could linger for years’”).

⁴ The Third Circuit has also identified additional factors for courts to consider, though they overlap significantly with the *Girsh* factors: (1) the maturity of the underlying substantive issues; (2) the existence and probable outcome of claims by other classes and subclasses; (3) the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved or likely to be achieved for other claimants; (4) whether class or subclass members are accorded the right to opt-out of the settlement; (5) whether any provisions for attorneys’ fees are reasonable; and (6) whether the procedure for processing individual claims under the settlement is fair and reasonable. *In re Pet Food Prod. Liab. Litig.*, 629 F.3d 333, 350 (3d Cir. 2010) (citing *In re Prudential Ins. Co. America Sales Practice Litigation Agent Actions*, 148 F.3d 283).

This Court previously granted preliminary approval of the Settlement, signifying that the Settlement was ostensibly reasonable. *See* Preliminary Approval Order. Now that notice of the proposed Settlement has been provided to the Class Members, the Court may fully consider final approval. As discussed more fully below, the proposed class action settlement meets the Third Circuit's standard for a fair, reasonable, and adequate settlement.

1. The Complexity, Expense and Likely Duration of the Litigation

As such, this factor weighs heavily in favor of settlement at this time, because it avoids the expenditure of time, money, and other resources on complex litigation on behalf of all parties and enables the Class to realize a recovery quickly. *See In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d at 812. This is particularly true where, as here, the action involves highly disputed claims and numerous complex legal and technical issues such that litigating the case through trial would have been complex, time-consuming, and expensive. In contrast, the Settlement provides a substantial benefit to the Settlement Class Members without the accompanying delay, risk and uncertainty of continued litigation. *See Yaeger v. Subaru of Am., Inc.*, 2016 WL 4541861, at *9 (D.N.J. Aug. 31, 2016). As such, this factor weighs in favor of final approval.

2. The Reaction of the Class to the Settlement

In the Third Circuit, the number of objections is considered an indication of

the reaction of the class. *See In re Cendant Corp. Litig.*, 264 F.3d at 234–. “[S]ilence constitutes tacit consent to the agreement.” *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313 n.15 (3d Cir. 1993). A low number of objections is considered persuasive evidence that the proposed settlement is fair and adequate. *In re Cendant Corp. Litigation*, 264 F.3d at 234–35. As of the date of this motion, no Class Member has objected to the terms of the Settlement, and as such, this factor weighs heavily in favor of final approval of the Settlement.

3. The Stage of the Proceedings and Amount of Discovery Completed

To evaluate this factor, courts look at the procedural stage of the case at the time of settlement and the amount of discovery completed to assess if counsel has enough information to fully evaluate the merits of the case during negotiations. *See In re Warfarin Sodium Antitrust Litigation*, 391 F.3d at 537. Settlement early in litigation, without proof of collusion between the Parties, does not undermine a finding that the settlement is fair, reasonable, and adequate. *See Weiss v. Mercedes-Benz of N. Am., Inc.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995). Moreover, there are means other than formal discovery whereby plaintiffs’ attorneys are able “to apprise themselves of the merits of the litigation.” *In re Processed Egg Prod. Antitrust Litig.*, 284 F.R.D. 249, 270 (E.D. Pa. 2012). The Parties only began settlement negotiations after Plaintiffs had successfully defeated, in part, Defendants’ Motions to Dismiss and Class Counsel performed extensive research and investigation into the merits of

the claims prior to filing the initial complaint which included significant technical details regarding the alleged defect. *See* Paul Prelim. Approval Decl. at ¶¶9-14, 25. Then, Class Counsel sought and received significant confirmatory discovery from Defendants to fully assess the recall remedies and their efficacy in resolving the complained of issue in Settlement Class Vehicles. *Id* at ¶¶26, 31. As such, this factor weighs in favor of final approval.

4. The Risks of Establishing Liability

This “inquiry requires a balancing of the likelihood of success if the case were taken to trial against the benefits of immediate settlement. *Wallace v. Powell*, 288 F.R.D. 347, 369 (M.D. Pa. 2012) (quotation omitted). In weighing the likelihood of success at trial against the benefits of the settlement at this stage of the case, any obstacle to plaintiff’s success identified weighs in favor of settlement. *See In re Warfarin Sodium Antitrust Litigation*, 391 F.3d at 537; *In re Prudential Ins. Co. America Sales Practice Litigation Agent Actions*, 148 F.3d at 319. Here, Defendants have continually denied any liability, and has maintained that it did not engage in fraud, misrepresentation, concealment, breach of warranty, or violation of any consumer fraud statute, and that they acted reasonably and appropriately to address the potential transmission issue. Furthermore, Defendants maintained that the applicable recall campaigns properly and adequately remedied the issues concerning the transmissions, and asserted, among other defenses to the claims, that these

substantial remedies, issued in the form of NHTSA supervised recalls, prudentially mooted this class action, and rendered the Plaintiffs without standing to seek damages over and above the remedies they received by the recalls. In addition, Defendants maintained that the claims are subject to dismissal pursuant to applicable statutes of limitations under various states laws, and other defenses pursuant to the economic loss doctrine, lack of pre-sale knowledge and/or a duty to disclose, lack of privity, and other potential defenses.

In addition, certification of a class if this case were to proceed through litigation would have difficulties including, but not limited to, potential defenses as to commonality, typicality, adequacy of representation, superiority, and the fact that any alleged “common” questions do not predominate over individual issues relating to Plaintiffs and putative class members, such as whether there was defect manifestation in each putative class member’s vehicle, the specific cause of any alleged transmission malfunction or inoperability, individual purchase and lease transactions of each putative class member and his/her decision-making with respect thereto, and other matters relevant to liability and damages. Finally, differences in the laws and burdens/proof requirements among the various applicable state laws could preclude certification of any “nationwide” class if this action were to be litigated rather than settled.

The Settlement avoids the risk that Defendants may not be liable after trial, and that a class may not be certified in the context of litigation. As such, this factor weighs in favor of approval of the settlement.

5. The Risks of Establishing Damages

For this factor, the Court is to weigh the potential damages that could be awarded following trial against the benefits of the settlement available now. *See In re Cendant Corp. Litigation*, 264 F.3d at 238–39. Here, the settlement provides for extended warranties on the subject transmission, as well as vouchers worth up to \$750 for use at Subaru retailers and reimbursement of certain previously unreimbursed out-of-pocket expenses paid by certain class members, a result that could only be matched by complete victory for Plaintiffs and the Class after the delay and expense of a full trial. As such, this factor weighs in favor of approval.

6. The Risks of Maintaining the Class Action Through Trial

This factor measures the likelihood of obtaining and keeping a certified class if the action were to continue. As with other issues, Class Counsel expects that Defendants would vigorously oppose any motion for class certification. “Further, even if class certification were granted in this matter, class certification can always be reviewed or modified before trial, so ‘the specter of decertification makes settlement an appealing alternative.’” *SEI Investments Co.*, at *5 (quoting *Skeen v.*

BMW of N. Am., LLC, 2016 WL 4033969 at *15 (D.N.J. July 26, 2016). As such, this factor weighs in favor of approval.

7. The Ability of Defendants to Withstand a Greater Judgment

Although Defendants are able to withstand a greater judgment than the settlement amount and cost of the prospective relief, this factor is considered neutral where the defendant's ability to pay greatly exceeds the potential liability. *See In re CertainTeed Corp. Roofing Shingle Prod. Liab. Litig.*, 269 F.R.D. 468, 489 (E.D. Pa. 2010). As such, this factor is neutral, weighing neither for nor against the settlement.

8. The Range of Reasonableness of Settlement in Light of the Best Possible Recovery and All Attendant Risks of Litigation

As noted by the court in *SEI Investments*, the last two *Girsh* factors are “often considered together, [and] evaluate whether the settlement represents a good value for a weak case or a poor value for a strong case.” At *5 (citation omitted). Courts are thus asked to assess “the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing...compared with the amount of the proposed settlement.” *In re Prudential Ins. Co. America Sales Practice Litigation Agent Actions*, 148 F.3d at 322. Here, the value of the proposed settlement, including a warranty extension, outweighs the possibility of any superior relief. Further, considering the costs of continuing

litigation through trial and a lengthy appellate process, the settlement is particularly advantageous to all parties. As such, these factors weigh in favor of approval.

Taken together, the *Girsh* factors support final approval of the proposed Settlement. Given also that there are no objections to the Settlement, and that the proposed Class meets the requirements for class certification, the settlement should be finally approved.

C. The Class Notice Satisfied Due Process and Rule 23

Under Federal Rule of Civil Procedure 23(e), class members who would be bound by a settlement are entitled to reasonable notice before the settlement may be approved. *See* Manual for Complex Litigation, Fourth, § 30.212. The Court must provide a class certified under Rule 23(b)(3) “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). To satisfy this standard and due process requirements, such notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The Notice that the Court approved was provided to Settlement Class Members in accordance with the also-approved Notice Plan. It includes all legal requirements and explains the Settlement concisely using clear, simple terms. The

notice plan carried out by JND furnished the Settlement Class Members the best notice practicable under the circumstances. *See Henderson*, 2013 WL 1192479, at *12-13.

JND, an experienced vendor, oversaw the process of compiling addresses of Settlement Class Members, and used that information to prepare a mailing list to which Notice was sent via first-class mail, satisfying the “gold standard for class notice.” *Good v. Am. Water Works Co., Inc.*, 2016 WL 5746347, at *7 (S.D.W. Va. Sept. 30, 2016) (holding “direct mail notices as “the gold standard”); *Boyd v. May Trucking Co.*, 2019 WL 12763009, at *11 (C.D. Cal. July 1, 2019) (finding “direct mail notice is satisfactory.”). Notice of the Settlement and other relevant documents, including Claim Forms, the Settlement Agreement, and the Preliminary Approval Order, are also available on the dedicated Settlement website.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court grant their Motion for Final Approval of the Settlement and for certification of the proposed Settlement Class, and enter the proposed Final Approval Order and Judgment.

Dated: January 30, 2024

Respectfully submitted,

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

AIMEE HICKMAN, *et al.*, individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:21-CV-02100-NLH-
AMD

Motion Date: April 16, 2024

**DECLARATION OF RUSSELL D. PAUL IN SUPPORT OF PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Russell D. Paul, hereby declare as follows:

1. I am an attorney duly licensed to practice law before all of the courts of the Commonwealth of Pennsylvania and the States of New Jersey, Delaware, and New York as well as before the United State Court of Appeals for the Third, Seventh, and Ninth Circuits, the United States District Courts of the Eastern District of Pennsylvania, District Court of Delaware, District Court of the Eastern District of Michigan, District of New Jersey, District Court of the Southern District of New York and District Court of the Eastern District of New York.

2. I am a Shareholder of Berger Montague PC (“Berger”), one of the counsel of record (“Class Counsel”) for Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and Steven

Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode (“Plaintiffs”).

3. I submit this declaration in support of Plaintiffs’ unopposed Motion for Final Approval of Class Action Settlement pursuant to Federal Rules of Civil Procedure 23, for an Order and Judgment: (1) granting final approval of the parties’ proposed class action settlement; (2) granting final appointment of Plaintiffs Aimee and Jared Hickman, Frank and Kelly Drogowski, Richard Palermo, Carolyn Patol, Cassandra and Steven Sember, John Taitano, William Treasurer, and Lori and Shawn Woiwode as Settlement Class Representatives, Russell Paul, Abigail Gertner, Amey Park, and Natalie Lessor as Settlement Class Counsel and JND Legal Administration (“JND” or “Claims Administrator”) as Settlement Claim Administrator, (3) directing the implementation of the Settlement in accordance with the terms and conditions of the Settlement Agreement, (4) granting class certification for settlement purposes only, and (5) dismissing the Action with prejudice upon the Effective Date.

A. Status of Notice Program

4. Following the preliminary approval of the settlement on October 17, 2023, *see* ECF No. 68, Class Counsel and JND, the settlement administrator, caused the notice to be mailed on January 15, 2024.

5. Class Notice was mailed to approximately 229,381 Class Members on January 15, 2024 via first class mail. Settlement Class Members were located based on the Settlement Class Vehicles' VINs (vehicle identification numbers) and using third-party data aggregation service, obtaining the names and addresses of record of the Settlement Class Members state through DMV title and registration records. JND then checked the provided address against the National Change of Address Database, as well as using email append and matching schema processes to obtain and verify email addresses for as many potential Class Members as possible. *See* Declaration of Jennifer M. Keough ("JND Decl.") at ¶¶5-8, simultaneously filed with Plaintiffs' Motion for Final Approval of Class Settlement.

6. For any individual mailed Notice that was returned as undeliverable, JND will re-mail the Notice to any provided forwarding address. For any undeliverable notice packets where no forwarding address was provided, JND will perform an advanced address search (e.g., a skip trace) and re-mail any undeliverable Class Notice packets to the resultant new and current addresses located. *Id.* at ¶12.

7. In addition, on January 15, 2024, JND also commenced sending Email Notices to 184,080 email addresses associated with potential Class Member records, which campaign will conclude on February 2, 2024. *Id.* at ¶14.

8. JND also established a dedicated Settlement website, www.cvtclassactionsettlement.com, which includes details about the lawsuit, the

Settlement and its benefits, and the Settlement Class Members' legal rights and options including objecting to or requesting to be excluded from the Settlement and/or not doing anything; instructions on how and when to submit a claim for reimbursement; instructions on how to contact the Claim Administrator by e-mail, mail or (toll-free) telephone; copies of the Class Notice, Claim Form, the Amended Settlement Agreement, Motions and Orders relating to the Preliminary and Final Approval processes and determinations, and important submissions and documents relating thereto; important dates pertaining to the Settlement including the procedures and deadlines to opt-out of or object to the Settlement, the procedure and deadline to submit a claim for reimbursement, and the date, place and time of the Final Fairness Hearing; and answers to Frequently Asked Questions (FAQs). The Settlement website and toll-free information line went live on January 15, 2024 and, to date, the Settlement website has received 44,879 page views by 12,996 unique users. *Id.* at ¶¶15-16.

9. Pursuant to 28 U.S.C. § 1715, the Class Action Fairness Act of 2005, JND also provided timely notice to the U.S. Attorney General and the applicable State Attorneys General ("CAFA Notice") so that they may review the proposed Settlement and raise any comments or concerns to the Court's attention prior to final approval. *Id.* at ¶¶3-4.

10. As of the date of this Declaration, no Class Member has objected to the Settlement. Further, as of the date of this Declaration, there have been 15 requests for exclusion from the Settlement. *Id.* at ¶21. A full list of the exclusion requests will be provided to the Court by April 16, 2024.

11. JND will continue to provide periodic reports to Class Counsel to present the most up to date information regarding contact from Settlement Class Members.

B. Proposed Form of Order

12. The Parties stipulated to a proposed form of order to govern final approval of the Settlement.

13. A copy of the Proposed Final Approval Order has been submitted to the Court as an exhibit to the Settlement Agreement at ECF No. 67-7.

14. I have conferred with counsel for Defendants, and Defendants do not oppose this motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Russell D. Paul

Russell D. Paul

Executed January 30, 2024

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

AIMEE HICKMAN, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., *et al.*,

Defendants.

Case No. 1:21-CV-02100-NLH-AMD

**DECLARATION OF JENNIFER M. KEOUGH
REGARDING NOTICE ADMINISTRATION**

I, Jennifer M. Keough, declare and state as follows:

1. I am the Chief Executive Officer, President, and Co-Founder of JND Legal Administration (“JND”). JND is a legal administration services provider with headquarters located in Seattle, Washington. JND has extensive experience with all aspects of legal administration and has administered hundreds of class action settlements. As the CEO and President, I am involved in all facets of JND’s operations, including monitoring the implementation of our notice and claims administration programs.

2. JND is serving as the Settlement Administrator in the above-captioned litigation (“Action”), as ordered by the Court in its October 17, 2023 Order Granting Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”). I submit this Declaration to report on the implementation of the Notice Program. This Declaration is based on my personal knowledge, as well as upon information provided to me by experienced JND employees and counsel for Plaintiffs and Defendants (“Counsel”) in the Action, and if called upon to

do so, I could and would testify competently thereto.

CAFA NOTICE

3. In compliance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, JND compiled a CD-ROM containing the following documents:

- a. Class Action Complaint with Exhibit, filed February 8, 2021;
- b. First Amended Class Action Complaint, filed May 14, 2021;
- c. Plaintiffs’ Unopposed Motion for an Order Preliminarily Approving Class Action Settlement, filed August 18, 2023; and

4. On August 28, 2023, JND mailed the CD-ROM to the appropriate Federal and State officials identified in an enclosed distribution list with an accompanying cover letter, copies of which are attached as **Exhibit A**.

CLASS MEMBER DATA

5. On October 17, 2023, Defendants provided JND with files containing 162,607 unique Vehicle Identification Numbers (“VINs”) representing the Settlement Class Vehicles included in the Settlement Agreement.

6. Using the VINs for the Class Vehicles, JND worked with a third-party data aggregation service to acquire potential Settlement Class Members’ contact information from the Departments of Motor Vehicles (“DMVs”) for all current and previous owners and registered lessees of the Settlement Class Trucks. The data JND received from the DMVs included Class Members in all 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

7. JND then analyzed, de-duplicated, and standardized the data and promptly loaded it into a secure, case-specific database for the matter. Prior to mailing the Court-approved Postcard Notices, JND performed advanced address research using the USPS National Change of Address

(“NCOA”) database¹ to obtain the most current mailing address information for potential Class Members.

8. JND also conducted a sophisticated email append process to obtain email addresses for as many potential Class Members as possible. The email append process utilized skip tracing tools to identify a reliable email address by which the potential Class Member may be reached. JND then analyzed the email data to identify any undeliverable or otherwise invalid email addresses. To ensure that Email Notice is sent only to email addresses associated with known Class Members, JND adheres to a rigorous matching schema to identify email addresses for which the confidence rating is high and based on a quantum of matching points between the Class Member record input and the potential email addresses returned.

DIRECT NOTICE

9. On January 15, 2024, JND completed mailing 229,381 Court-approved Postcard Notices via first-class U.S. mail to potential Class Members. A representative copy of the Postcard Notice is attached as **Exhibit B**.

10. JND mailed an additional 300 Notices to Class Members with ten or more Class Vehicles. For these Class Members, JND mailed the content of the Postcard Notice with an accompanying cover letter that included additional instructions on how to access specialized claim filing assistance. A representative copy of the cover letter is attached as **Exhibit C**.

11. The Postcard Notice provided Class Members with the following information: (i) the definition of the Class; (ii) a summary of the Settlement benefits; (iii) options regarding the Settlement, including information about how to file a claim online; and (iv) how to find more detailed information

¹ The NCOA database is the official United States Postal Service (“USPS”) technology product which makes change of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream. This product is an effective tool to update address changes when a person has completed a change of address form with the USPS. The address information is maintained in the database for 48 months.

about the Settlement. The Postcard Notice also informed Class Members of the relevant deadlines regarding their options and included the Class Member's VIN along with personalized information that they could use to log in to the online claim portal to file a claim electronically.

12. Any Postcard Notices returned to JND with a forwarding address will be promptly re-mailed to the forwarding address provided. For any Postcard Notices returned without a forwarding address, JND will conduct advanced address research using available skip-tracing tools and will promptly re-mail to any verified updated address that is obtained.

13. As of the date of this Declaration, 2,282 Postcard Notices have been forwarded and 4,693 Postcard Notices have been returned as undeliverable. JND is conducting advanced address research and will promptly re-mail the Postcard Notice to any verified address that is obtained.

14. On January 15, 2024, JND also commenced sending Email Notices to 184,080 email addresses associated with potential Class Member records. The Email Notice campaign will conclude on February 2, 2024. As of the date of this Declaration, a total of 55,012 Email Notices have been sent. A representative copy of the Email Notice is attached as **Exhibit D**.

SETTLEMENT WEBSITE

15. On January 12, 2024, JND launched an informational, case-specific Settlement Website at www.CVTClassActionSettlement.com. The Settlement Website provides comprehensive information about the Settlement, including answers to frequently asked questions, contact information for the Settlement Administrator, key dates, and links to important case documents. Linked documents include the Long Form Notice (available in English and Spanish), the Claim Form, and the Settlement Agreement and Release, among others. The Settlement Website also provides a VIN Lookup feature where potential Class Members can input their VIN to determine whether their vehicle qualifies as a Class Vehicle. In addition to providing comprehensive information about the Settlement, the

Settlement Website also includes an electronic Reimbursement and Voucher Claim Form and an electronic Request for Exclusion Form.

16. As of the date of this Declaration, JND has tracked 12,996 unique visitors to the Settlement Website who registered 44,879 page views. JND will continue to maintain the Settlement Website for the duration of the Settlement administration.

TOLL-FREE INFORMATION LINE AND EMAIL ADDRESS

17. On January 12, 2024, JND established the toll-free telephone number that Class Members may call to obtain information about the Settlement. Callers have the option to listen to an Interactive Voice Response system or speak to a live agent. The toll-free number is accessible 24 hours a day, 7 days a week, with an option to speak directly with JND call center associates during business hours.

18. As of the date of this Declaration, the toll-free number has received 782 calls, of which 15 callers have chosen to speak with a live operator.

19. JND also established a dedicated email address to receive and respond to Class Member inquiries at info@CVTClassActionSettlement.com. As of the date of this Declaration, JND has received 226 emails to this email inbox.

OBJECTIONS

20. The Notices informed Class Members that anyone who wanted to object to the Settlement could do so by filing a written statement with the Court on or before February 29, 2024. As of the date of this Declaration, JND has not received and is not aware of any objections having been submitted.

REQUESTS FOR EXCLUSION

21. The Notices informed Class Members that anyone who wanted to exclude themselves from the Settlement (“opt out”) must submit a request (online or postmarked) no later than February 29, 2024. As of the date of this Declaration, JND has received 15 requests for exclusion.

CLAIM FORMS

22. The Notices informed Class Members who wish to claim a Voucher or reimbursement for Qualifying Repairs that they must submit a Claim Form (online or postmarked) no later than April 15, 2024. As of the date of this Declaration, JND has received 426 Claim Form submissions.

CONCLUSION

23. In my opinion, the Notice Plan as described above and as executed by JND constitutes the best practicable notice to the Settlement Class under the circumstances of this case. I will provide a supplemental declaration to the Court prior to the Final Approval Hearing with updated information regarding requests for exclusion and the claims administration process.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 29th day of January, 2024, at Seattle, Washington.

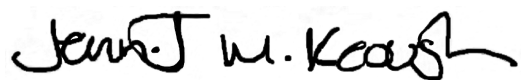

JENNIFER M. KEOUGH _____

EXHIBIT A



August 28, 2023

The Appropriate Federal
and State Officials Identified
in Attachment A

Re: Class Notice of Proposed Class Action Settlement

Dear Sir or Madam:

This Notice is being provided to you in accordance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715 on behalf of Subaru Corporation and Subaru of America, Inc., the defendants in the below-referenced class action (“the Action”). Plaintiffs’ Unopposed Motion for an Order Preliminarily Approving Class Action Settlement was filed with the Court on August 18, 2023. As of the date of this Notice, the Court has not scheduled an approval hearing, although the Motion is set for September 18, 2023 to be decided on the papers.

Case Name: *Aimee Hickman, et al. v. Subaru of America, Inc., et al.*
Case Number: *1:21-CV-02100-NLH-AMD*
Jurisdiction: *United States District Court for the District of New Jersey*
Date Settlement Filed: *August 18, 2023*
Site Court:

Copies of all materials filed in the above-named actions are electronically available on the Court’s Pacer website found at <https://pcl.uscourts.gov>. Additionally, in compliance with 28 U.S.C. § 1715(b), the enclosed CD-ROM contains the following documents filed in the Action:

- Class Action Complaint.pdf
Class Action Complaint with Exhibit (Full Complaint), filed February 8, 2021
- First Amended Complaint.pdf
First Amended Class Action Complaint, filed May 14, 2021
- Motion for Preliminary Approval.pdf
Plaintiffs’ Unopposed Motion for an Order Preliminarily Approving Class Action Settlement, filed August 18, 2023

It is not possible to provide a breakdown of the Settlement Class in accordance with 28 U.S.C. § 1715 (b)(7) at this time. However, we anticipate that the Settlement Class is sufficiently numerous as to include Class Members potentially residing in all 50 U.S. states, as well as the District of Columbia, and may include Class Members residing in U.S. territories and associated states.

There are no other settlements or agreements made between Counsel for the parties related to the class defined in the proposed settlement, and as of the date of this Notice, no Final Judgment or notice of dismissal has been entered in this case.

If you have any questions regarding the details of the case and settlement, please contact Defense Counsel's representative at:

Neal Walters
700 East Gate Drive, Suite 330
Mount Laurel, NJ 08054-0015
856.761.3438 DIRECT
Email: waltersn@ballardspahr.com

For questions regarding this Notice, please contact JND at:

JND Class Action Administration
1100 2nd Ave, Suite 300
Seattle, WA 98101
Phone: 800-207-7160

Regards,

JND Legal Administration

Encl.

Case No. 1:21-cv-02100-NLH-AMD (D.N.J.)

CAFA Notice - Attachment A - Service List

Treg R. Taylor
Office of the Attorney General
1031 W 4th Ave
Ste 200
Anchorage, AK 99501

Steve Marshall
Attorney General's Office
501 Washington Ave
Montgomery, AL 36104

Tim Griffin
Office of the Attorney General
323 Center St
Ste 200
Little Rock, AR 72201

Kris Mayes
Office of the Attorney General
2005 N Central Ave
Phoenix, AZ 85004

CAFA Coordinator
Office of the Attorney General
Consumer Protection Section
455 Golden Gate Ave., Ste 11000
San Francisco, CA 94102

Phil Weiser
Office of the Attorney General
Ralph L. Carr Judicial Building
1300 Broadway, 10th Fl
Denver, CO 80203

William Tong
Office of the Attorney General
165 Capitol Ave
Hartford, CT 06106

Kathy Jennings
Delaware Department of Justice
Carvel State Office Building
820 N French Street
Wilmington, DE 19801

Ashley Moody
Office of the Attorney General
State of Florida
PL-01 The Capitol
Tallahassee, FL 32399

Chris Carr
Office of the Attorney General
40 Capitol Sq SW
Atlanta, GA 30334

Anne E. Lopez
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

Brenna Bird
Office of the Attorney General
Hoover State Office Building
1305 E. Walnut Street Rm 109
Des Moines, IA 50319

Raúl R. Labrador
Office of the Attorney General
700 W. Jefferson St, Suite 210
Boise, ID 83720

Kwame Raoul
Office of the Attorney General
James R. Thompson Center
100 W. Randolph St
Chicago, IL 60601

Case No. 1:21-cv-02100-NLH-AMD (D.N.J.)
CAFA Notice - Attachment A - Service List

Todd Rokita
Office of the Attorney General
Indiana Government Center South
302 W Washington St 5th Fl
Indianapolis, IN 46204

Kris W. Kobach
Office of the Attorney General
120 SW 10th Ave
2nd Fl
Topeka, KS 66612

Daniel Cameron
Office of the Attorney General
Capitol Building
700 Capitol Ave Ste 118
Frankfort, KY 40601

Jeff Landry
Office of the Attorney General
1885 N. Third St
Baton Rouge, LA 70802

CAFA Coordinator
General Counsel's Office
Office of Attorney General
One Ashburton Pl, 20th Floor
Boston, MA 02108

Anthony G. Brown
Office of the Attorney General
200 St. Paul Pl
Baltimore, MD 21202

Aaron Frey
Office of the Attorney General
6 State House Station
Augusta, ME 04333

Dana Nessel
Department of Attorney General
G. Mennen Williams Building, 7th Fl
525 W Ottawa St
Lansing, MI 48933

Keith Ellison
Office of the Attorney General
445 Minnesota St
Suite 1400
St. Paul, MN 55101

Andrew Bailey
Attorney General's Office
Supreme Court Building
207 W High St
Jefferson City, MO 65101

Lynn Fitch
Office of the Attorney General
Walter Sillers Building
550 High St Ste 1200
Jackson, MS 39201

Austin Knudsen
Office of the Attorney General
Justice Building, Third Fl
215 N. Sanders
Helena, MT 59601

Josh Stein
Attorney General's Office
114 W Edenton St
Raleigh, NC 27603

Drew H. Wrigley
Office of the Attorney General
State Capitol, 600 E Boulevard Ave
Dept. 125
Bismarck, ND 58505

Case No. 1:21-cv-02100-NLH-AMD (D.N.J.)
CAFA Notice - Attachment A - Service List

Mike Hilgers
Attorney General's Office
2115 State Capitol
Lincoln, NE 68509

John Formella
Office of the Attorney General
NH Department of Justice
33 Capitol St.
Concord, NH 03301

Matthew J. Platkin
Office of the Attorney General
Richard J. Hughes Justice Complex
25 Market St 8th Fl, West Wing
Trenton, NJ 08611

Raúl Torrez
Office of the Attorney General
Villagra Building
408 Galisteo Street
Santa Fe, NM 87501

Aaron Ford
Office of the Attorney General
Old Supreme Court Building
100 N Carson St
Carson City, NV 89701

CAFA Coordinator
Office of the Attorney General
28 Liberty St
15th Fl
New York, NY 10005

Dave Yost
Attorney General's Office
State Office Tower
30 E Broad St 14th Fl
Columbus, OH 43215

Gentner Drummond
Office of the Attorney General
313 NE 21st St
Oklahoma City, OK 73105

Ellen F. Rosenblum
Oregon Department of Justice
Justice Building
1162 Court St NE
Salem, OR 97301

Michelle Henry
PA Office of the Attorney General
Strawberry Square 16th Fl
Harrisburg, PA 17120

Peter F. Neronha
Office of the Attorney General
150 S Main St
Providence, RI 02903

Alan Wilson
Office of the Attorney General
Rembert C. Dennis Bldg
1000 Assembly St Rm 519
Columbia, SC 29201

Marty Jackley
Office of the Attorney General
1302 E Highway 14
Ste 1
Pierre, SD 57501

Jonathan Skrmetti
Office of the Attorney General
500 Dr Martin L King Jr Blvd
Nashville, TN 37219

Case No. 1:21-cv-02100-NLH-AMD (D.N.J.)
CAFA Notice - Attachment A - Service List

Angela Colmenero
Office of the Attorney General
300 W. 15th St
Austin, TX 78701

Sean D. Reyes
Office of the Attorney General
Utah State Capitol Complex
350 North State St Ste 230
Salt Lake City, UT 84114

Jason S. Miyares
Office of the Attorney General
202 N. Ninth St.
Richmond, VA 23219

Charity R. Clark
Attorney General's Office
109 State St.
Montpelier, VT 05609

Bob Ferguson
Office of the Attorney General
1125 Washington St SE
Olympia, WA 98501

Josh Kaul
Attorney General's Office
P.O. Box 7857
Madison, WI 53707

Patrick Morrissey
Office of The Attorney General
State Capitol, 1900 Kanawha Blvd E
Building 1 Rm E-26
Charleston, WV 25305

Bridget Hill
Office of the Attorney General
109 State Capitol
200 W 24th St Rm W109
Cheyenne, WY 82002

Brian Schwalb
Office of the Attorney General
400 6th St NW
Washington, DC 20001

Merrick Garland
Office of the U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530

Fainu'ulelei Falefatu Ala'ilima-Utu
Department of Legal Affairs
Exec Ofc Bldg, 3rd Fl
P.O. Box 7
Utulei, AS 96799

Douglas B. Moylan
Office of the Attorney General
Administration Division
590 S Marine Corps Dr, Suite 901
Tamuning, GU 96913

Edward Manibusan
Office of the Attorney General
Administration Building
P.O. Box 10007
Saipan, MP 96950

Domingo Emanuelli Hernández
Dpto. de Justicia de Puerto Rico
Calle Teniente César González 677
Esq. Ave. Jesús T. Piñero
San Juan, PR 00918

Aimee Hickman, et al. v. Subaru of America, Inc., et al.

**Case No. 1:21-cv-02100-NLH-AMD (D.N.J.)
CAFA Notice - Attachment A - Service List**

Ariel Smith
Office of the Attorney General
3438 Kronprindsens Gade
GERS Building 2nd Fl
St. Thomas, VI 00802

Joses R. Gallen
Department of Justice
P.O. Box PS-105
Palikir
Pohnpei State, FM 96941

Richard Hickson, Attorney General
C/O Marshall Islands Embassy
2433 Massachusetts Ave NW
Washington, DC 20008

Ernestine K. Rengiil
Office of the Attorney General
P.O. Box 1365
Koror, PW 96940

EXHIBIT B

Legal Notice

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF
NEW JERSEY

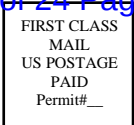
**If you bought or
leased certain
Subaru vehicles,
you may
benefit from a
class action
settlement**

Questions? Visit
www.CVTClassActionSettlement.com
or Call 1-877-871-0321

*Para una notificación en español, visite
www.CVTClassActionSettlement.com
o llame 877-871-0321*

Subaru CVT Settlement Administrator

c/o JND Legal Administration
P.O. Box 91465
Seattle, WA 98111



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 has been reached in a class action lawsuit called *Hickman, et al. v. Subaru of America Inc., et al.*, No. 1:21-cv-02100-NLH-AMD (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.CVTClassActionSettlement.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' continuously variable transmissions; 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 2019-2020 Ascents. 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.CVTClassActionSettlement.com.

What does the Settlement provide? The Settlement provides extended warranty and extended parts warranty coverage for Qualifying Failures experienced on or after the date of this Notice. The Settlement also provides, where applicable, a cash reimbursement for Qualifying CVT Repairs prior to the date of this Notice. Finally, the Settlement provides for a voucher in the amount of \$400 for two visits to address a Qualifying Voucher Failure and \$750 for three or more visits to address a Qualifying Voucher Failure prior to the date of this Notice.

What do I get from the settlement benefit? You may be entitled to automatically receive the extended warranty or extended parts warranty. However, you must submit a valid claim for cash reimbursement. Go to www.CVTClassActionSettlement.com to file or download a Claim Form. You can also write Subaru CVT Settlement Administrator, c/o JND Legal Administration, P.O. Box 91465, Seattle, WA 98111, or email

info@CVTClassActionSettlement.com. Claim forms and supporting documentation must be submitted online or postmarked **by April 15, 2024** or they will not be considered. Go to www.CVTClassActionSettlement.com to learn more.

Do nothing. 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 or extended parts 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 or extended parts 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 **February 15, 2024**. For more details about your rights and options and how to exclude yourself or object, go to www.CVTClassActionSettlement.com.

Appellate hearing. The Court will hold a Fairness Hearing on April 16, 2024 at 2:00 pm to consider whether to approve the Settlement; Class Counsel’s attorneys’ fees and expenses up to \$750,000; and service awards of \$3,750 for each of the named Plaintiffs (Aimee Hickman, Jared Hickman, William Treasurer, Kelly Drogowski, Frank Drogowski, John Taitano, Richard Palermo, Lori Woiwode, Shawn Woiwode, Carolyn Patol, Cassandra Sember, and Steven Sember), such that there will be one payment per vehicle owned or leased by the named Plaintiffs. 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 firm of Berger Montague PC as Class Counsel. You or your attorney may ask to speak at the hearing at your own expense, but you do not have to.

Get more information. For more information, visit www.CVTClassActionSettlement.com, call toll-free 1-877-871-0321, write Subaru CVT Settlement, c/o JND Legal Administration, P.O. Box 91465, Seattle, WA 98111, or email info@CVTClassActionSettlement.com.



Please do not contact the Court regarding this Notice

NI ID: [redacted] **PIN:** [redacted] **VIN:** [redacted]

Carefully separate this Address Change Form at the perforation

Name: _____

Current Address: _____

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.

Place
Stamp
Here

Subaru CVT Settlement Administrator
c/o JND Legal Administration
P.O. Box 91465
Seattle, WA 98111

EXHIBIT C

Subaru CVT Settlement
c/o JND Legal Administration
PO Box 91465
Seattle, WA 98111

Subaru CVT Class Action Settlement – Claim Filing Assistance for Owners or Lessees of 10 or more Settlement Class Vehicles

Dear [NAME],

You are receiving this letter because you may be eligible for benefits from a proposed class action settlement in a lawsuit called *Hickman, et al. v. Subaru of America, Inc.*, No. 1:21-CV-02100-NLH-AMD (D.N.J.). The Settlement provides extended warranty and extended parts warranty service for Qualifying Extended Warranty Failures experienced on or after the Notice Date of January 15, 2024. The Settlement also provides, where applicable, a cash reimbursement for Qualifying CVT Repairs prior to the Notice Date and a Voucher in the amount of either \$400 or \$750 depending on the number of visits made for a Qualifying Voucher Failure prior to the Notice Date.

The Court granted preliminary approval of the Settlement on October 17, 2023, and ordered notices to be sent to potential Class Members, like you, to inform them of their legal rights under the Settlement. For more information about the Settlement, including your rights and options and the deadlines to exercise them, please review the enclosed, Court-ordered Notice. You may also find up-to-date information related to the Settlement at www.CVTClassActionSettlement.com.

DMV records indicate that you may have owned or leased 10 or more Settlement Class Vehicles. As further described in the enclosed Notice, you will need to submit a claim for these Vehicles to seek compensation under the Settlement. A special process has been established to facilitate the bulk filing of claims for Class Members with 10 or more Settlement Class Vehicles. To submit a bulk claim, please contact us by email at info@CVTClassActionSettlement.com, or call 1-877-871-0321, and a representative specializing in bulk claims will assist you.

Claims must be submitted by **April 15, 2024**.

Please read the enclosed legal Notice to learn about your rights and options under the Settlement, including important deadlines. For additional information about the proposed Settlement, please visit the Settlement Website at www.CVTClassActionSettlement.com.

Regards,

Subaru CVT Settlement Administrator

EXHIBIT D

From: info@CVTClassActionSettlement.com
To: ROCIPI@NT M@IL @DDR@SS@
Subject: Important Notice: Subaru CVT Settlement

NI ID: XXXXX-XXXXX
PIN: XXXX
VIN: XXXXXXXXXXXXXXXXXXXX

LEGAL NOTICE

UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF NEW JERSEY

You bought or leased certain Subaru vehicle you may benefit from a class action settlement

A proposed settlement has been reached in a class action lawsuit called *Hickman, et al. v. Subaru of America, Inc., et al.*, No. 1:21-cv-02100-NHL-AMD (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.CVTClassActionSettlement.com.

What it's 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' continuously variable transmissions; 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 2019-2020 Ascents. 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.CVTClassActionSettlement.com.

What does the Settlement provide The Settlement provides extended warranty and extended parts warranty coverage for Qualifying Failures experienced on or after the date of this Notice. The Settlement also provides, where applicable, a cash reimbursement for Qualifying CVT Repairs prior to the date of this Notice. Finally, the Settlement provides for a voucher in the amount of \$400 for two visits to address a Qualifying Voucher Failure and \$750 for three or more visits to address a Qualifying Voucher Failure prior to the date of this Notice.

What do I get the settlement benefit You may be entitled to automatically receive the extended warranty or extended parts warranty. However, you must submit a valid claim for cash reimbursement. Go to www.CVTClassActionSettlement.com to file or download a Claim Form. You can also write Subaru CVT Settlement Administrator, c/o JND Legal Administration, P.O. Box 91465, Seattle, WA 98111, or email info@CVTClassActionSettlement.com. Claim Forms and

supporting documentation must be submitted online or postmarked by April 15, 2024 or they will not be considered.

Go to www.CVTClassActionSettlement.com to learn more.

Do Nothing 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 or extended parts 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 or extended parts 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 February 29, 2024.

For more details about your rights and options and how to exclude yourself or object, go to www.CVTClassActionSettlement.com.

Attend the Hearing The Court will hold a Fairness Hearing on April 16, 2024 at 2:00 pm to consider whether to approve the Settlement; Class Counsel's attorneys' fees and expenses up to \$750,000; and service awards of \$3,750 for each of the named Plaintiffs (Aimee Hickman, Jared Hickman, William Treasurer, Kelly Drogowski, Frank Drogowski, John Taitano, Richard Palermo, Lori Woiwode, Shawn Woiwode, Carolyn Patol, Cassandra Sember, and Steven Sember), such that there will be one payment per vehicle owned or leased by the named Plaintiffs. 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 firm of Berger Montague PC as Class Counsel. You or your attorney may ask to speak at the hearing at your own expense, but you do not have to.

Get more information For more information, visit www.CVTClassActionSettlement.com, call toll-free 1-877-871-0321, write Subaru CVT Settlement, c/o JND Legal Administration, P.O. Box 91465, Seattle, WA 98111, or email info@CVTClassActionSettlement.com.

Please do not contact the Court regarding this Notice

[unsubscribe](#)