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

GILLES COHEN, *et al.*,

individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC. and
DENSO INTERNATIONAL OF
AMERICA, INC.,

Defendants.

Case No: 1:20-cv-08442-JHR-AMD

**PLAINTIFFS’ NOTICE OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs, Gilles Cohen, Muhammad Adnan, Donny Woo, Benjamin Moore, Mary Lou Plante, Meredith Mein De Vera, Dan Rosenthal, Alexandra Efantis, Blaise Fontenot, John Micklo, Katherine Mutschler, Benjamin Christensen, Jennifer Lilley, Steven Biondo, Chantel Nelson, Jacqueline Ferguson, Jacqueline Brockman, Marty Brown, Christine King, Kevin King, Paula Weeks, Martin Torresquintero, Cole Sweeton, Christine Schultz, Troy Perry, Katherine Griffin, and David Sroelov (“Plaintiffs”), on behalf of themselves and the proposed Class, by and through their counsel, hereby respectfully request that the Court enter an Order, substantially in the form of the concurrently filed Proposed Final Order and Judgement:

- (1) Confirming that the Class Action Settlement is fair, reasonable, and adequate, and in the best interest of the Class and is in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, including but not limited to Rule 23(e), as amended, the United States Constitution (including the Due Process Clause), the Class Action Fairness Act, and any other applicable law;
- (2) Granting final approval of the Class Action Settlement, including the Settlement Agreement and all exhibits thereto;
- (3) Confirming that the Class meets all applicable requirements of Fed. R. Civ. P. 23(a) and (b)(3);

- (4) Confirming certification of the nationwide Class for settlement purposes only;
- (5) Confirming that the Class Notice is reasonable and adequate and meets all the applicable requirements of Fed. R. Civ. P. 23(a) and (b)(3);
- (6) Confirming that the Class Notice was provided to governmental authorities in compliance with the Class Action Fairness Act, 28 U.S.C. § 1715(d);
- (7) Finding that the Class Representatives, Gilles Cohen, Muhammad Adnan, Donny Woo, Benjamin Moore, Mary Lou Plante, Meredith Mein De Vera, Dan Rosenthal, Alexandra Efantis, Blaise Fontenot, John Micklo, Katherine Mutschler, Benjamin Christensen, Jennifer Lilley, Steven Biondo, Chantel Nelson, Jacqueline Ferguson, Jacqueline Brockman, Marty Brown, Christine King, Kevin King, Paula Weeks, Martin Torresquintero, Cole Sweeton, Christine Schultz, Troy Perry, Katherine Griffin, and David Sroelov, have adequately represented the Class for purposes of entering into and implementing the Settlement Agreement;
- (8) Confirming the appointment James E. Cecchi of Carella, Byrne, Cecchi, Brody & Agnello, P.C., Christopher A. Seeger of Seeger Weiss

LLP, and W. Daniel “Dee” Miles III of Beasley, Allen, Crow, Methvin,
Portis & Miles, P.C. as Class Counsel;

- (9) Overruling all objections to the Settlement;
- (10) Finding that the form, content, and methods of disseminating Class Notice of the Settlement constituted the best notice practicable under the circumstances and satisfied requirements of Fed. R. Civ. P. 23(c) and the United States Constitution (including the due process clause);
- (11) Finding that only those persons/entities/organizations listed on Appendix A of the Proposed Final Order and Judgment have timely and properly excluded themselves from the Class;
- (12) Releasing the claims of all Class Members in accordance with the terms of the Settlement;
- (13) Issuing a permanent injunction;
- (14) Dismissing the Action with prejudice as provided for by the Settlement;
and
- (15) Issuing related relief, as appropriate

This Motion is based on the contemporaneously-filed memoranda of law in support of final approval submitted by Plaintiffs; the Joint Declaration of W. Daniel “Dee” Miles, III, James E. Cecchi, And Christopher A. Seeger, together with all exhibits attached thereto; the proposed form of the final order and final

judgment; any supplemental memoranda of law to be filed in support of final approval; and all pleadings, records, and papers on file with the Court in this action.

Dated: September 30, 2024

Respectfully submitted,

**CARELLA, BYRNE, CECCHI,
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2024, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court, is available for viewing and downloading from the ECF system, and will be served by operation of the Court's electronic filing system (CM/ECF) upon all counsel of record.

s/ James E. Cecchi

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. BACKGROUND	3
III. SUMMARY OF THE SETTLEMENT	8
A. The Class	8
B. The Benefits of the Settlement	8
C. Claim Submission and Administration	9
D. Release of Claims/Liability	12
IV. LEGAL ARGUMENT.....	12
A. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND SHOULD BE APPROVED	12
B. The <i>Girsh</i> Factors Weigh in Favor of Approval	15
1. Continued Litigation Would Be Long, Complex, and Expensive.....	15
2. The Reaction of the Class to the Settlement.....	18
3. The Stage of the Proceedings	19
4. The Risks of Establishing Liability	21
5. The Risks of Establishing Damages	22
6. The Risks of Maintaining the Class Action through Trial	23
7. Defendants’ Ability to Withstand Greater Judgment.....	25

8.	Reasonableness of the Settlement in Light of the Best Possible Recovery and All Attendant Risks of Litigation.....	26
V.	THE NOTICE PROGRAM SATISFIES DUE PROCESS.....	27
VI.	THE SETTLEMENT CLASS SHOULD BE CERTIFIED	30
A.	The Rule 23(a) Factors Are Met	31
1.	Numerosity	31
2.	Commonality	32
3.	Typicality.....	32
4.	Adequacy	33
B.	The Rule 23(b)(3) Factors Are Met	35
1.	Predominance	35
2.	Superiority	36
VII.	CONCLUSION.....	37

Table of Authorities

Case	Page(s)
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	24, 31, 34, 35, 36
<i>Amgen Inc. v. Conn. Ret. Plans & Tr. Funds</i> , 568 U.S. 455 (2013).....	35
<i>Bell Atl. Corp. v. Bolger</i> , 2 F.3d 1304 (3d Cir. 1993).....	13, 18
<i>Beneli v. BCA Fin. Servs., Inc.</i> , 324 F.R.D. 89 (D.N.J. 2018).....	25
<i>Bredbenner v. Liberty Travel, Inc.</i> , 2011 WL 1344745 (D.N.J. Apr. 8, 2011).....	16, 19, 25
<i>Danvers Motor Co. v. Ford Motor Co.</i> , 543 F.3d 141 (3d Cir. 2008).....	36
<i>Ehrheart v. Verizon Wireless</i> , 609 F.3d 590 (3d Cir. 2010).....	13
<i>Girsh v. Jepson</i> , 521 F.2d 153 (3d Cir. 1975).....	<i>passim</i>
<i>Handschu v. Special Servs. Div.</i> , 605 F. Supp. 1384 (S.D.N.Y. 1985).....	19
<i>In re Am. Family Enters.</i> , 256 B.R. 377 (D.N.J. 2000)	15
<i>In re Cendant Corp. Sec. Litig.</i> , 109 F. Supp. 2d 235 (D.N.J. 2000)	15, 28
<i>In re Cendant Corp. Sec. Litig.</i> , 264 F.3d 201 (3d Cir. 2001).....	<i>passim</i>
<i>In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.</i> , 269 F.R.D. 468 (E.D. Pa. 2010).....	13, 25
<i>In re Chicken Antitrust Litig. Am. Poultry</i> , 669 F.2d 228 (5th Cir. 1982).....	19
<i>In re Cmty. Bank of N. Va.</i> , 418 F.3d 277 (3d Cir. 2005).....	30, 35

In re Corrugated Container Antitrust Litig.,
643 F.2d 195 (5th Cir. 1981)..... 19

In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.,
55 F.3d 768 (3d Cir. 1995)..... *passim*

In re Mercedes-Benz Antitrust Litig.,
213 F.R.D. 180 (D.N.J. 2003)..... 35

In re Merck & Co., Vytarin ERISA Litig.,
2010 WL 547613 (D.N.J. Feb. 9, 2010) 17, 24

In re NFL Players Concussion Injury Litig.,
821 F.3d 410 (3d Cir. 2019)..... 14, 15, 20

In re Prudential Ins. Co. of Am. Sales Prac. Litig.,
148 F.3d 283 (3d Cir. 1998)..... 18, 23, 37

In re Prudential Ins. Co. of Am. Sales Prac. Litig.,
962 F. Supp. 450 (D.N.J. 1997) 14, 18, 31, 32

In re Safety Components, Inc. Sec. Litig.,
166 F. Supp. 2d 72 (D.N.J. 2001) 21

In re Warfarin Sodium Antitrust Litig.,
212 F.R.D. 231 (D. Del. 2002)..... 23

In re Warfarin Sodium Antitrust Litig.,
391 F.3d 516 (3d Cir. 2004)..... *passim*

Johnston v. HBO Film Mgmt., Inc.,
265 F.3d 178 (3d Cir. 2001)..... 32, 34

Lake v. First Nationwide Bank,
900 F. Supp. 726 (E.D. Pa. 1995) 16

Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.,
149 F.R.D. 65 (D.N.J. 1993)..... 31

Mullane v. Cent. Hanover Bank & Tr. Co.,
339 U.S. 306 (1950)..... 27

Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,
259 F.3d 154 (3d Cir. 2001)..... 33

O’Brien v. Brain Rsch. Labs, LLC,
2012 WL 3242365 (D.N.J. Aug. 9, 2012) 24, 25

Officers for Justice v. Civ. Serv. Comm’n,
688 F.2d 615 (9th Cir. 1982)..... 14

Phillips Petroleum Co. v. Shutts,
472 U.S. 797 (1985)..... 27

Reyes v. Netdeposit, LLC,
802 F.3d 469 (3d Cir. 2015)..... 32

Slade v. Shearson, Hammill & Co.,
79 F.R.D. 309 (S.D.N.Y. 1978) 16

Stewart v. Abraham,
275 F.3d 220 (3d Cir. 2001)..... 31

Stoetzner v. U.S. Steel Corp.,
897 F.2d 115 (3d Cir. 1990)..... 18

Sullivan v. DB Invs.,
667 F.3d 273 (3d Cir. 2011)..... 14, 24

Varacallo v. Mass. Mut. Life Ins. Co.,
226 F.R.D. 207 (D.N.J. 2005)..... 37

Weiss v. Mercedes-Benz of N. Am.,
899 F. Supp. 1297 (D.N.J. 1995) 17

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

Statutes

28 U.S.C. § 1715 34

Federal Rules

Fed. R. Civ. P. 23(a)..... 30

Fed. R. Civ. P. 23(a)(1)..... 31

Fed. R. Civ. P. 23(a)(2)..... 32

Fed. R. Civ. P. 23(a)(3)..... 32

Fed. R. Civ. P. 23(b) 30

Fed. R. Civ. P. 23(b)(3)..... 30, 35, 36

Fed. R. Civ. P. 23(e)(1)(B) 27

Fed. R. Civ. P. 23(e)(2)..... 13

Other Authorities

Manual For Complex Litigation (Fourth) § 21.312 (2004)..... 28
Manual For Complex Litigation (Fourth) § 21.641 (2004)..... 14

I. INTRODUCTION

Plaintiffs Gilles Cohen, Muhammad Adnan, Donny Woo, Benjamin Moore, Mary Lou Plante, Meredith Mein De Vera, Dan Rosenthal, Alexandra Efantis, Blaise Fontenot, John Micklo, Katherine Mutschler, Benjamin Christensen, Jennifer Lilley, Steven Biondo, Chantel Nelson, Jacqueline Ferguson, Jacqueline Brockman, Marty Brown, Christine King, Kevin King, Paula Weeks, Martin Torresquintero, Cole Sweeton, Christine Schultz, Troy Perry, Katherine Griffin, and David Sroelov (“Plaintiffs”), on behalf of themselves and all others similarly situated, by and through their counsel, respectfully move the Court for an order: (i) granting final approval to the Settlement set forth in the Settlement Agreement (the “Settlement Agreement” or “SA”) (ECF No. 283-3); (ii) certifying a Settlement Class for settlement purposes only; (iii) granting final appointment of the Plaintiffs as Settlement Class Representatives and the law firms of Carella Byrne Cecchi Brody & Agnello, P.C. (“Carella Byrne”), Seeger Weiss LLP (“Seeger Weiss”), and Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. (“Beasley Allen”), as Settlement Class Counsel; (iv) confirming the appointment of JND Legal Administration as the Settlement Administrator and (v) entering a Final Order and Judgment dismissing the Action with prejudice.

On July 11, 2024, this Court entered an Order: (i) preliminarily approving the Settlement between Plaintiffs, on behalf of themselves and all others similarly situated, and Defendants Subaru of America, Inc. (“Subaru”) and Denso

International America, Inc. (“Denso”) (collectively “Defendants”), and (ii) conditionally certifying the following class for settlement purposes:

All individuals or legal entities who, at any time as of the Initial Notice Date, own or owned, purchase(d) or lease(d) Covered Vehicles¹ in any of the fifty states, the District of Columbia, Puerto Rico, and all other United States territories and/or possessions.²

ECF No. 240 at ¶ 3.

Nothing has changed since the Preliminary Approval Order that would warrant a different result. Plaintiffs now move for final approval of the Settlement so that the substantial monetary and equitable relief to the Settlement Class can be delivered without delay.³

As set forth below, the Settlement satisfies all of the elements for final

¹ The Covered Vehicles are the Additional Vehicles and Recalled Vehicles, as identified in Appendix A to Plaintiffs’ Memorandum of Law in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement. ECF No. 238-1.

² Excluded from the Settlement Class are: (a) Subaru, its officers, directors and employees; its affiliates and affiliates’ officers, directors and employees; its distributors and distributors’ officers, directors and employees; and Subaru Dealers and Subaru Dealers’ officers and directors; (b) Denso, its officers, directors and employees; its affiliates and affiliates’ officers, directors and employees; its distributors and distributors’ officers, directors and employees; (c) Plaintiffs’ Counsel; and (d) judicial officers and their immediate family members and associated court staff assigned to this case. In addition, persons or entities are not Class Members once they timely and properly exclude themselves from the Settlement Class, as provided by the Settlement Agreement and this Order, once the exclusion request is finally approved by the Court.

³ Plaintiffs separately move for approval of an award of attorneys’ fees, reimbursement of expenses, and payment of service awards to the Class Representatives. *See* Pls.’ Mot. for Attys’ Fees, ECF No. 244.

approval.

II. BACKGROUND

On April 23, 2020, Plaintiffs Katherine Griffin, Janet Oakley, and Adam Whitley filed the first of several class actions against Defendants seeking damages and equitable relief in connection with their manufacturing, marketing and sale of Subaru vehicles, which they alleged posed a safety risk because they contained Denso Fuel Pumps plaintiffs alleged were defective. *Katherine Griffin, et al. v. Subaru of America, Inc., et al.*, Case No. 2:20-cv-00563-ACA (N.D. AL). Between June 20, 2020 and July 10, 2020, three other putative class actions were filed in different districts (SA, § I.C), and, ultimately, all Plaintiffs voluntarily transferred their cases to this District, where they were consolidated for all purposes on February 3, 2021. ECF No. 32. Plaintiffs filed their Consolidated Amended Complaint (“CAC”) the same day. ECF No. 33.

In the CAC, Plaintiffs alleged that certain Subaru vehicles equipped with the Denso Fuel Pumps were unsafe to drive because the Fuel Pump’s impeller is made of low density material that could not withstand its operating environment. *Id.* at ¶¶ 1-20, 199. Fuel Pumps are a key part of a vehicle’s fuel injection system because they regulate the flow of fuel from the fuel tank to the engine and allow the vehicle to be operated as intended by the driver. ¶¶ 1, 195-198. Plaintiffs alleged the low density impeller in the Denso Fuel Pumps could deform and interfere with the body of the Fuel Pump, causing it to become inoperative, which can result in engine stalls

and similar symptoms, and poses a safety risk. ¶¶ 1-20, 199-208.

Between April 27, 2020 and June 11, 2020, Denso recalled 2.1 million of its Fuel Pumps installed in various makes and models of vehicles, which included Fuel Pumps installed in Subaru vehicles. ¶¶ 4, 7. On April 16, 2020, Subaru recalled the Denso Fuel Pumps in approximately 188,000 of its model year 2019 Subaru Impreza, Subaru Outback, Subaru Legacy and Subaru Ascent vehicles. ¶ 9. Plaintiffs alleged in the CAC that Subaru's recall was deficient, including because it did not capture all Subaru vehicles fitted with the allegedly defective Fuel Pumps. ¶¶ 12-16, 211-214, 216-220.

On the basis of these allegations, Plaintiffs asserted putative nationwide class and putative statewide sub-class claims for violations of various state consumer protection statutes, strict liability, common law fraud against both Defendants, and claims for breach of express and implied warranty, negligent recall, and a claim under the Magnuson-Moss Warranty Act on behalf of a nationwide class, against Subaru. Defendants vigorously dispute Plaintiffs' claims and assert the vehicles are not defective, that they did not breach any warranties or engage in any misrepresentation or wrongdoing, and that the fuel pumps that may potentially exhibit an anomaly were properly recalled and replaced thereby obviating the need for this litigation. Defendants further assert that the recalls were appropriate and provided free new replacement fuel pumps which fully corrected the prior alleged

issues and obviate the claims for relief in this action.

In March 2021, Defendants moved to dismiss all of Plaintiffs' claims, which the Parties thoroughly briefed over a period of six months. ECF Nos. 78, 80. In March 2022, the Court issued two lengthy opinions granting in part and denying in part Denso's and Subaru's motions to dismiss. ECF Nos. 111, 113. The Court dismissed 46 of Plaintiffs' claims against Denso, and denied Denso's motion to dismiss as to Plaintiffs' other claims: strict liability claims under the laws of 4 states, common law fraud claims under the law of 6 states, and consumer protection claims under the laws of 10 states. ECF No. 112. The Court also dismissed 50 of Plaintiffs' claims against Subaru, and denied Subaru's motion to dismiss as to the remainder of Plaintiffs' claims: breach of implied warranty claims under the laws of 8 states, common law fraud claims under the laws of 8 states, and consumer protection and strict liability claims under the laws of 4 states. ECF No. 114. The Court granted Plaintiffs leave to replead some of the dismissed claims.

On July 29, 2021, Subaru issued a second recall of 165,026 Subaru vehicles with Denso Fuel Pumps. Subaru twice expanded this Recall in August 2021, ultimately recalling 175,968 additional Subaru vehicles. Altogether, Subaru recalled 359,683 of its vehicles due to the alleged Fuel Pump defect.

On May 5, 2022, Plaintiffs filed their SAC, amending their claims for fraudulent concealment/omission under the laws of various states, and for violation

of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, et seq. ECF No. 125. The SAC also included new allegations relating to Subaru's expanded recall. In June 2022, Subaru and Denso moved to dismiss Plaintiffs' SAC. ECF Nos. 140, 141. The Parties briefed Defendants' motions to dismiss the SAC until September 2022 (ECF Nos. 166, 167), and the motion remained sub judice until it was administratively terminated on February 27, 2024, by agreement of the Parties, due to this pending Settlement.

While the motions to dismiss were being briefed, the Parties were actively engaged in discovery, met and conferred on various discovery issues, and negotiated the substantive terms of the discovery confidentiality order and ESI protocol, which required guidance from and rulings by the Court. As part of discovery, Defendants produced, and Plaintiffs processed and reviewed approximately 22,000 documents containing more than 163,000 pages related to the recalls, the design and operation of the Fuel Pumps, warranty data, failure modes, Defendants' investigation into the alleged defect, and the recall countermeasure development and implementation. Additionally, Plaintiffs' automotive consultant sourced and inspected over 350 Denso Fuel Pumps, and analyzed their operation, specifications, and the density of their impellers.

In January 2023, with knowledge of the strengths and weaknesses of their respective positions, the Parties began to explore the possibility of a resolution of

this case. The Parties also continued to actively engage in discovery, including depositions of 14 named Plaintiffs, and extensive document review until March 28, 2023, when this Court stayed discovery in light of the Parties' settlement discussions. ECF No. 211. Defendants produced confirmatory discovery in aid of the settlement negotiations. Class Counsel's rigorous review and analysis of Defendants' productions and subsequent intense negotiations with Defendants culminated in 169,169 "Additional Vehicles" initially being included in the Settlement and eligible for Settlement benefits, bringing the population of Covered Vehicles to 528,852. Accordingly, on November 1, 2023, the Parties agreed on the substantive terms of this Settlement which were memorialized in a draft Settlement Agreement.

Subsequently, on February 16, 2024, 647,000 Additional Vehicles were added to the Settlement, thus bringing the total number of Covered Vehicles to approximately 1,175,000. On March 19, 2024, Defendants clarified that the exact number of Covered Vehicles is 1,388,532 (consisting of 359,683 Recalled Vehicles + 1,028,849 Additional Vehicles). These substantial, iterative expansions of the proposed Class are the result of the Parties' continued efforts to achieve fulsome, robust relief for the Class in this Settlement, which Plaintiffs are pleased to present to the Court for final approval.

III. SUMMARY OF THE SETTLEMENT

A. The Class

The Class for settlement purposes is comprised of all individuals or legal entities who, at any time as of the Initial Notice Date, own or owned, purchase(d) or lease(d) Covered Vehicles in any of the fifty States, the District of Columbia, Puerto Rico, and all other United States territories and/or possessions.

B. The Benefits of the Settlement

As part of the Settlement, Subaru, among other things, will implement a Customer Support Program in the form of an Extended New Vehicle Limited Warranty (“CSP”), an Extended Replacement Parts Limited Warranty (“Extended Warranty”), a Loaner/Towing Program, and an Out-of-Pocket Claims Process.⁴

Under these provisions, Class Members are entitled to the following relief:

<p>Customer Support Program</p>	<p>Coverage for repairs (including parts and labor) needed to correct defects in materials or workmanship in the Fuel Pumps of Additional Vehicles for a period of 15 years from the In-Service Date, (SA, § III.A.1), which is the date that the Additional Vehicle was originally sold or leased by a Subaru dealer. SA, § II.A.26.</p>
<p>Extended Replacement Parts Limited Warranty</p>	<p>A warranty extension of 15 years, measured from the replacement date, or 150,000 miles, whichever comes first, for the replacement Fuel Pumps installed in the Recalled Vehicles. SA, § III.B.1.</p>

⁴ Pursuant to the Settlement Agreement, Defendants began providing coverage under the CSP on September 24, 2024, in advance of the Final Effective Date. SA, § III.

<p style="text-align: center;">Loaner Vehicle/Towing</p>	<p>Upon request, Class Members are entitled to a complimentary Loaner Vehicle while their fuel pumps are being replaced or repaired under the Customer Support Program or Extended Replacement Parts Limited Warranty. SA, §§ III.A.2, III.B.2.</p> <p>Class Members can keep the Loaner Vehicle for 24 hours after they drop off their vehicle for repair, or after they are informed by Subaru that their vehicle is repaired, whichever is later.</p> <p>If the Covered Vehicle is inoperable or is exhibiting a dangerous condition, Class Members are entitled to a complimentary tow to a Subaru Dealer upon reasonable notice. SA, §§ III.A.2, III.B.2.</p>
<p style="text-align: center;">Out-of-Pocket Reimbursement</p>	<p>Class Members are entitled to submit claims for out-of-pocket expenses incurred to repair or replace a Fuel Pump in their Covered Vehicle(s), as well as rental vehicle and towing costs, that were not otherwise reimbursed and that were incurred prior to the date on which time to appeal from the Final Judgment has expired. SA, § III.C.</p>
<p style="text-align: center;">Technical Training</p>	<p>To ensure proper repair, technicians will be required to review technical training videos provided by Subaru, prior to performing any Fuel Pump repairs. SA, § III.G.</p>

The benefits under the CSP and Extended Warranty travel with the Covered Vehicle. SA, §§ II.A-B. The Settlement Agreement also includes a reconsideration procedure (SA, § III.D), Settlement oversight (SA, § III.F), and a release (SA, § VII.B) which is attached to the Long Form Notice and is posted on the Settlement Website.

C. Claim Submission and Administration

The Parties agreed to retain JND Legal Administration as the Settlement Administrator. SA, § II.A.38. The Settlement Administrator has implemented the

Notice Plan (discussed below), disseminated the CAFA notice to appropriate governmental officials, and is currently administering the Claims Process. *See* Declaration of Gina Intrepido-Bowden, Vice President of JND Legal Administration, LLC (“JND”) regarding Settlement Notice Plan Implementation, dated September 30, 2024 (“Intrepido-Bowden Decl.”) at ¶¶ 3-29. JND is responsible for the review and determination of reimbursement claims, and distribution of payments to eligible Claimants whose Claims are complete and have been approved under the Settlement terms. SA, at § III.C. Pursuant to the Settlement, the Defendants will pay all notice and administrative costs separate and apart from any benefits to which the Class Members may be entitled under the Settlement (*id.* § III). These costs will not be borne by Class Members.

The Settlement provides for a fair, equitable, and straightforward Claims Process for Class Members. For each complete and timely Claim that is approved, the Settlement Administrator will mail a reimbursement check to the Class Member within 60 days after approval of the Claim. S.A. § III.C. Significantly, the Settlement provides that if a Claim and/or its Supporting Documentation is incomplete or deficient, the Settlement Administrator will mail to the Class Member a letter or notice outlining the deficiencies and affording a 60-day period to cure them. *Id.* The Settlement Administrator’s decision is final; provided, however, that Class Counsel, Subaru’s Counsel, and Denso’s Counsel may meet and confer to resolve any denied

Claims. If Counsel jointly recommend payment of the rejected Claims or payment of a reduced Claim amount, then Subaru's Counsel and/or Denso's Counsel shall inform the Settlement Administrator, who shall then pay said Claims. *Id.*

The Class Notice and Claim Form, both of which were approved by the Court (ECF No. 240 at ¶¶ 10-12), and Settlement Website all provide the necessary details, including how and by when reimbursement Claims must be submitted, what information and documentary proof is required for a valid Claim, and how to contact the Settlement Administrator, or Class Counsel, with any questions or requests for assistance with respect to a Claim. Indeed, the Class Notice and Settlement Website provide the mailing address, the email address and a toll-free telephone number for Class Members to contact the Settlement Administrator.

Class Notice commenced on July 15, 2024 and was substantially completed on September 24, 2024. ECF No. 240, at ¶ 22; *see also* Intrepido-Bowden Decl. at ¶¶ 2-26. Any Class Member who wishes to opt out of the Settlement must do so according to the terms in the Settlement Agreement, set forth in § V(A), as approved by this Court and set forth in the Preliminary Approval Order (ECF 240 at ¶¶ 14, 16). Any Settlement Class Member who has not opted out of the Settlement in such a timely and proper manner will be deemed to be part of the Settlement Class and shall be bound by all subsequent proceedings, orders, and judgments. *Id.*

Under the Settlement Agreement, any potential Class Member who does not

opt out of the Settlement may object to the Settlement. To object, the Class Member must have complied with the procedures and deadlines in the Settlement Agreement, as approved by this Court and set forth in the Preliminary Approval Order (ECF 240 at ¶ 17).

The deadline for opting out or objecting to the Settlement is October 29, 2024. As ordered by the Court, Plaintiffs will supplement the final approval briefing to respond to requests for exclusion and objections, if any, on November 13, 2024. ECF 240, at ¶ 22.

D. Release of Claims/Liability

In consideration of the Settlement benefits, after the entry of the Final Order and Judgment, the Defendants and their related entities and affiliates (the “Released Parties,” as defined in SA, § I.A.36.), will receive a release of claims related to the Covered Vehicles’ Fuel Pumps, including the claims that were or could have been asserted in the litigation (the “Release,” as defined in SA, § VII). The scope of the Release reflects the issues, allegations and claims in this case, and specifically excludes claims for personal injury, wrongful death or physical property damage (other than damage to the Fuel Pump in the Covered Vehicle itself). *Id.*

IV. LEGAL ARGUMENT

A. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND SHOULD BE APPROVED

To grant final approval of a class settlement, Rule 23(e) requires a

determination by the district court that the proposed settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534 (3d Cir. 2004) (“*Warfarin Sodium*”). There is a strong judicial policy in favor of resolution of litigation before trial particularly in “class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. 468, 484 (E.D. Pa. 2010) (quoting *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010)); see also *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) (“*GMC Truck*”) (“The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.”). The *Ehrheart* court held:

This presumption is especially strong in “class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *GMC Truck*, 55 F.3d at 784. The strong judicial policy in favor of class action settlement contemplates a circumscribed role for the district courts in settlement review and approval proceedings. . . . Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts [and] the parties may also gain significantly from avoiding the costs and risks of a lengthy and complex trial.

Ehrheart, 609 F.3d at 594-95; see also *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1314 n.16 (3d Cir. 1993).

Settlements enjoy a presumption that they are fair and reasonable when, as in

this case, they are the product of arm's-length negotiations conducted by experienced counsel who are fully familiar with all aspects of class action litigation. *See, e.g., GMC Truck*, 55 F.3d at 785; *Sullivan v. DB Invs.*, 667 F.3d 273, 320 (3d Cir. 2011) (*en banc*); *In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 436 (3d Cir. 2019) (“We apply an initial presumption of fairness in reviewing a class settlement when: ‘(1) the negotiations occurred at arms 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.’”) (quoting *In re Cendant Corp. Sec. Litig.*, 264 F.3d 201, 232 n.18 (3d Cir. 2001)); *see also* Manual For Complex Litigation (Fourth) § 21.641 (2004).

A fair, reasonable and adequate settlement need not be the “ideal settlement.” A settlement is, after all, “a compromise, a yielding of the highest hopes in exchange for certainty and resolution.” *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 962 F. Supp. 450, 534 (D.N.J. 1997), *aff'd*, 148 F.3d 283 (3d Cir. 1998) (“*Prudential I*”).

As one court has noted:

[T]he court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned . . . The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.

Officers for Justice v. Civ. Serv. Comm’n, 688 F.2d 615, 625, 630 (9th Cir. 1982);

see also In re Am. Family Enters., 256 B.R. 377, 421 (D.N.J. 2000) (“[S]ignificant weight should also be given ‘to the belief of experienced counsel that [the] settlement is in the best interest of the class.’”); *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235 (D.N.J. 2000), *aff’d* 264 F.3d 201 (3d Cir. 2001).

The Third Circuit has adopted a nine-factor test to determine whether a settlement is “fair, reasonable, and adequate.” The elements of this test—known as the “*Girsh* factors”—are:

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

GMC Truck, 55 F.3d at 785 (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)); *see also In re NFL Players Concussion Injury Litig.*, 821 F.3d at 437 (affirming continued use of *Girsh* factors). “These factors are a guide and the absence of one or more does not automatically render the settlement unfair.” *In re Am. Family Enters.*, 256 B.R. at 418. Here, the Settlement meets each of these factors, and thus, should be approved.

B. The *Girsh* Factors Weigh in Favor of Approval

1. Continued Litigation Would Be Long, Complex, and Expensive

The first *Girsh* factor is whether the Settlement avoids a lengthy, complex and

expensive continuation of litigation. “This factor captures ‘the probable costs, in both time and money, of continued litigation.’” *Cendant*, 264 F.3d at 233-34. “Where the complexity, expense, and duration of litigation are significant, the Court will view this factor as favoring settlement.” *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *11 (D.N.J. Apr. 8, 2011). Courts consistently have held that the expense and possible duration of litigation are factors to be considered in evaluating the reasonableness of a settlement. *Lake v. First Nationwide Bank*, 900 F. Supp. 726, 732 (E.D. Pa. 1995); *Slade v. Shearson, Hammill & Co.*, 79 F.R.D. 309, 313 (S.D.N.Y. 1978); *see also GMC Truck*, 55 F.3d at 812 (concluding that lengthy discovery and ardent opposition from the defendant with “a plethora of pretrial motions” were facts favoring settlements, which offer immediate benefits and avoid delay and expense); *Yaeger v. Subaru of Am., Inc.*, 2016 WL 4541861, at *9 (D.N.J. Aug. 31, 2016) (observing that “where motor vehicles have a relatively short lifespan, there is a premium upon promptly finding a remedy for alleged defects to restore full enjoyment of the vehicle”).

Here, due to the factual and legal complexities involved in this case, continued litigation necessarily would be extremely expensive and time-consuming and would involve substantial factual and expert discovery around the country (and likely Japan) as well as significant motion practice. Trial would involve extensive pretrial motions involving complex questions of law and fact, and the trial itself would be

lengthy and complicated, and the result is uncertain. This favors the settlement of the litigation. *See Warfarin Sodium*, 391 F.3d at 536 (finding the first *Girsh* factor to weigh in favor of settlement after three years of litigation); *Weiss v. Mercedes-Benz of N. Am.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995) (approving settlement that was the “result of an arm’s length negotiation between two very capable parties” and where “Mercedes was prepared to contest this class action vigorously”). Post-trial motions and appeal would further delay resolution and increase costs. *Warfarin Sodium*, 391 F.3d at 536 (“[I]t was inevitable that post-trial motions and appeals would not only further prolong the litigation but also reduce the value of any recovery to the class.”); *In re Merck & Co., Vytarin ERISA Litig.*, 2010 WL 547613, at *7 (D.N.J. Feb. 9, 2010) (noting that additional costs associated with trial of multi-district class action and the delayed recovery for the class weighs in favor of settlement). Even if Plaintiffs were successful, the result could potentially be less than the very significant benefits afforded by this Settlement, and Defendants would undoubtedly appeal an adverse judgment, adding further time to a final resolution of this matter if it were litigated.

Under all of the circumstances, providing the Settlement Class Members with a certain result now, particularly as the mileage and years in service continue to accumulate or cars go out of service as a matter of course, rather than an uncertain result occurring years in the future, weighs in favor of approval of the Settlement.

For these reasons, the first *Girsh* factor weighs in favor of final approval of the Settlement.

2. The Reaction of the Class to the Settlement

The second *Girsh* factor “attempts to gauge whether members of the class support the Settlement.” *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 148 F.3d 283, 318 (3d Cir. 1998) (“*Prudential IP*”). To properly evaluate it, “the number and vociferousness of the objectors” must be examined. *GMC Truck*, 55 F.3d at 812. Generally, “silence constitutes tacit consent to the agreement.” *Id.* A “paucity of protestors . . . militates in favor of the settlement,” *See Bell Atl.*, 2 F.3d at 1314; *see also Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 119 (3d Cir. 1990) (objections by 29 members of a class comprised of 281 “strongly favors settlement”); *Prudential I*, 962 F. Supp. at 537 (small number of negative responses to settlement favors approval); *Weiss*, 899 F. Supp. at 1301 (100 objections out of 30,000 class members weighs in favor of settlement); *Yaeger*, 2016 WL 4541861, at *9 (“strongly positive” reaction of the class in case with 34 objectors and 2,328 opt-outs amount 577,860 class vehicles).

Here, there are approximately 1,388,532 Class Vehicles, and because vehicles may go through second and third owners, the actual number of mailed Notices exceeded 2.15 million. Intrepido-Bowden Decl. at ¶¶ 6-10. Because the deadline for Settlement Class Members to submit objections or requests for exclusion is October 29, 2024, Plaintiffs will address this *Girsh* factor in a supplemental filing on

November 13, 2024 as directed by the Court, ECF 240 at ¶ 22, in advance of the final approval hearing set for November 18, 2024.

3. The Stage of the Proceedings

The stage of the proceedings and the amount of discovery completed is another factor that courts consider in determining the fairness, reasonableness, and adequacy of a settlement. *GMC Truck*, 55 F.3d at 785; *Girsh*, 521 F.2d at 157. “This factor considers the degree of case development accomplished by counsel prior to settlement.” *Bredbenner*, 2011 WL 1344745, at *12. “Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.” *GMC Truck*, 55 F.3d at 813.

Most importantly, the appropriateness of a class settlement is not measured by the thickness of the file or an assessment of the amount of formal discovery taken. *See In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. 1981); *Handschu v. Special Servs. Div.*, 605 F. Supp. 1384, 1394 (S.D.N.Y. 1985); *Cendant*, 264 F.3d at 235-36; *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 241 (5th Cir. 1982). Such a rule, of course, would offend public policy—which encourages the early and effective resolution of complicated cases such as this.

Here, substantial discovery and exchanges of information have occurred, and as this Court held in granting preliminary approval of the Settlement, Class Counsel possessed sufficient information to assess the relative strengths and weaknesses of their case and negotiate a favorable settlement. ECF No. 240 at ¶ 8; *see also* ECF

No. 238-2 at ¶¶ 6-34.

Class Counsel examined Class Vehicle fuel pumps and retained and consulted with multiple experts to identify the issues in this case and have also reviewed and analyzed substantial discovery received from Defendants. ECF No. 238-2, ¶¶ 21-25, 30-31. As this Court already recognized, Class Counsel possessed a thorough understanding of the potential liability, damages, and class certification issues, which helped inform the Parties' negotiations and shape the Settlement. ECF No. 240, ¶¶ 4, 7-9; *see also* ECF No. 238-2 at ¶¶ 12-25, 46. As such, Class Counsel understood the merits, strengths and weaknesses, and could thus negotiate an appropriate Settlement. *See In re NFL Players Concussion Injury Litig.*, 821 F.3d at 438-439 (“[C]ounsel had an adequate appreciation of the merits of the case before negotiating.”). Moreover, some of the same Class Counsel here represented plaintiffs in *Cheng v. Toyota Motor Corp.*, 1:20-cv-00629-WFK-JRC (E.D.N.Y.), a substantially similar lawsuit involving the same allegedly defective Denso-made fuel pumps in certain Toyota vehicles which settled on December 20, 2022 with substantially similar relief. ECF No. 238-2 at ¶ 38. Accordingly, Class Counsel had the benefit of a well-developed understanding of the strengths and weaknesses of the current litigation. *Id.* ¶¶ 12-25, 38, 46. With this unique perspective, Class Counsel were able to assess the risks and benefits of the current litigation and gauge the resources, time, and expenses required to litigate this action through trial instead of

a Settlement that provides immediate and significant benefits to nearly 2.2 million current and former owners and lessees of the nearly 1.4 million Covered Vehicles, and countless others who may purchase or lease Covered Vehicles in the future and will be entitled to the Customer Support Program or the Extended Warranty that travels with the vehicles. *Id.*

Class actions alleging automotive defects present very complex and unique issues, especially as the cars continue to age and put on miles. Therefore, there can be no legitimate question that settlement is in the best interests of the class, *see Yaeger*, 2016 WL 4541861, at *9, as it enables the maximum number of Class Members to receive the tangible benefits of the Settlement without the substantial delays and uncertainties of litigation.

4. The Risks of Establishing Liability

“By evaluating the risks of establishing liability, the district court can examine what the potential rewards (or downside) of litigation might have been had class counsel elected to litigate the claims rather than settle them.” *GMC Truck*, 55 F.3d at 814. “The inquiry requires a balancing of the likelihood of success if ‘the case were taken to trial against the benefits of immediate settlement.’” *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 89 (D.N.J. 2001).

Although Class Counsel believe that the claims presented in this litigation are meritorious, they are experienced counsel who understand that the “the risks surrounding a trial on the merits are always considerable.” *Weiss*, 899 F. Supp. at

1301. Defendants have zealously defended against these claims, and would surely continue to do so if the litigation were to proceed. Although Plaintiffs vigorously disagree, Defendants have asserted numerous defenses to this Action which could bar completely, if not substantially reduce, all or many Class Members' potential recoveries under the various applicable states' laws, including: statutes of limitation, lack of standing, lack of manifestation of the alleged defect, lack of privity with Defendants, absence of a duty to disclose under applicable states' laws, absence of pre-sale knowledge of any alleged defect, lack of reliance or causation, "economic loss rule" bars to recovery, lack of recoverable damages and/or "ascertainable loss," and other statutory and common law complete or partial barriers to recovery that may be applicable to particular Class Members' claims.

In contrast, the Settlement here presents the Class with immediate, substantial, guaranteed relief. Further, although Plaintiffs are confident that their claims are legally sound, there is always the possibility that the Court or a jury may disagree. These risks include the potential denial of class certification, the granting of summary judgment, and loss at trial. Thus, these inherently unpredictable risks in establishing liability weigh in favor of settlement, particularly here, where the Settlement provides the Class with valuable monetary and equitable relief now.

5. The Risks of Establishing Damages

"Like the fourth factor, 'this inquiry attempts to measure the expected value of litigating the action rather than settling it at the current time.'" *Cendant*, 264 F.3d

at 238. The court looks at the potential damage award if the case were taken to trial against the benefits of immediate settlement. *Prudential II*, 148 F.3d at 319. In *Warfarin Sodium*, the trial court found that the risk of establishing damages strongly favored settlement, observing that “[d]amages would likely be established at trial through ‘a “battle of experts,” with each side presenting its figures to the jury and with no guarantee whom the jury would believe.’” *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256 (D. Del. 2002), *aff’d* 391 F.3d 516, 537 (3d Cir. 2004). Similarly, in *Cendant*, the Third Circuit reasoned that there was no compelling reason to think that “a jury confronted with competing expert opinions” would accept the plaintiff’s damages theory rather than that of the defendant, and thus the risk in establishing damages weighed in favor of approval of the settlement. *Cendant*, 264 F.3d at 239. The same is true here. The risks of establishing damages favor final approval.

6. The Risks of Maintaining the Class Action through Trial

The Court must measure the likelihood of obtaining and maintaining a certified class if the action were to proceed to trial. *Girsh*, 521 F.2d at 157. Class Counsel believe that this case is wholly appropriate for class certification in the litigation context. However, there is always a risk that this Court would find this action not suitable for class certification, or find it not suitable for litigation on a multi-state basis. For example, although Plaintiffs continue to believe that class certification is proper, Defendants no doubt would contend that numerous individual

factual and legal issues predominate and adversely affect the ability to certify a class in the litigation context, including the different conditions of each Covered Vehicle; the manner in which each vehicle was driven and maintained; accidents, events, damage to the vehicle and environmental factors that may impact the operation of the Fuel Pump; individual facts and circumstances of each Class Member's purchase or leasing of, and decision making concerning, his/her vehicle; what, if anything, each Class Member may have seen, heard or relied upon prior to purchase or lease; whether and to what extent any Class Member experienced any failure or malfunction of his/her Covered Vehicle's Fuel Pump; whether and to what extent any Class Member can establish any entitlement to damages or other relief; and other purported issues individual to each Class Member.

In sharp contrast, these issues do not preclude class certification for settlement purposes. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Sullivan*, 667 F.3d at 302-03 (“the concern for manageability that is a central tenet in the certification of a litigation class is removed from the equation” in the case of a settlement class); *In re Merck & Co.*, 2010 WL 547613, at *5 (citing *Warfarin Sodium*, 391 F.3d at 519) (manageability concerns that arise in litigation classes are not present in settlement classes); *O'Brien v. Brain Rsch. Labs, LLC*, 2012 WL 3242365, at *9 (D.N.J. Aug. 9, 2012) (“[B]ecause certification is sought for purposes of settlement and is not contested, the concerns about divergent proofs at trial that

underlie the predominance requirement are not present here.”); *Beneli v. BCA Fin. Servs., Inc.*, 324 F.R.D. 89, 96 (D.N.J. 2018) (same).

Further, even if class certification were granted in the litigation context, class certification can always be reviewed or modified before trial, so “the specter of decertification makes settlement an appealing alternative.” *O’Brien*, 2012 WL 3242365, at *18. Finally, even if a class is certified, there is no sure bet that Plaintiffs would prevail at trial. In other words, class litigation is inherently uncertain and subject to many twists and turns. Experienced counsel know this and, consequently, this factor weighs in favor of final approval.

7. Defendants’ Ability to Withstand Greater Judgment

Although there is no dispute that Defendants have ample resources, countless settlements have been approved where a settling defendant has had the ability to pay greater amounts, and the Third Circuit has noted that this fact alone does not weigh against settlement approval. *See, e.g., Warfarin Sodium*, 391 F.3d at 538. This factor is generally neutral when the defendant’s ability to pay greatly exceeds the potential liability, and was not a factor in settlement negotiations. *CertainTeed*, 269 F.R.D. at 489 (“[B]ecause ability to pay was not an issue in the settlement negotiations, this factor is neutral.”); *Warfarin Sodium*, 391 F.3d at 538 (“[T]he fact that [defendant] could afford to pay more does not mean that it is obligated to pay any more than what the . . . class members are entitled to under the theories of liability that existed at the time the settlement was reached.”); *Bredbenner*, 2011 WL 1344745, at *15

("[C]ourts in this district regularly find a settlement to be fair even though the defendant has the practical ability to pay greater amounts.").

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

The final two *Girsh* factors are the reasonableness of the Settlement in light of the best possible recovery, and all the attendant risks of litigation. As this Court has already held in granting Preliminary Approval, "the certification of the Settlement Class is appropriate when balanced against the risks and delays of further litigation." ECF No. 240, at ¶ 8. This Settlement offers real and robust economic benefits to Class Members including a Customer Support Program to provide coverage for repairs (parts and labor) needed to correct defects in the Fuel Pumps of Additional Vehicles (running from the In-Service Date), a warranty extension of 15 years, measured from the replacement date, and up to 150,000 miles, whichever comes first, for the replacement Fuel Pumps installed in Recalled Vehicles, a loaner vehicle and towing program so that Class Members do not have to drive their Covered Vehicle to the dealership for diagnosis if it is exhibiting a dangerous condition associated with the Fuel Pump, an easy Claims Process for out of pocket reimbursement for costs associated with the repair or replacement of a Fuel Pump in their Covered Vehicle (including towing and rental costs), and technical training of Subaru technicians to ensure proper repair techniques. Indeed, the prior settlement in *Cheng* involved terms that are substantially similar to the ones presented here, and

was determined to be fair and reasonable. *Cheng*, 1:20-cv-00629-JRC (E.D.N.Y. Dec. 20, 2022), ECF No. 192, at ¶ 11.

If this Action continued, Class Members might have received nothing if future rulings were unfavorable to the Class. *See* concurrently-filed Joint Declaration of Class Counsel in Support of Plaintiffs’ Motion for An Award of Attorneys’ Fees, Reimbursement of Expenses, and Class Representative Service Awards (“Jt. Decl.”), ECF No. 244-2, ¶¶ 42-43; *see also* ECF No. 238-1 at 17-21; ECF No. 240, ¶ 8. In summary, this factor weighs in favor of approval of the Settlement.

V. THE NOTICE PROGRAM SATISFIES DUE PROCESS

To protect the rights of absent members of the Class, the Court must ensure that all Class Members who would be bound by a class settlement are provided the best practicable notice. *See* Fed. Rule Civ. P. 23(e)(1)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985). The best practicable notice is that which is “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). Both the content and the means of dissemination of the notice must satisfy the “best practicable notice” standard.

The notice of a class settlement should: define the class; describe clearly the options open to the class members and the deadlines for taking action; describe the essential terms of the proposed settlement; disclose any special benefits provided to

the class representatives; provide information regarding attorneys' fees; indicate the time and place of the hearing to consider approval of the settlement, and the method for objecting to or opting out of the settlement; explain the procedures for allocating and distributing settlement funds, and, if the settlement provides different kinds of relief for different categories of class members, clearly set out those variations; provide information that will enable class members to calculate or at least estimate their individual recoveries; and prominently display the address and phone number of class counsel and the procedure for making inquiries. Manual For Complex Litigation (Fourth) § 21.312 (2004); *see also Cendant*, 109 F. Supp. 2d. at 254. The form and manner of Class Notice approved by this Court meets all of these requirements. ECF No. 240, ¶¶ 10-12.

This Court has approved the Parties' Notice Plan, holding "the mailing of the Direct Mail Notice in the manner set forth in the Settlement Agreement, as well as the establishment of a Settlement Website and other forms of notice provided in the Notice Plan (Exhibit 4 to the Settlement Agreement), satisfy Rule 23, due process, and constitute the best notice practicable under the circumstances." ECF No. 240, ¶ 10. As detailed above and in the Settlement Administrator's Declaration, the Notice Program here involved mailing 2,160,643 notices directly to potential Class Members. *See Intrepido-Bowden Decl.* at ¶ 10; *see also Jt. Decl.*, ECF No. 244-2, ¶ 37.

In addition, “CAFA notice” of the proposed Settlement was also served on the Attorney General of the United States and to the Attorneys General of the states where Class Members reside, pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715. Intrepido-Bowden Decl. at ¶ 5. The postmark deadline to object or request exclusion is October 29, 2024. ECF No. 240, ¶ 22. Class Counsel will respond to any objections by the Court-ordered deadline of November 13, 2024. *Id.*

The Settlement Administrator also established a national toll-free number so Class Members could hear instructions, request a notice to be mailed out to them, or to speak with a live operator. Intrepido-Bowden Decl. at ¶ 24. The Settlement Administrator also established a dedicated post office box and email address to receive and respond to inquiries from potential Class Members, (*id.* ¶¶ 24-26), and a Settlement Website featuring (1) a portal through which a person can enter the VIN number of a vehicle to confirm if it is a Covered Vehicle; (2) instructions on how to submit a Claim for reimbursement either by mail or online submission; (3) details about the lawsuit, the Settlement and its benefits, and the Class Members’ legal rights and options including objecting to or requesting to be excluded from the Settlement and/or not doing anything; (4) instructions on how and when to submit a Claim for reimbursement; (5) instructions on how to contact the Settlement Administrator, Defendants and Class Counsel for assistance; (6) a copy of the Claim Form, Long Form Notice, the Settlement Agreement, the Preliminary Approval

Motion and Order, the Class Counsel Fee and Expenses Application, other pertinent orders and documents; (7) 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 (8) answers to Frequently Asked Questions (FAQs). *Id.* ¶¶ 19-23; *see also* www.SubaruFuelPumpsSettlement.com. Thus, the Notice Program that the Court preliminarily approved was fully implemented and has informed the Class fully of their rights and benefits under the Settlement. The Notice to the Class unquestionably satisfies all due process requirements.

VI. THE SETTLEMENT CLASS SHOULD BE CERTIFIED

Class certification under Rule 23 has two primary components. First, the party seeking class certification must establish the four requirements of Rule 23(a):

(1) [N]umerosity (a “class [so large] that joinder of all members is impracticable”); (2) commonality (“questions of law or fact common to the class”); (3) typicality (named parties’ claims or defenses “are typical . . . of the class”); and (4) adequacy of representation (representatives “will fairly and adequately protect the interests of the class”).

Warfarin Sodium, 391 F.3d at 527. Second, the Court must find that the class fits within one of the three categories of class actions set forth in Rule 23(b). *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 302 (3d Cir. 2005). In the present case, Plaintiffs seek certification under Rule 23(b)(3), which requires that common questions “predominate over any questions affecting only individual members” and that class

resolution be “superior to other available methods for the fair and efficient adjudication of the controversy.” *Amchem*, 521 U.S. at 592-93. As detailed below, and as this Court determined in granting preliminary approval, all of the Rule 23 requirements are clearly satisfied for settlement purposes. ECF No. 240 at ¶ 7.

A. The Rule 23(a) Factors Are Met

1. Numerosity

Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is “impracticable.” *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 73 (D.N.J. 1993). For purposes of Rule 23(a)(1), “impracticable” does not mean impossible, “only that common sense suggests that it would be difficult or inconvenient to join all class members.” *See Prudential I*, 962 F. Supp. at 510; *see also Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001) (numerosity requirement satisfied “if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40”).

Here, the Class includes approximately 1,388,532 Covered Vehicles identified precisely by VIN numbers in Exhibits 1 and 2 to the Settlement Agreement. The potential number of Class Members, in this nationwide Settlement Class, is nearly 2.2 million individuals. Given the number and geographic distribution of the Class Members, joinder of all Class Members would be impracticable, and the proposed Settlement Class easily satisfies Rule 23’s numerosity requirement. *Liberty*, 149 F.R.D. at 73.

2. Commonality

“Rule 23(a)(2)’s commonality element requires that the proposed class members share at least one question of fact or law in common with each other.” *Warfarin Sodium*, 391 F.3d at 527-28. “Commonality does not require perfect identity of questions of law or fact among all class members. Rather, ‘even a single common issue will do.’” *Reyes v. Netdeposit, LLC*, 802 F.3d 469, 486 (3d Cir. 2015). Here, the Settlement Class Members share many common issues of law and fact.

In the context of consumer fraud and warranty-based class actions, a class asserting claims based on a common course of conduct and common warranty satisfies the commonality requirement. *Prudential I*, 962 F. Supp. at 511-14. The common questions of whether the Fuel Pumps are or were defective, whether Defendants were aware of the defects, and of whether the Plaintiffs and the Class were harmed by the alleged course of conduct, are capable of classwide resolution. Accordingly, all Class Members share the same causes of action and are alleged to have suffered the same or similar harm. Rule 23(a)(2)’s requirement of a common question of law or fact is satisfied for settlement purposes.

3. Typicality

In considering typicality under Rule 23(a)(3), the court must determine whether “the named plaintiffs’ individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based.” *Johnston v. HBO Film Mgmt.*,

Inc., 265 F.3d 178, 184 (3d Cir. 2001). Typicality does not require that all class members share identical claims. *Id.* So long as “the claims of the named plaintiffs and putative class members involve the same conduct by the defendant, typicality is usually established regardless of factual differences.” *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154, 183-84 (3d Cir. 2001).

Typicality is readily established here for settlement purposes. The proposed Class Representatives each purchased a Covered Vehicle with the same allegedly defective part and, among other claims, assert state consumer protection claims alleging that they paid too much at the point of sale due to Defendants’ common course of conduct. *Yaeger*, 2016 WL 4541861, at *6 (typicality satisfied where “plaintiffs allege that the class claims arise out of the same conduct of the defendants related to their design, manufacture, and sale of the class vehicles that suffered from an alleged oil consumption defect, and defendants’ alleged failure to disclose that material fact”). They also assert breach of warranty claims based on the same warranties, and strict liability claims arising from the same alleged defect. Accordingly, they allege the same injury and claims as the other Class Members, and the typicality requirement is satisfied.

4. Adequacy

The adequacy requirement has two components intended to ensure that the absent class members’ interests are protected: (a) the named plaintiffs’ interests must be sufficiently aligned with the interests of the class, and (b) the plaintiffs’ counsel

must be qualified to represent the class. *GMC Truck*, 55 F.3d at 800. Here, the requirements for adequacy are satisfied.

As for the first component, the Court must determine whether “the representatives’ interests conflict with those of the class.” *Johnston*, 265 F.3d at 185. There is no conflict between the proposed Class Representatives and the Class, because, as with all members of the Class, Plaintiffs seek compensation for the same alleged defect in the Covered Vehicles. Plaintiffs have no interests that are antagonistic to or in conflict with the Class they seek to represent and their alleged injuries are identical to those suffered by Class Members. *See Amchem*, 521 U.S. at 625-27 (courts look at whether the representatives’ interest are in any way antagonistic to or in conflict with those of the class members).

As far as the adequacy of counsel is concerned, the Class is represented by Carella Byrne, Seeger Weiss and Beasley Allen, as Class Counsel for the Settlement Class. ECF No. 240, ¶¶ 4, 7.

These firms are renowned in the class action field generally, and within automotive defect class litigation specifically, as demonstrated by the firm resumes contained in the Firm Declarations submitted in connection with the Motion for An Award of Attorneys’ Fees, Reimbursement of Expenses, And Class Representative Service Awards. *See* ECF Nos. 244-3 – 244-8. Accordingly, both prongs of the adequacy inquiry are satisfied.

B. The Rule 23(b)(3) Factors Are Met

In addition to meeting the requirements of Rule 23(a), the Class also must satisfy Rule 23(b)(3). The rule is satisfied here for settlement purposes. Questions of law or fact common to the Class Members predominate over any questions affecting only individual Class Members, especially in light of the proposed Settlement, which eliminates any individual issues. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

1. Predominance

Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members.” As the Supreme Court explained in *Amchem*, “[p]redominance is a test readily met in certain cases alleging consumer [fraud].” 521 U.S. at 625. “Common issues predominate when the focus is on the defendants’ conduct and not on the conduct of the individual class members.” *In re Mercedes-Benz Antitrust Litig.*, 213 F.R.D. 180, 187 (D.N.J. 2003); *see also Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013) (“Rule 23(b)(3), however, does *not* require a plaintiff seeking class certification to prove that every ‘element of her claim is susceptible to classwide proof.’”); *Cnty. Bank*, 418 F.3d at 309 (predominance requirement satisfied where “[a]ll plaintiffs’ claims arise from the same alleged fraudulent scheme”; “[t]he presence of potential state law or federal claims that were not asserted by the named plaintiffs does not defeat a finding of predominance”).

Here, all of the Class Members allege they have been injured by the same wrongful course of conduct. The common legal and factual questions, such as the existence of a design defect and/or materials defect in connection with the Covered Vehicles' Fuel Pumps and Defendants' alleged knowledge of it, are at the core of the litigation and are focused on the actions of Defendants, not Plaintiffs. *See Cheng*, 1:20-cv-00629-WFK-JRC (E.D.N.Y.), ECF 192, at ¶ 5(e) (finding predominance satisfied in case alleging a similar defect). Accordingly, predominance is satisfied for settlement purposes.

2. Superiority

Rule 23(b)(3) also requires that class resolution be “superior to other available methods for fairly and efficiently adjudicating the controversy.” The following factors are relevant to the superiority inquiry:

[A] [T]he class members' interests in individually controlling the prosecution or defense of separate actions, [B] the extent and nature of any litigation concerning the controversy already begun by or against class members, [C] the desirability or undesirability of concentrating the litigation of the claims in the particular forum, [D] the likely difficulties in managing a class action.

Id. at *7; *Danvers Motor Co. v. Ford Motor Co.*, 543 F.3d 141, 149 (3d Cir. 2008).

The superiority inquiry is simplified in the settlement context, because when certifying a settlement only class, the Court need not inquire whether the case, if tried, would pose intractable management problems; one purpose of the settlement is not to have a trial. *Amchem*, 521 U.S. at 620. Moreover, “[f]or the purposes of

settlement, concentrating litigation in one forum is desirable.” *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 234 (D.N.J. 2005). In making this analysis, the district court may take the proposed settlement into consideration. *Prudential II*, 148 F.3d at 308; *Warfarin Sodium*, 391 F.3d at 529 (“When dealing with variations in state laws, the same concerns with regards to case manageability that arise with litigation classes are not present with settlement classes, and thus those variations are irrelevant to certification of a settlement class.”).

Here, a class action is the superior method of resolving the Class Members’ claims for settlement purposes. All of the Class Members’ claims are based upon the same basic operative facts and substantially similar legal standards. Further, the Settlement provides Class Members the ability to obtain predictable, certain, and definite compensatory relief promptly and contains well-defined claim and administrative procedures to assure due process for each Class Member. By contrast, individualized litigation carries with it great uncertainty, risk, and costs, and provides no guaranty that injured Class Members will obtain necessary and timely compensatory relief at the conclusion of the litigation.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs’ Motion should be granted.

Dated: September 30, 2024

Respectfully submitted,
**CARELLA, BYRNE, CECCHI,
BRODY & AGNELLO, P.C.**

/s/ James E. Cecchi

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Email: Mitch.Williams@BeasleyAllen.com
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Class Counsel for the Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2024, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court, is available for viewing and downloading from the ECF system, and will be served by operation of the Court's electronic filing system (CM/ECF) upon all counsel of record.

s/ James E. Cecchi

James E. Cecchi

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

GILLES COHEN, JOHN MICKLO,
MUHAMMAD ADNAN, DONNY WOO,
BENJAMIN MOORE, MARY LOU PLANTE,
MEREDITH MEIN DE VERA, DAN
ROSENTHAL, IGOR KRAVCHENKO,
ALEXANDRA EFANTIS, BLAISE
FONTENOT, KATHERINE MUTSCHLER,
JACQUELINE FERGUSON, BENJAMIN
CHRISTENSEN, JENNIFER LILLEY,
STEVEN BIONDO, CHANTEL NELSON,
JACQUELINE BROCKMAN, MARTY
BROWN, CHRISTINE KING, KEVIN KING,
PAULA WEEKS, MARTIN
TORRESQUINTERO, COLE SWEETON,
TROY PERRY, CHRISTINE SCHULTZ,
KATHERINE GRIFFIN, JANET OAKLEY,
ADAM WHITLEY, ROBERT KARRAT,
DAVID SROELOV, CHIARA BANCOD-HILE,
and MARK GARDENER,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC. and DENSO
INTERNATIONAL OF AMERICA, INC.,

Defendants.

Civil Action No. 1:20-cv-08442-JHR-AMD

**DECLARATION OF
GINA INTREPIDO-BOWDEN
RE: SETTLEMENT NOTICE PLAN
IMPLEMENTATION**

I, GINA INTREPIDO-BOWDEN, declare and state as follows:

1. I am a Vice President at JND Legal Administration LLC (“JND”). I am a nationally recognized legal notice expert with more than 20 years of experience designing and implementing class action legal notice programs. I have been involved in many of the largest and most complex class action notice programs, including all aspects of notice dissemination.

2. JND is serving as the Settlement Administrator in the above-captioned matter, pursuant to the Court’s Order Granting Preliminarily Approval of Class Action Settlement (“Order”) dated July 11, 2024. ECF 240.

3. I previously submitted a Declaration Regarding Settlement Notice Plan on May 30, 2024. ECF 238-4. I submit this Declaration to describe the implementation of the Settlement Notice Plan to date.

NOTICE PLAN

4. The Notice Plan includes the following components, as further described in the sections below:

- a. CAFA Notice to appropriate state and federal officials;
- b. Direct mail notice to all Class Members for whom a valid postal address was obtained;
- c. Supplemental digital notice targeted specifically to Class Members using (1) a custom audience list of Class Member data via the Google Display Network (“GDN”), Facebook, and Instagram; and (2) Vehicle Identification Number (“VIN”) targeting through iHeart Automotive Connection (“IAC”);

d. Settlement website that provides detailed information about the Settlement and important case documents, including the Settlement Agreement and the Long Form Notice in both English and Spanish, a list of important deadlines, a VIN lookup tool to check vehicle eligibility, and a Claim Form that may be submitted electronically or printed and mailed; and

e. Settlement toll-free number, post office box, and email address through which Class Members are able to obtain more information about the Settlement and request that the Long Form Notice and/or Claim Form be sent to them.

CAFA NOTICE

5. On June 7, 2024, JND caused the Class Action Fairness Act (CAFA) Notice to be mailed to the appropriate state and federal government officials.

CLASS DATA

6. On May 16, 2024, JND received from Defendant Subaru of America, Inc. a list of 1,388,532 eligible VINs. Using the VINs, JND worked with third-party data aggregation services to acquire potential Class Members' contact information from the Departments of Motor Vehicles ("DMVs"). Data was received for 2,496,647 current and previous owners and lessees of the Covered Vehicles.

7. JND combined, analyzed, de-duplicated and standardized the data that it received from the Defendants and the DMVs to provide individual notice to virtually all Settlement Class Members. Through this process, JND identified 2,160,643 potential Settlement Class Members (including 895 Settlement Class Members who are current or former owners or lessees of more than 10 Settlement Class Vehicles).

8. JND promptly loaded the VINs and potential Settlement Class Member contact information into a case-specific database for the Settlement administration. A unique identification number was assigned to each Settlement Class Member record to identify them throughout the administration process.

DIRECT NOTICE EFFORT

9. Prior to mailing the Class Notice, JND updated the addresses through the U.S. Postal Service's ("USPS") National Change of Address ("NCOA") database.¹

10. On September 24, 2024, JND mailed the court-approved Class Notice to 2,159,748 Class Members. A representative sample of the Class Notice is attached as **Exhibit A**.

11. For 895 potential Settlement Class Member who had more than 10 VINs associated with their name and address, JND sent the Notice and a cover letter advising them of their options and how to contact JND to submit a bulk claim. A representative sample of the cover letter that accompanied the Class Notice is attached as **Exhibit B**.

12. JND will track all notices returned undeliverable by the USPS and will promptly re-mail notices that are returned with a forwarding address. In addition, JND will take reasonable efforts to research and determine if it is possible to reach a Class Member for whom a Class Notice is returned without a forwarding address, either by mailing to a more recent mailing address or using available advanced address search tools to identify a new mailing address by which the potential Class Member may be reached.

¹ The NCOA database is the official USPS technology product which makes changes of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream.

SUPPLEMENTAL DIGITAL NOTICE

13. On September 24, 2024, JND caused a supplemental digital effort to launch with GDN, Facebook, Instagram, and IAC.

14. Prior to launching the digital effort, JND provided GDN, Facebook, and Instagram with Class Member data containing phone numbers, postal addresses, and/or emails. GDN then matched the provided Class data with their own first-party data which they collect through Gmail, YouTube, Chrome registrations, etc. Likewise, Facebook/Instagram matched the provided data with their account user data. All matches were then added to a “Custom Audience” list. Ads are being served to the Custom Audience while they are active on GDN, Facebook, and Instagram from September 24, 2024 through October 21, 2024. Accounts identified as Spanish language accounts, are receiving notice in Spanish.

15. As of September 26, 2024, of the 20 million digital impressions planned, 1,167,274 digital impressions have been served.² JND will continue to monitor the digital activity through the October 21, 2024 campaign end date.

16. Screenshots of the digital notices as they appeared in English and Spanish on GDN, Facebook, and Instagram are attached as **Exhibit C**.

17. JND provided IAC with Class Member VINs. On September 24, 2024, IAC began to deploy 350,000 Email Notices to a matched list of the potential Class Members associated with

² Impressions or Exposures are the total number of opportunities to be exposed to a media vehicle or combination of media vehicles containing a notice. Impressions are a gross or cumulative number that may include the same person more than once. As a result, impressions can and often do exceed the population size.

the provided Class Member VINs.³ IAC began to deploy a follow-up Email Notice on September 27, 2024 to those email recipients who opened the September 24, 2024 Email Notice.⁴ IAC will begin deploying a second Email Notice on October 1, 2024 with a follow-up Email Notice starting on October 4, 2024 to those recipients who open the October 1, 2024 Email Notice. Additionally, IAC has agreed to begin deploying a third Email Notice on October 8, 2024 with a follow-up Email Notice starting on October 11, 2024 to those recipients who open the October 8, 2024 Email Notice for no additional cost.

18. The IAC Email Notice as sent, is attached as **Exhibit D**.

SETTLEMENT WEBSITE

19. On July 29, 2024, JND established the informational case-specific Settlement Website, www.SubaruFuelPumpsSettlement.com. The Settlement Website has an easy-to-navigate design and is formatted to emphasize important information and deadlines. It includes a page with answers to frequently asked questions, contact information, key dates, and links to important case documents, including the Long Form Notice in both English and Spanish, and the Settlement Agreement. The Settlement Website also includes information on how potential Class Members can opt-out of or object to the Settlement if they choose.

³ IAC deploys emails on a “drip” system to avoid white labeling (spam). It can take up to five days to fully deploy.

⁴ The original supplemental digital plan included banners ads being served via GDN to those potential Class Members who opened their IAC Email Notice; however, IAC has ceased implementing the GDN effort. Instead, IAC has agreed to send a third Email Notice deployment on October 8, 2024 with a third follow-up Email Notice on October 11, 2024 to those email recipients who open the October 8, 2024 Email Notice. The digital impressions that were to be served over GDN through IAC have been shifted to the original GDN, Facebook, and Instagram effort. Therefore, the overall digital impression delivery will remain the same, and a third IAC Email Notice and follow-up Email Notice will be deployed for no additional cost.

20. The Settlement Website features a VIN lookup tool and an online Claim Form (“OCF”) with document upload capabilities for the submission of claims. When a user logs into the OCF with their Unique ID, a prepopulated OCF with the Class Member’s name and VIN is provided. The Claim Form is also posted at the Settlement Website for download for Class Members who prefer to submit a claim form by mail.

21. The Settlement Website is ADA-compliant and optimized for mobile visitors so that information loads quickly on mobile devices. It is designed to maximize search engine optimization through Google and other search engines.

22. The Settlement Website is prominently displayed in all printed notice documents and it is accessible through the digital notices.

23. As of September 26, 2024, there have been 17,822 total views of the Settlement Website pages and documents and 10,058 unique visitors to the Settlement Website. JND will continue to maintain the Settlement Website throughout the Settlement administration process.

TOLL-FREE NUMBER, P.O. BOX, AND EMAIL ADDRESS

24. On July 29, 2024, JND established a 24-hour, toll-free telephone line (844-552-0070) for Class Members and other individuals to call to obtain additional information about the Settlement. Live operators are available during business hours to answer Class Members’ questions and assist with claim filing. As of September 26, 2024, JND has received 185 calls to toll-free line. JND will continue to maintain the toll-free line throughout the Settlement administration process.

25. JND has also established an email address that permits Class Members and other individuals to submit email inquiries to JND. As of September 26, 2024, JND has received 18

email communications received to the Settlement email address. JND will continue to maintain the email address throughout the Settlement administration process.

26. JND has also established a post office box to receive and respond to Class Member correspondence. JND will continue to maintain the post-office throughout the Settlement administration process.

NOTICE DESIGN AND CONTENT

27. The proposed notice documents are designed to comply with Rule 23's guidelines for class action notices and the FJC's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. The notices contain easy-to-read summaries of the instructions on how to obtain more information about the case and direct potential Class Members to the settlement website, where the Long Form Notice and other case documents are posted.

REACH

28. As of September 27, 2024, all notices have been mailed. JND estimates that the mailed notice alone will reach virtually the entire Class. The customized supplemental digital effort will further enhance that reach. The estimated reach is similar to that of other court approved programs and meets the standard set forth by the FJC.⁵

⁵ Federal Judicial Center, *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), p. 3 states: "...the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%."

CONCLUSION

29. JND will continue to implement the Notice Plan pursuant to the Settlement Agreement and the Court's Order.

I declare under the penalty of perjury pursuant to the laws of the United States of America and the State of New Jersey that the foregoing is true and correct.

Executed on September 30, 2024, at Stone Harbor, NJ.



GINA INTREPIDO-BOWDEN

- EXHIBIT A -

Notice of Proposed Class Action Settlement

Subaru Fuel Pumps Settlement

Case ID: Legal Administration

PO Box 91497

Seattle, WA 98111

If you currently or previously own(ed) or lease(d) certain 2017-2020 Subaru vehicles equipped with Denso fuel pumps, you may be entitled to benefits under a class action settlement.

This notice is being mailed to you because you have been identified as owning or leasing such a vehicle.

For information on the proposed settlement, and how and when to file a claim for reimbursement or object to or exclude yourself from the settlement, call toll-free 1-844-552-0070 or you may visit www.subarufuelpumpssettlement.com.

Si desea recibir esta notificación en español, llámenos o visite nuestra página web.

Do not contact the Court for information about the settlement.

«MailingBarcode»

Postal Service: Please do not mark barcode

«Printed_ID»

«Name»

«Address1»

«Address2»

«Address3»

«Address4»

«Address5»

«City», «State» «PostalCode»

«Country»

A Settlement has been reached in a class action lawsuit regarding Denso-manufactured low-pressure fuel pumps in certain Subaru vehicles.

Am I a Class Member?

You are a Settlement Class Member if you are a current or former owner or lessee of certain 2017-2020 Subaru vehicles equipped with a Denso fuel pump ("Covered Vehicles"), subject to certain exclusions. You can confirm whether your vehicle is included in the settlement, and that you are therefore a class member, by searching the VIN Lookup Tool on the Settlement Website: www.subarufuelpumpssettlement.com.

What benefits can I get from the settlement?

If the Court grants final approval, the Settlement provides (i) a Customer Support Program in the form of an Extended New Vehicle Limited Warranty providing coverage of 15 years, measured from In-Service Date, for repairs to correct defects in original equipment fuel pumps, and (ii) an Extended Replacement Parts Limited Warranty providing coverage of 15 years, measured from the replacement date, and up to 150,000 miles, whichever comes first, for replacement fuel pump assemblies pursuant to certain recalls. The Settlement also offers a complimentary Loaner/Towing Program for vehicles undergoing fuel pump repairs, and a reimbursement of certain out of pocket expenses. For further details, what is covered, the terms and conditions, and the requirements and deadline for submitting a claim for reimbursement, please refer to the full Class Notice on the Settlement Website.

How can I exclude myself from the class?

If you want to exclude yourself from the settlement, you must mail a request for exclusion with the required information **postmarked no later than October 29, 2024**. The requirements for a request for exclusion, and the addresses to whom it must be mailed, are set forth in the Long Form Class Notice on the Settlement Website at www.subarufuelpumpssettlement.com. If you timely and properly exclude yourself, you will not be eligible to receive any benefits of the settlement. If you do not timely and properly exclude yourself, you will remain part of the Settlement Class and will be bound by its terms and provisions including the Release and Waiver.

PageID: 4591
How can I object?

If you want to stay in the Settlement Class but object to any aspect of the settlement, you must file an objection with the Court with the required information **no later than October 29, 2024**. For further information and instructions on the requirements for an objection, and when and how to file one, refer to the settlement website and the Long Form Class Notice.

Do I have a lawyer in this case?

Yes. The Court has appointed the law firms of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., Seeger Weiss LLP, and Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. to represent you and the Class. These attorneys are called Class Counsel. You will not be charged for their services. If you would like to retain your own counsel you may do so at your own expense.

The Court's Final Fairness Hearing.

The Court will hold a Final Fairness Hearing on **November 18, 2024 at 10:00 am ET**, at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Courtroom 5D, Camden, NJ 08101 to consider whether to approve (1) the settlement; (2) Class Counsel's request for Attorneys' fees and costs of \$15,500,000; and (3) Named Plaintiffs Service Awards of up to \$3,750. The date of the hearing may change without further notice so please visit www.subarufuelpumpssettlement.com for updated information.

Where can I get more information?

Please visit the Settlement Website at www.subarufuelpumpssettlement.com or call toll free 1-844-552-0070 to obtain more complete information about the proposed settlement and your rights.

Please do not contact the Court regarding this Notice.

YOUR VIN:	<<VIN>>
YOUR UNIQUE ID:	<<UniqueID>>
YOUR PIN:	<<Pin>>
PLEASE REFER TO YOUR UNIQUE ID AND PIN TO FILE A CLAIM	



Carefully separate this Address Change Form at the perforation

PageID: 4592

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 Fuel Pumps Settlement
c/o JND Legal Administration
P.O. Box 91497
Seattle, WA 98111

- EXHIBIT B -

Subaru Fuel Pumps Settlement
c/o JND Legal Administration
PO Box 91497
Seattle, WA 98111

«Printer_ID»

Data contains unsupported character(s).

«Name»
«AddressLine1»
«AddressLine2»
«AddressLine3»
«AddressLine4»
«AddressLine5»
«City», «State» «PostalCode»
«Country»

September 24, 2024

Subaru Fuel Pumps Settlement – Claim Filing Assistance for Owners or Lessees of more than 10 Covered Vehicles

Dear «Fullname»,

You are receiving this letter because you may be eligible for benefits in a proposed class action settlement in a class action lawsuit called *Cohen, et al. v. Subaru of America, Inc., et al.*, No. 1:20-cv-08442-JHR-AMD (D.N.J.). The Settlement provides benefits to current or former owners or lessees of certain 2017-2020 Subaru vehicles equipped with a Denso fuel pump (“Covered Vehicles”), subject to certain exclusions.

The Court granted preliminary approval of the Settlement on July 11, 2024, 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.SubaruFuelPumpsSettlement.com.

DMV records indicate that you may have owned or leased more than 10 Covered Vehicles. Settlement benefits are further described in the enclosed notice, which include reimbursement for certain out-of-pocket expenses related to fuel pump repairs. To qualify for reimbursement, you will need to submit a claim. A special process has been established to facilitate the bulk filing of claims for Class Members with more than 10 Covered Vehicles. To submit a bulk claim, please email info@SubaruFuelPumpsSettlement.com or call 1-844-552-0070, and a representative specializing in bulk claims will assist you.

The Court will hold a Final Fairness Hearing on November 18, 2024 at 10:00 am ET, at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Courtroom 5D, Camden, NJ 08101. The date of the hearing may change without further notice, so please visit the Settlement Website regularly for updates.

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.SubaruFuelPumpsSettlement.com.

Regards,

Subaru Fuel Pumps Settlement Administrator

Notice of Proposed Class Action Settlement

If you currently or previously own(ed) or lease(d) certain 2017-2020 Subaru vehicles equipped with Denso fuel pumps, you may be entitled to benefits under a class action settlement.

This notice is being mailed to you because you have been identified as owning or leasing such a vehicle.

A Settlement has been reached in a class action lawsuit regarding Denso-manufactured low-pressure fuel pumps in certain Subaru vehicles.

Am I a Class Member?

You are a Settlement Class Member if you are a current or former owner or lessee of certain 2017-2020 Subaru vehicles equipped with a Denso fuel pump ("Covered Vehicles"), subject to certain exclusions. You can confirm whether your vehicle is included in the settlement, and that you are therefore a class member, by searching the VIN Lookup Tool on the Settlement Website: www.subarufuelpumpssettlement.com.

What benefits can I get from the settlement?

If the Court grants final approval, the Settlement provides (i) a Customer Support Program in the form of an Extended New Vehicle Limited Warranty providing coverage of 15 years, measured from In-Service Date, for repairs to correct defects in original equipment fuel pumps, and (ii) an Extended Replacement Parts Limited Warranty providing coverage of 15 years, measured from the replacement date, and up to 150,000 miles, whichever comes first, for replacement fuel pump assemblies pursuant to certain recalls. The Settlement also offers a complimentary Loaner/Towing Program for vehicles undergoing fuel pump repairs, and a reimbursement of certain out of pocket expenses. For further details, what is covered, the terms and conditions, and the requirements and deadline for submitting a claim for reimbursement, please refer to the full Class Notice on the Settlement Website.

How can I exclude myself from the class?

If you want to exclude yourself from the settlement, you must mail a request for exclusion with the required information **postmarked no later than October 29, 2024**. The requirements for a request for exclusion, and the addresses to whom it must be mailed, are set forth in the Long Form Class Notice on the Settlement Website at www.subarufuelpumpssettlement.com. If you timely and properly exclude yourself, you will not be eligible to receive any benefits of the settlement. If you do not timely and properly exclude yourself, you will remain part of the Settlement Class and will be bound by its terms and provisions including the Release and Waiver.

How can I object?

If you want to stay in the Settlement Class but object to any aspect of the settlement, you must file an objection with the Court with the required information **no later than October 29, 2024**. For further information and instructions on the requirements for an objection, and when and how to file one, refer to the settlement website and the Long Form Class Notice.

Do I have a lawyer in this case?

Yes. The Court has appointed the law firms of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., Seeger Weiss LLP, and Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. to represent you and the Class. These attorneys are called Class Counsel. You will not be charged for their services. If you would like to retain your own counsel you may do so at your own expense.

The Court's Final Fairness Hearing.

The Court will hold a Final Fairness Hearing on **November 18, 2024 at 10:00 am ET**, at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Courtroom 5D, Camden, NJ 08101 to consider whether to approve (1) the settlement; (2) Class Counsel's request for Attorneys' fees and costs of \$15,500,000; and (3) Named Plaintiffs Service Awards of up to \$3,750. The date of the hearing may change without further notice so please visit www.subarufuelpumpssettlement.com for updated information.

Where can I get more information?

Please visit the Settlement Website at www.subarufuelpumpssettlement.com or call toll free 1-844-552-0070 to obtain more complete information about the proposed settlement and your rights.

Please do not contact the Court regarding this Notice.


- EXHIBIT C -

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service warns


- **Visuals:** How the 2024 hurricane season compares to past years
- **En español:** Sigue nuestra cobertura en vivo del huracán Helene
- **Stay informed:** Low-bandwidth connection? Try CNN's lite site




Parts of Florida already underwater as Helene approaches



Why coastal communities should fear storm surge



A hurricane destroyed her home. Homeowners insurance paid her just \$8,000



The Rust Belt manufacturing collapse devastated their communities. Two men explain who they're supporting for president

Caitlin Clark's spectacular rookie season comes to an end

The hidden dangers around drinking non-alcoholic beverages ⌚ 1:23

This US couple relocated to Italy after retiring. It didn't go according to plan

Mandy Moore welcomes third child

This group is reaching Gen Z voters with games and data ⌚ 2:05

MORE TOP STORIES

Murdoch family holds its breath as future of media empire hangs in the balance

Rudy Giuliani disbarred in DC as part of 2020 election lies fallout


Port workers from Maine to Texas are set to strike next week. Expect shortages and higher prices

These are the criminal charges a Haitian nonprofit group is seeking to file against Trump and Vance ⌚ 2:30

Putin issues nuclear warning to the West over strikes on Russia from Ukraine

US expected to charge two Russians accused of running billion-dollar money laundering schemes

ON THE CAMPAIGN TRAIL



Melania Trump again raises questions about Butler shooting while recounting the moments she learned of assassination attempts

- CNN reporter breaks down notable moments from Melania Trump's Fox News interview ⌚ 2:50

LEGAL NOTICE

Current or former owners/lessees of certain SUBARU vehicles equipped with Denso fuel pumps may get benefits from a class action settlement

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Helene live updates: Forecast to hit Florida as Category 4 tonight

Models threaten a storm surge of up to 20 feet for parts of Florida's Gulf Coast.


Flooding dangers for hundreds of miles ▶

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5. Sean 'Diddy' Combs
6. Presidents Cup
7. NFL Week 4 Predi...
8. Pet Food Recall
9. Megalopolis
10. The Golden Bach...




DWTS drama as Cheryl Burke tells off Anna Delvey after her exit




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FDA issues warning over pet food contaminated with salmonella and listeria

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Texas Sen. Ted Cruz (R) vented his frustration on the Senate floor Wednesday evening after Sen. Cory Booker (D-N.J.), in an unusual exchange, objected to a bipartisan bill sponsored by...

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Who Has the Cheapest Car Insurance in Florida (Check Zip Code)

You could grab deep discounts on car insurance if you're currently insured, have 3 years without a ticket, no DUIs, and drive less than 50 miles per day.

LEGAL NOTICE

Current or former owners/lessees of certain SUBARU vehicles equipped with Denso fuel pumps may get benefits from a class action settlement

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TODAY'S TOP STORIES



Spotting The Signs Of Crohn's Disease

Crohn's disease symptoms can differ greatly depending on the individual and the area of the GI tract that is affected. Take a look at the range of symptoms that may be related to Crohn's disease.



Is The Nasal Flu Spray Better Than The Shot?



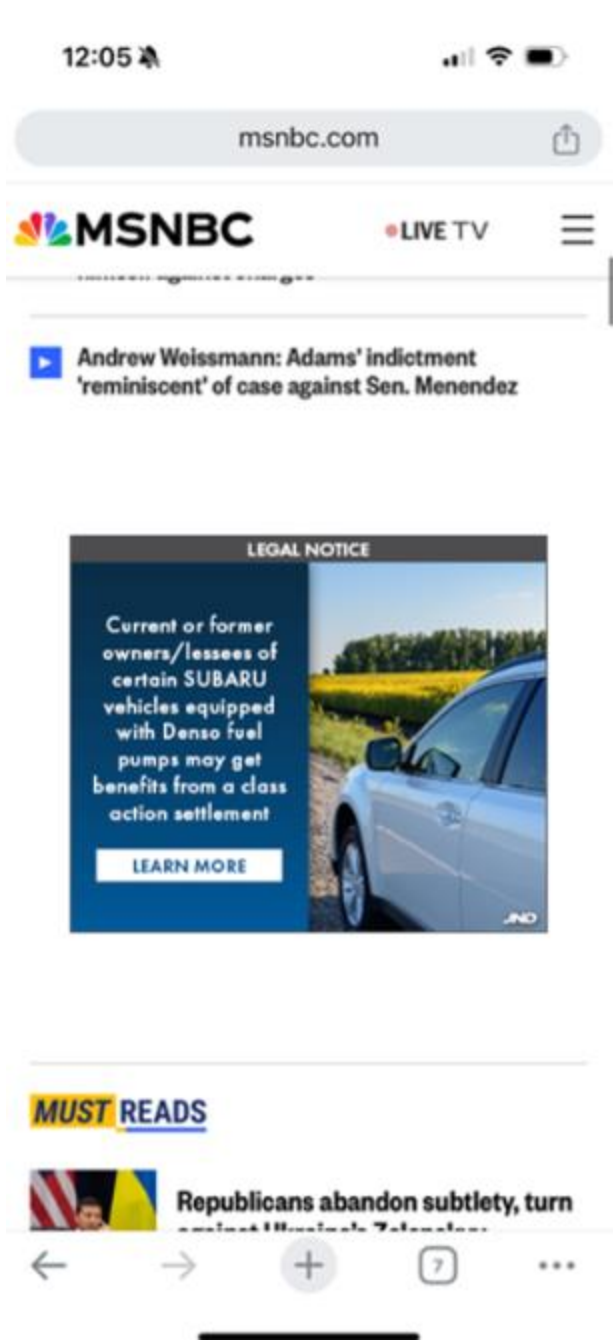
Causes of Fall Allergies



Wilderness Therapy Programs: Safe Haven or Risky Venture?

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LEGAL NOTICE Current or former owners/lessees of certain SUBARU vehicles equipped with Denso fuel pumps may get benefits from a class action settlement [LEARN MORE](#) 



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¿Cómo el mexicano Diego Ortiz llegó a ser coach en la NFL?

En el mes de la Herencia Hispana te contamos la historia de Diego Ortiz, quien se convirtió en el primer mexicano que se integra a un staff de entrenadores de la NFL.

By Alfonso Marcella y Eric Gómez | ESPN

Diego Ortiz, las virtudes que lo llevaron a la NFL

2:28

TITULARES

- Steelers declinan nombrar a Fields como titular permanente
- Cardinals pierden por la temporada a Jones
- NFL impone suspensión a Derwin James de Chargers
- Raiders aún consideran un cambio de mariscal
- Canales insiste en que Dalton será QB titular de Panthers
- LaPorta, de Lions, sufrió esguince de tobillo, fuentes
- Darnold de Vikings no bene daño estructural en la rodilla
- Eagles pierden a Smith, Johnson por conmociones

AVISO LEGAL

Propietarios actuales o anteriores/ arrendatarios de ciertos vehículos de SUBARU equipados con bombas de combustible Denso pueden obtener beneficios de un acuerdo de demanda colectiva

APRENDE MÁS

NFL 2024: Fantasy Football

EL FOOTBALL ES ANTASY LAS HISTORIAS SON REALES.

¡PARTICIPA EN EL JUEGO DE FANTASY!

APRENDE MÁS

Participa en el Juego de Fantasía Número 1 en el

weather.com/es-US/

Historias principales

Huracán Helene 11:00 AM EDT

105 mph Cat 2
Presión: 982 mb
Velocidad: 140 a 144 mph
Posición: 200 millas al SW de Tampa, FL

Helene se Intensifica en el Golfo Antes de Tocar Tierra en Florida

- Helene Golpea a Cancún y Apunta a Florida
- Tormenta John Tocarà Tierra de Nuevo Cerca de Acapulco
- Helene es Ahora un Huracán de Categoría 1
- Gob. DeSantis Declara Emergencia por Helene

Más Noticias

Helene Deja Turistas Atrapados en el Aeropuerto de Cancún

Helene se Fortalece y se Convierte en Huracán de Categoría 2

Lo Último sobre el Huracán Helene

AVISO LEGAL

Propietarios actuales o anteriores/ arrendatarios de ciertos vehículos de SUBARU equipados con bombas de combustible Denso pueden obtener beneficios de un acuerdo de demanda colectiva

APRENDE MÁS

Huracán Helene

univision.com

Flórida se prepara para el azote de Helene, que está cerca de ser un huracán de categoría 3

- En Florida: autoridades en condados de Hillsborough, Pinellas y Leon urgen a residentes a evacuar sus hogares
- Lluvias e inundaciones de hasta 8 pulgadas: el golpe de Helene en Cuba
- Los vientos de Helene están cerca de alcanzar la categoría 3

10 años del caso Ayotzinapa: "Un crimen de Estado" con más de 100 detenidos y ningún condenado

8 MIN DE LECTURA



¡Por fin! La Liga MX da golpe a la MLS, de la mano del América

2 MIN DE LECTURA

Nodal revela cómo le va la "vida de casado" con Ángela Aguilar

5:51




Ponte al día

Disfruta de los últimos capítulos de tus novelas y shows favoritos

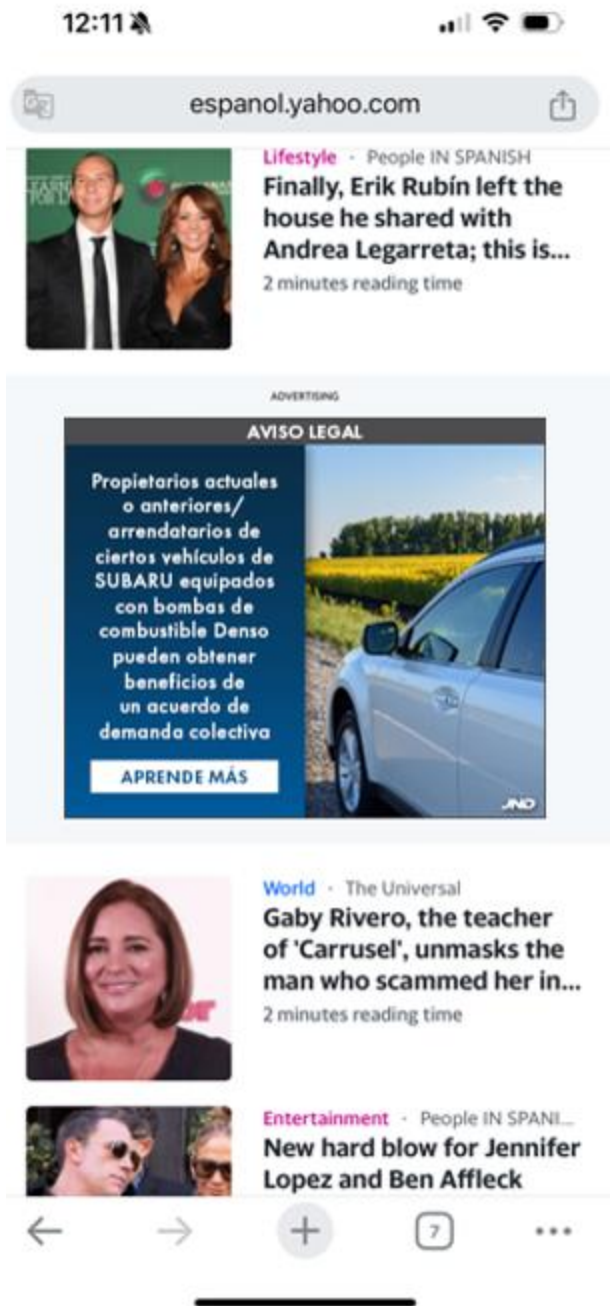


ABSOLUTAMENTE LEGAL Propietarios actuales o anteriores/ arrendatarios de ciertos vehículos de SUBARU equipados con bombas de combustible Denso pueden obtener beneficios de un acuerdo de demanda colectiva

APRENDE MÁS

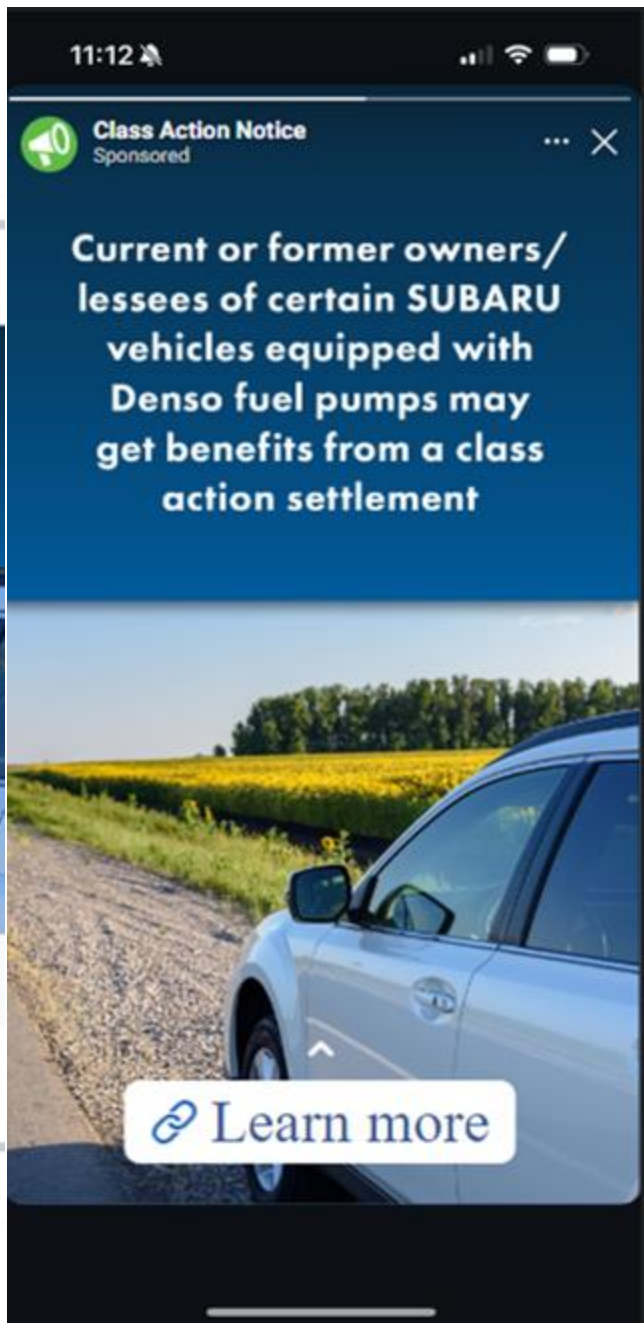
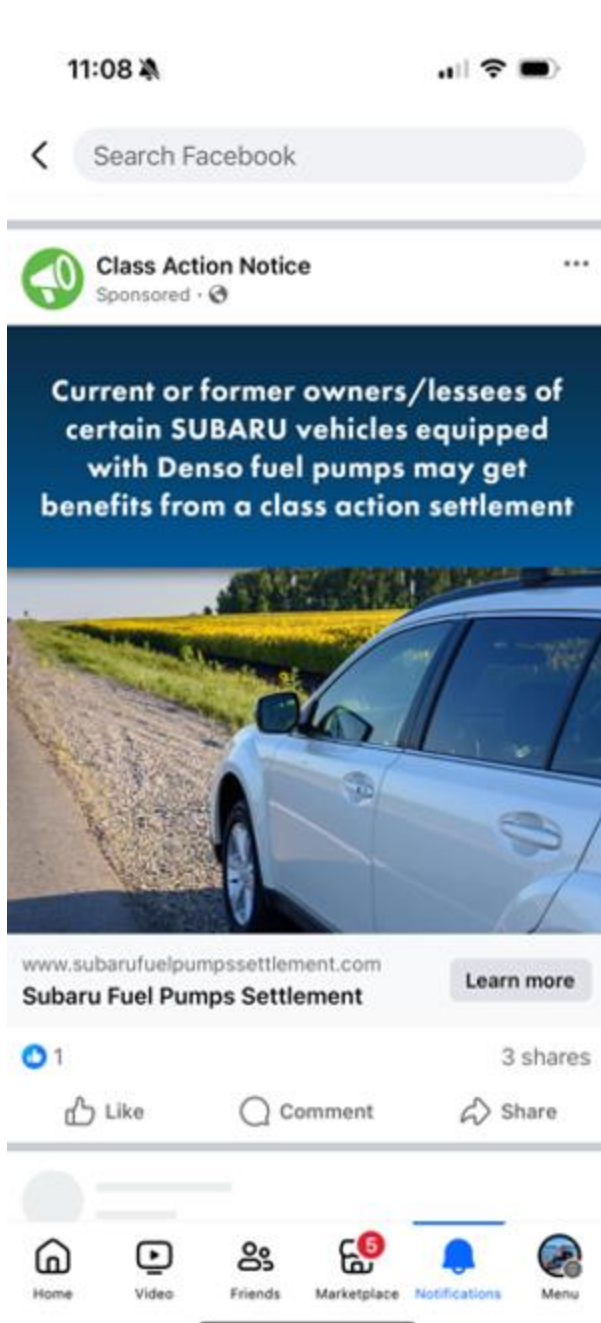


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Facebook – English

The screenshot shows a Facebook interface with a central sponsored post. The post features a blue header with white text: "Class Action Notice sponsored (denso)". Below the header is a large image of a white Subaru SUV parked on a gravel path next to a field of yellow flowers. The text overlaid on the image reads: "Current or former owners/lessees of certain SUBARU vehicles equipped with Denso fuel pumps may get benefits from a class action settlement". Below the image, the URL "WWW.SUBARUFUELPUMPSSETTLEMENT.COM" is displayed, followed by the page name "Subaru Fuel Pumps Settlement" and a "Learn more" button. The post shows 1 like and 3 shares. The left sidebar contains navigation options like "Rachel Greenberg", "Friends", "Memories", "Saved", "Groups", "Videos", "Marketplace", "Feeds", and "See more". The right sidebar shows "Sponsored" ads for "Minecraft Club for Kids" and "Restock Alert", and "Your Pages and profiles" with options for "19 Messages", "Switch to Page", and "Create promotion".



Facebook – Spanish

The screenshot shows a Facebook interface with a central sponsored post. The post features a blue header with white text: "Proprietarios actuales o anteriores/ arrendatarios de ciertos vehiculos de SUBARU equipados con bombas de combustible Denso pueden obtener beneficios de un acuerdo de demanda colectiva". Below the text is a photograph of a silver Subaru driving on a gravel road through a field of yellow flowers. The post includes a URL "WWW.SUBARUFUELPUMPSSETTLEMENT.COM" and the text "Aviso de Demanda Colectiva". At the bottom of the post are icons for "Like", "Comment", and "Share".

Class Action Notice
Sponsored (demo)

Proprietarios actuales o anteriores/
arrendatarios de ciertos vehiculos de SUBARU
equipados con bombas de combustible Denso
pueden obtener beneficios de un acuerdo de
demanda colectiva

WWW.SUBARUFUELPUMPSSETTLEMENT.COM
Aviso de Demanda Colectiva

Like Comment Share

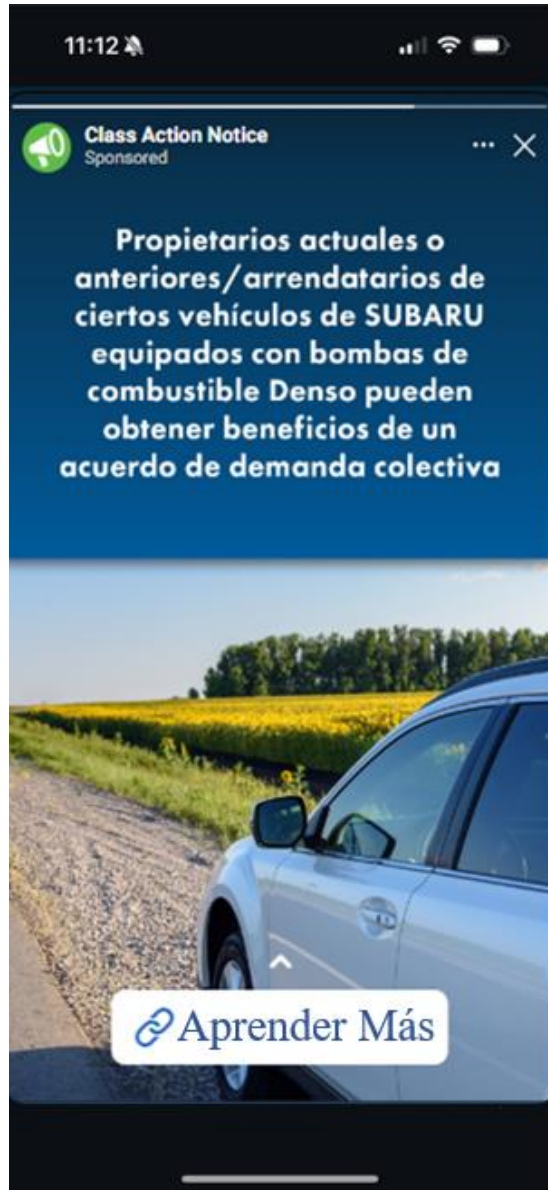
Sponsored

- Minecraft Club for Kids 9-12 | Join Minecraft Club | 4 - 6 pm | Ages 7 to 12 | joinmcs.com
- Restock Alert | restockstyle.com

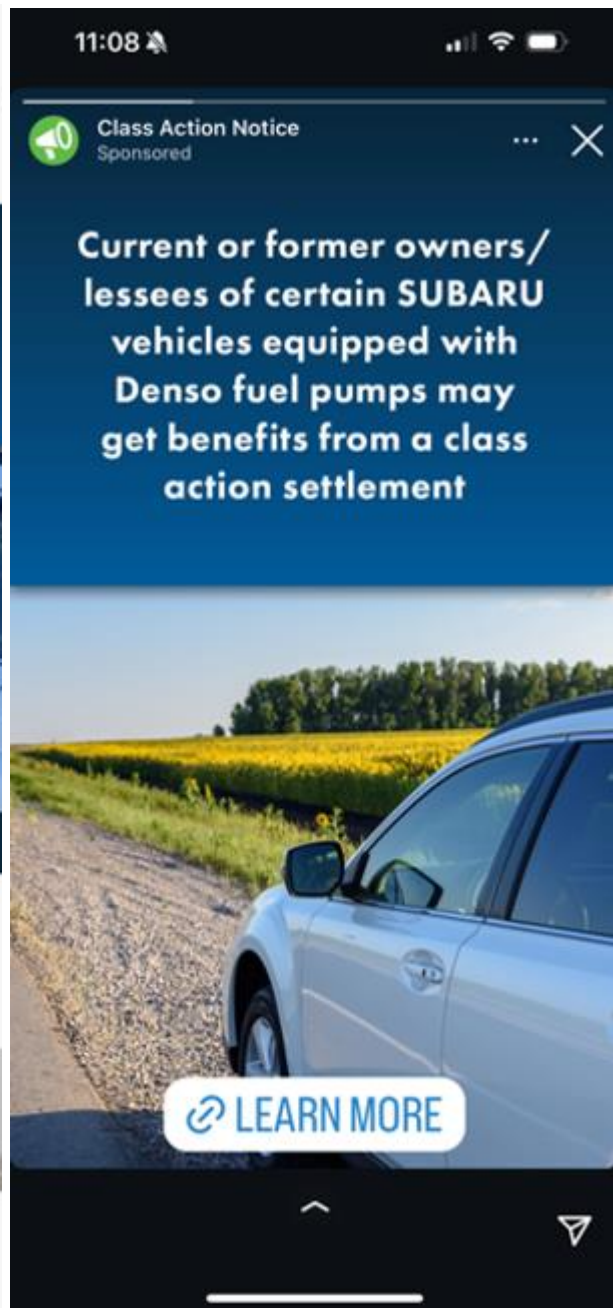
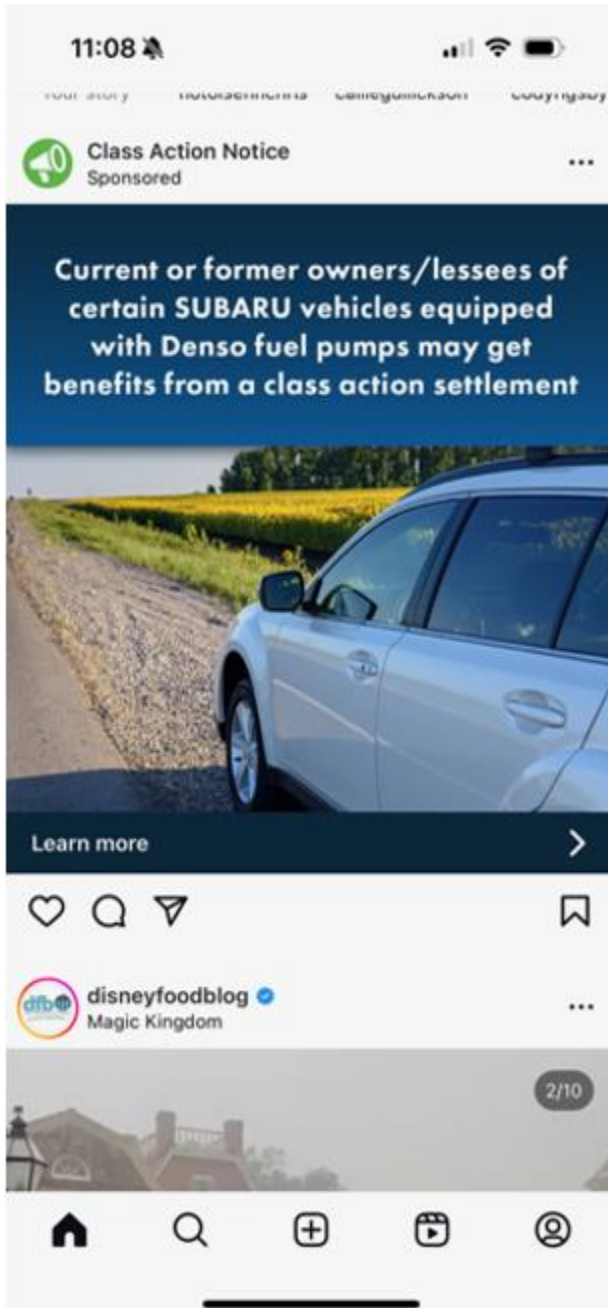
Your Pages and profiles

- 18 Messages
- Switch to Page
- Create promotion

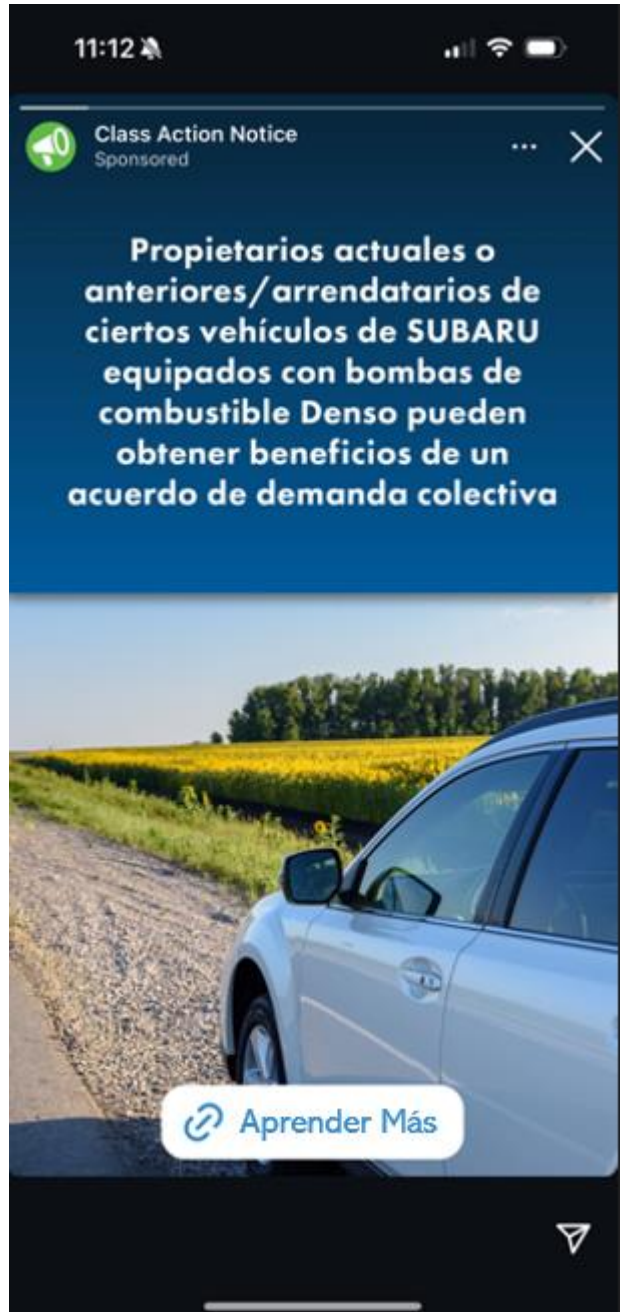
Contacts



Instagram – English



Instagram - Spanish



- EXHIBIT D -

From: Class Action Lawsuits <Broadcast@Safe-Mail-Sender.com>
Sent: Tuesday, September 24, 2024 6:49 PM
To: [REDACTED]
Subject: Rachel, Subaru Fuel Pumps Settlement – You May Be Entitled to Benefits

Rachel, File a claim at www.SubaruFuelPumpsSettlement.com

If you currently or previously own(ed) or lease(d) certain 2017-2020 Subaru vehicles equipped with Denso fuel pumps, you may be entitled to benefits under a class action settlement.

To file a claim, please refer to the Unique ID and PIN included on the Postcard Notice you received in the mail.

Para una notificación en español, visite www.SubaruFuelPumpsSettlement.com o llame al 1-844-552-0070.

What is this about?

The name of the lawsuit is Cohen, et al. v. Subaru of America, Inc., et al., Case No. 1:20-cv-08442-JHR-AMD (D.N.J.) (the "Action"). The defendants are Subaru of America, Inc. and Denso International America, Inc. This email explains the lawsuit, the settlement, and your legal rights. You are NOT being sued. The Court still has to decide whether to finally approve the Settlement. Please be patient and check the Settlement Website regularly at www.SubaruFuelPumpsSettlement.com. Please do not contact the Court. All questions should be directed to the Settlement Administrator, identified below.

The class action lawsuit claims that certain Subaru vehicles are equipped with Denso-manufactured low-pressure fuel pumps that may contain a defect. The lawsuit asserts that such defects may potentially cause those fuel pumps to malfunction or become inoperative and pursues claims for violations of various state consumer protection statutes, among other claims. You can read the class action complaint by visiting www.SubaruFuelPumpsSettlement.com. Subaru and Denso deny the claims and any right to relief, deny that they have violated any law, and deny that they engaged in any wrongdoing. The parties agreed to resolve these matters before these issues were decided by the Court.

This settlement does not involve claims of personal injury, wrongful death, or actual physical property damage arising from the Covered Vehicles.

Am I a Class Member?

You are a Settlement Class Member if you are a current or former owner or lessee of certain 2017-2020 Subaru vehicles equipped with a Denso fuel pump ("Covered Vehicles"), subject to certain exclusions. You can confirm whether your vehicle is included in the settlement, and that you are therefore a class member, by searching the VIN Lookup Tool on the Settlement Website: www.SubaruFuelPumpsSettlement.com.

What benefits can I get from the settlement?

If the Court grants final approval, the Settlement provides (i) a Customer Support Program in the form of an Extended New Vehicle Limited Warranty providing coverage of 15 years, measured from In-Service Date, for repairs to correct defects in original equipment fuel pumps, and (ii) an Extended Replacement Parts Limited Warranty providing coverage of 15 years, measured from the replacement date, and up to 150,000 miles, whichever comes first, for replacement fuel pump assemblies pursuant to certain recalls. The Settlement also offers a complimentary Loaner/Towing Program for vehicles undergoing fuel pump repairs, and a reimbursement of certain out of pocket expenses. For further details, what is covered, the terms and conditions, and the requirements and deadline for submitting a claim for reimbursement, please refer to the full Class Notice on the Settlement Website: www.SubaruFuelPumpsSettlement.com.

Your other options.

- ✓ **How can I exclude myself from the class?** If you want to exclude yourself from the settlement, you must mail a request for exclusion with the required information postmarked no later than **October 29, 2024**. The requirements for a request for exclusion, and the addresses to whom it must be mailed, are set forth in the Long Form Class Notice on the Settlement Website at www.SubaruFuelPumpsSettlement.com. If you timely and properly exclude yourself, you will not be eligible to receive any benefits of the settlement. If you do not timely and properly exclude yourself, you will remain part of the Settlement Class and will be bound by its terms and provisions including the Release and Waiver.
- ✓ **How can I object?** If you want to stay in the Settlement Class but object to any aspect of the settlement, you must file an objection with the Court with the required information no later than **October 29, 2024**. For further information and instructions on the requirements for an objection, and when and how to file one, refer to the settlement website and the Long Form Class Notice.

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

Do I have a lawyer in this case?

Yes. The Court has appointed the law firms of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., Seeger Weiss LLP, and Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. to represent you and the Class. These attorneys are called Class Counsel. You will not be charged for their services. If you would like to retain your own counsel you may do so at your own expense.

What happens next?

The Court will hold a Final Fairness Hearing on **November 18, 2024 at 10:00 am ET**, at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Courtroom 5D, Camden, NJ 08101 to consider whether to approve (1) the settlement; (2) Class Counsel's request for Attorneys' fees and costs of \$15,500,000; and (3) Named Plaintiffs Service Awards of up to \$3,750. The date of the hearing may change without further notice so please visit www.SubaruFuelPumpsSettlement.com for updated information.

Questions?

For more information, including the Settlement Agreement and the Long Form Class Notice that summarizes the terms of the Settlement, visit www.SubaruFuelPumpsSettlement.com. For questions, call toll-free 1-844-552-0070, or write the Settlement Administrator at Subaru Fuel Pumps Settlement, c/o JND Legal Administration, P.O. Box 91497, Seattle, WA 98111.

Please do not contact the Court for information about the settlement.

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