

1 Gayle M. Blatt, SBN 122048  
2 gmb@cglaw.com  
3 CASEY GERRY SCHENK  
4 FRANCAVILLA BLATT & & PENFIELD, LLP  
5 110 Laurel Street  
6 San Diego, CA 92101-1486  
7 Telephone: (619) 238-1811  
8 Facsimile: (619) 544-9232

9 Michael F. Ram, SBN 104805  
10 mram@forthepeople.com  
11 Marie N. Appel, SBN 187483  
12 mappel@forthepeople.com  
13 Jean Martin (pro hac vice pending)  
14 jmartin@forthepeople.com  
15 MORGAN & MORGAN  
16 COMPLEX LITIGATION GROUP  
17 711 Van Ness Avenue, Suite 500  
18 San Francisco, CA 94102  
19 Telephone: (415) 358-6913  
20 Facsimile: (415) 358-6923

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

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

26 Plaintiffs,

27 v.

SUBARU OF AMERICA, INC.

Defendant.

NO.: '20CV1743 GPC MDD

CLASS ACTION

COMPLAINT FOR DAMAGES,  
EQUITABLE, DECLARATORY AND  
INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

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

## INTRODUCTION

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

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

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

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

---

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

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

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

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

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

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

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

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

**PARTIES**

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

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

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

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

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

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

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

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

27 <sup>3</sup> Exhibit A Bare packet No 1. pp. 26-29.

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

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

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

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

## 12 JURISDICTION AND VENUE

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

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

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

## 24 STATEMENT OF FACTS

### 25 *A. Sudden Unintended Acceleration and Throttle Defect*

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

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

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

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

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

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

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

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

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

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

19 ***B. Consumer Complaints***

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

---

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



1 makes and model years of Class Vehicles. By way of example, as reported on  
2 [www.carproblemzoon.com](http://www.carproblemzoon.com).<sup>5</sup>

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

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

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

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

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

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



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

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

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

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

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

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

1 reveals several complaints detailing the exact same issue.<sup>7</sup>

2 **NHTSA ID Number: 11110715**

3 **Incident Date July 5, 2018**

4 **Consumer Location GROVELAND, CA**

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

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

20 **NHTSA ID Number: 10956391**

21 **Incident Date February 20, 2017**

22 **Consumer Location WHITTIER, CA**

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

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

---

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

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

6 **NHTSA ID Number: 10986373**  
7 **Incident Date April 18, 2017**  
8 **Consumer Location NORTH ANDOVER, MA**  
9 **Vehicle Identification Number 4S3BNAN6XH3\*\*\*\***

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

23 **NHTSA ID Number: 11245002**  
24 **Incident Date August 19, 2019**  
25 **Consumer Location BEAVER FALLS, PA**  
26 **Vehicle Identification Number 4S4BSAFC1H3\*\*\*\***

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

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

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

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

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

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

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

1 in material numbers.

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

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

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

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

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

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

24 **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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





1 provide the same comprehensive coverage for additional years and mileage.<sup>9</sup>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

24           86. Plaintiffs and Members of the Class allege in the alternative that they  
25 have no adequate remedy at law.  
26  
27

**FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **PRAYER FOR RELIEF**

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

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

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

**DEMAND FOR JURY TRIAL**

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

Respectfully submitted,

Dated: September 4, 2020

By: s/ Gayle M. Blatt  
Gayle M. Blatt

Gayle M. Blatt  
CASEY GERRY SCHENK  
FRANCAVILLA BLATT &  
PENFIELD, LLP  
110 Laurel Street  
San Diego, CA 92101-1486  
Telephone: (619) 238-1811  
Facsimile: (619) 544-9232

Michael F. Ram, SBN 104805  
mram@forthepeople.com  
Marie N. Appel, SBN 187483  
mappel@forthepeople.com  
MORGAN & MORGAN  
COMPLEX LITIGATION GROUP  
711 Van Ness Avenue, Suite 500  
San Francisco, CA 94102  
Telephone: (415) 358-6913  
Facsimile: (415) 358-6923

Jean Sutton Martin  
(*pro hac vice* pending)  
jeanmartin@forthepeople.com  
John A. Yanchunis  
(*pro hac vice* pending)  
jyanchunis@forthepeople.com  
MORGAN & MORGAN  
COMPLEX LITIGATION GROUP  
201 N. Franklin Street, 7<sup>th</sup> floor  
Tampa, FL 33602

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

Telephone: (813) 275-5272  
Facsimile: (813) 275-9295

John G. Emerson  
(*pro hac vice* pending)  
jemerson@emersonfirm.com  
EMERSON FIRM, PLLC  
2500 Wilcrest Drive  
Suite 300  
Houston, TX 77042  
Telephone: (800) 551-8649  
Facsimile: (501) 286-4659