UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LAURA SAMPSON, *et al.*, individually and on behalf of all others similarly situated, Plaintiffs, v. SUBARU OF AMERICA, INC., Defendant.	Case No. 1:21-CV-10284-ESK-SAK

DEFENDANT'S MEMORANDUM OF LAW IN RESPONSE TO OBJECTIONS AND REQUESTS FOR EXCLUSION AND IN SUPPORT OF FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

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I. INTRODUCTION

Pursuant to the Preliminary Approval Order (ECF 141), Defendant Subaru of America, Inc. ("SOA") respectfully submits this Memorandum of Law in response to the few objections to the proposed Class Settlement and requests for exclusion, and in support of final approval of the Class Settlement herein.

Significantly, of the 5,049,923 Settlement Class Members, only 5 have filed purported objections to the proposed Settlement (amounting to only 0.000001% of the class). Three of the five objections are invalid for failing to comply with the Court-Ordered requirements. All of them lack substantive merit, as discussed in Section IV, *infra*. In addition, only 447 Settlement Class Members have submitted purported requests for exclusion (amounting to only 0.00009% of the class), and 108 of them are untimely and/or otherwise invalid as discussed in Section V, *infra*.

The microscopic number of objections and requests for exclusion demonstrates unequivocally that the Settlement Class strongly favors this preliminarily approved Class Settlement. The Settlement clearly meets the standards for final approval; it is fair, reasonable, and adequate, and satisfies Fed. R. Civ. P. 23 ("Rule 23") in all respects. The sole five purported objections do not, in substance or in number, provide any legitimate basis for not granting final approval.

In this Circuit, the evaluation of a proposed Class Settlement is governed by well-settled principles. First, courts recognize that "[s]ettlements…reflect[]

negotiated compromises. The role of a district court is not to determine whether the settlement is the fairest possible resolution [but only whether] the compromises reflected in the settlement…are fair, reasonable and adequate when considered from the perspective of the class as a whole." *In re Baby Products Antitrust Litig.*, 708 F.3d 163, 173-74 (3d Cir. 2013) (citation omitted); *see also Skeen v. BMW of North America, LLC*, 2016 WL 4033969, at *7 (D.N.J. July 26, 2016). As the Third Circuit has reaffirmed, "an evaluating court must…guard against demanding too large a settlement since, after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re New Jersey Tax Sales Certificates Antitrust Litig.*, 2018 WL 4232057, at *5 (3d Cir. Sept. 6, 2018) (internal quotation marks and citation omitted).

Second, 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 GMC Pick-Up Fuel Tank Prods. Liab. Litig.* ("*GM Trucks*"), 55 F.3d 768 (3rd Cir. 1995). The benefits of class action settlements accrue to the parties as well as the courts:

> 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 v. Verizon Wireless, 609 F.3d 590, 594-95 (3d Cir. 2010).

Third, there is a presumption that class settlements are fair and reasonable when, as in this action, they are the product of arm's length negotiations of disputed claims conducted by counsel who are skilled and experienced in class action litigation. *GM Trucks*, 55 F.3d at 785; *Sullivan v. DB Invs.*, 667 F.3d 273, 320 (3d Cir. 2011) (*en banc*); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005) ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness"). This is especially so when, as here, the Settlement was negotiated with the assistance of an experienced neutral mediator. *Hall v. AT&T Mobility, LLC*, 2010 WL 4053547, *26 (D.N.J. Oct. 13, 2010) ("the participation of an independent mediator in settlement negotiations virtually insures that the negotiations were conducted at arm's length…") (*quoting Bert v. AK Steel Corp.*, 2008 WL 4683747 (S.D. Ohio Oct. 23, 2008)); *In re National Football League Players' Concussion Injury Litig.*, 301 F.R.D. 191, 198 (E.D. Pa. 2014) (same).

And fourth, a class action settlement should be approved if the district court finds "that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Third Circuit has identified nine factors—known as the *Girsh* factors—that bear upon this analysis: (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. *GM Trucks*, 55 F.3d at 785-86 (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)). In addition, the Third Circuit has identified several additional relevant and partially overlapping factors—known as the "*Prudential*" factors: (1) the maturity of the underlying issues; (2) the comparison between the results for settlement class members as compared to other claimants; (3) the ability to opt out of the settlement; (4) whether attorneys' fees are reasonable; and (5) whether the claims process is fair and reasonable. *Prudential II*, 148 F.3d 283, 323 (3d Cir. 1998).

As shown below and in Class Counsel's Unopposed Motion for Final Approval (ECF 154-1), the proposed Class Settlement clearly meets all of these factors, is fair, reasonable and adequate under Rule 23, and should be granted final approval.

II. THIS SETTLEMENT SATISFIES ALL OF THE *GIRSH* FACTORS

Factor 1 – The Complexity and Duration of the Litigation

This factor clearly supports final approval of the Settlement. As addressed during the preliminary approval process, and reiterated in Plaintiffs' Brief in Support of its Unopposed Motion for Final Approval (ECF 154-1), this putative class action involves very complex automotive issues relating to autonomous driver assistance

systems/features in millions of putative class vehicles. The factual and legal claims are highly disputed, and litigation of this action through full discovery, summary judgment motions, a class certification motion, other pre-trial proceedings, *in limine* motions, a potential trial, and potential appeals, would undoubtedly be complex, expensive, and lengthy in duration—with the result uncertain. *See Careccio v. BMW of North America LLC*, 2010 WL 1752347, *4 (D.N.J. Apr. 29, 2010); *In re Hyundai and Kia Fuel Economy Litigation*, 926 F.3d 539, 571 (9th Cir. 2019).

Factor 2 – The Reaction of the Class to the Settlement

The reaction of the Class to the Settlement has been resoundingly positive and favors final approval. As discussed *supra*, of the 5,049,923 Settlement Class Members, there have only been 5 purported objections (representing 0.000001% of the Class)—fewer than one in a million—and 447 requests for exclusion (0.00009% of the Class). Such an overwhelmingly positive response from the Class strongly favors final approval. *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"); *Varacallo, supra,* 226 F.R.D. at 237 (exclusions amounting to about 0.06% of the class and objections amounting to about 0.003% of the class constituted "extremely low" numbers that "weighed in favor of approving" the proposed settlement); *In re Mercedes Benz Emissions Litigation*, 2021 WL 7833183, *10 (D.N.J. Aug. 2, 2021) (18 objections out of 438,290 members indicates that "the

Class as a whole…favors approval"); *In re Lucent Techs., Inc. Sec. Litig.*, 307 F. Supp. 2d 633, 643 (D.N.J. 2004) ("Courts [have] construe[d] class member's failure to object to proposed settlement terms as evidence that the settlement is fair and reasonable."); *Weiss v. Mercedes-Benz of N. Am.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995) (100 objections out of 30,000 class members weighs in favor of final approval of the class settlement); *Myers v. Medquist, Inc.*, 2009 WL 900787, *12 (D.N.J. Mar. 31, 2009) (noting that based on the low number of objectors and opt-outs, the court was "justified in assuming more than 98% of the Class Members" approved the settlement).

In addition, "CAFA" notice of the Settlement was timely sent to the U.S. Attorney General and the applicable State Attorneys General (Settlement Agreement § IV.A;), and none have objected to or raised any concern about this Settlement. Supplemental Declaration of Lara Lajoura dated September 17, 2024 at ¶ 5 (ECF 154-3).

Factor 3 – The Stage of the Proceedings

As this Court found in its Preliminary Approval Order, "[t]he proceedings that occurred before the Parties entered into the Settlement Agreement afforded counsel the opportunity to adequately assess the claims and defenses in the Action, the positions, strengths, weaknesses, risks, and benefits to each party, and as such, to negotiate a Settlement Agreement that is fair, reasonable, and adequate and reflects

those considerations" (ECF 141, ¶ 4; *see also* Brief in Support of Plaintiffs' Unopposed Motion for Preliminary Approval (ECF 140-1)). Nothing has changed since the settlement was preliminarily approved that would contradict this prior finding, and as such, this factor is readily satisfied.

Factors 4 and 5 – The Risks of Establishing Liability and Damages

This Settlement is particularly appropriate when balanced against the risks and delays of further litigation. Indeed, this action involves highly disputed claims regarding the design, manufacture, marketing, sale, and warranting of complex autonomous driver assistance systems. Defendant maintains that the Pre-Collision Braking, Rear Automatic Braking, and Lane Keep Assist features of the EyeSight systems in the Settlement Class Vehicles were properly designed, manufactured, marketed, and distributed, are not defective, that there was no breach of any express or implied warranty, and that no applicable statutes or legal obligations were violated.

Moreover, the overwhelming majority of Settlement Class Members have never experienced, and will likely not experience, any problem with their vehicles' EyeSight systems. And, the performance of any particular vehicle's EyeSight functions are affected materially by many different factors including but not limited to (i) roadway and environmental conditions (*e.g.*, weather, rain, snow, fog, dust, sand, water vapor, extreme heat or cold, bright sunlight or shadows, incline or

decline of the roadway, road markings and patterns, following distance and speed, the relative position of other drivers or obstacles, etc.), (ii) the type and circumstances of driving at any particular time; (iii) the quality and extent of the vehicle's maintenance (including tire pressure and alignment), (iv) any obstruction, misalignment, or damage to the stereo cameras, sonar sensors, or windshield, and (v) whether the vehicle and its relevant systems sustained any damage from an outside source. Clearly, any purported issues that a minuscule percentage of Settlement Class Members may perceive to have experienced with their EyeSight system functionality are likely the result of environmental conditions, outside influence, roadway conditions or the failure to perceive roadway conditions that rightfully trigger the subject systems, and/or any myriad other causes—none of which indicate or have anything to do with any purported "defect."

In addition, Defendant has numerous other significant defenses to this action which could bar completely, and/or substantially reduce, all or many Settlement Class Members' potential recoveries under applicable state laws. These defenses include statutes of limitation, lack of standing, lack of manifestation of the alleged issue, lack of privity, absence of a duty to disclose under applicable states law, "economic loss rule" bars to recovery, other statutory and common law bars to recovery, lack of recoverable damages, and many other common law and statutory defenses applicable to particular Settlement Class Members' claims.

The significant risks to Plaintiffs of further litigation make the outcome very uncertain, and clearly favor final approval of the proposed Class Settlement.

Factor 6 – The Risks of Maintaining a Class Action

This factor also favors final approval. From Defendant's perspective, in the absence of a class settlement, there would be significant risks to Plaintiffs of not obtaining class certification and/or not maintaining it through trial or appeal.

In this case, in addition to the absence of any defect, let alone a "common" one, numerous individualized factual and legal issues would likely predominate as to both liability and alleged damages, and adversely affect the ability to certify a class in the litigation context. They include individualized issues relating to (i) whether and to what extent any Settlement Class Member ever experienced any malfunction of EyeSight's Pre-Collision Braking, Rear Automatic Braking, and/or Lane Keep Assist functions, and if so, the nature of the alleged malfunction; (ii) the underlying circumstances, including weather/environmental factors, road conditions, speed, location, and nature of any surrounding vehicles/obstacles; (iii) the possible root causes of any alleged failure—each of which would need to be inspected and analyzed individually; (iv) the different conditions of each Settlement Class Vehicle; (v) the manner in which each vehicle was driven at any given time; (vi) the manner in which each vehicle was maintained; (vii) whether and to what extent the vehicle and/or subject systems was/were damaged, misaligned or

modified by accidents or other outside sources; (viii) individual facts and circumstances of each Settlement Class Member's purchase or leasing of, and decision-making concerning, his/her vehicle; (ix) what, if anything, each Settlement Class Member may have seen, heard or relied upon prior to purchase or lease; (x) whether the Settlement Class Member purchased his/her vehicle new, second-hand used, or third-hand or more used, and if so, each said vehicle's prior history use and maintenance; (xi) whether, when, and under what circumstances a Settlement Class Member ever presented any alleged EyeSight system failure to a Subaru dealership for inspection and repair within the vehicle's warranty period; (xii) whether or to what extent any Settlement Class Member can establish any entitlement to damages or other relief, and the individual issues relating thereto; and (xii) myriad other issues individual to each Settlement Class Member and his/her vehicle.

In addition, material differences among the laws of the various 50 states regarding the various causes of action alleged in this case would likely preclude certification of a "nationwide" class in a litigation context.

In contrast, these issues do not preclude class certification for settlement purposes, since the Court will not be faced with the significant manageability problems of a trial. *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., Inc. Vytorin Erisa Litigation*, 2010 WL 547613, *5 (D.N.J. Feb. 9, 2010) (*citing In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 519 (3d Cir. 2004) (manageability concerns that arise in litigation classes are not present in settlement classes)); *O'Brien v. Brain Research Labs, LLC*, 2012 WL 3242365, at *9 (D.N.J. Aug. 9, 2012) ("because 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 Financial Services, Inc.*, 324 F.R.D. 89, 96 (D.N.J. 2018) (same).

Thus, this Settlement provides very significant benefits which would likely not be available to the Settlement Class outside the context of a class settlement.

Factor 7 – Defendant's Ability to Withstand a Greater Judgment

Courts routinely find that the seventh factor is only relevant when the parties use the defendant's inability to pay to justify a reduced settlement. *In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 440 (3d Cir. 2016). This does not apply here, so this factor is neutral.

Factors 8 and 9 – The Range of Reasonableness of the Settlement in Light of the Best Recovery and Risks of Litigation

This Settlement provides very significant benefits to the Settlement Class. First, the Settlement includes a robust warranty extension for the Settlement Class Vehicles to cover 75% of the cost of a Covered Repair by an authorized Subaru retailer for up to 48 months or 48,000 miles, whichever occurs first, from the

Settlement Class Vehicle's In-Service date. The Warranty Extension demonstrates a 33% extension of the original NVLW warranty period of 36 months or 36,000 miles, whichever occurs first. In addition, in the event a particular Settlement Class Vehicle's Warranty Extension time period has already expired as of the Notice Date, then for that Settlement Class Vehicle, the time limitation of the Warranty Extension will be extended until four (4) months from the Notice Date. *See* Plaintiffs' Brief in Support of Final Approval (ECF 154-1), and the Settlement Agreement, Exh. A to the Declaration of Russell D. Paul (ECF 140-3).

In addition to the substantial Warranty Extension, the Settlement provides that Settlement Class Members who submit to the Claim Administrator, via the Settlement Website or mail, a timely and complete Claim for Reimbursement on or before September 27, 2025, shall be eligible for 75% reimbursement of the paid invoice amount (parts and labor) of a Covered Repair that was made prior to the Notice Date and within 48 months or 48,000 miles, whichever occurred first, from the Settlement Class Vehicle's In-Service Date. This reimbursement is available to current and prior owners and lessees of Settlement Class Vehicles. *See* ECF 154-1, 140-3. In addition, the Settlement provides for a very easy and reasonable claims process which, among other things, affords Settlement Class Members a reasonable opportunity to cure any deficiencies in their claims, and to seek an "attorney review" if he/she disagrees with a denial of a claim.

This Court has rightfully granted preliminary approval of the Settlement as "fair, reasonable, and adequate under Rule 23" (ECF 141), and nothing has changed since that time that would warrant a different determination. The Settlement clearly meets the requirements of Rule 23, especially when considering the appreciable risks of non-certification in the litigation context, non-recovery, or at the very least, a substantially reduced or delayed recovery in the absence of this Settlement.

III. THE RELEVANT *PRUDENTIAL* FACTORS SUPPORT APPROVAL

This Settlement also readily satisfies the additional factors the Third Circuit identified in *Prudential II*, which are: (1) the maturity of the underlying issues; (2) the comparison between the results for settlement class members as compared to other claimants; (3) the ability to opt out of the settlement; (4) whether attorneys' fees are reasonable; and (5) whether the claims process is fair and reasonable. *Prudential II*, 148 F.3d 283, 323 (3d Cir. 1998).

With respect to (1), this Court has already found, as stated in the Preliminary Approval Order, that the "proceedings that occurred before the Parties entered into the Settlement Agreement afforded counsel for both sides the opportunity to adequately assess the claims and defenses in the Action…." (ECF 141, ¶ 4). With respect to (2), the Settlement affords significant benefits to the Settlement Class Members which, from our perspective, and given the significant defenses and impediments of further litigation to recovery and class certification in this case, are

significantly more than an individual would likely achieve outside of this Settlement. With respect to (3), the Settlement Class Members were afforded an ample and reasonable amount of time for opting out of the Settlement Class, if they so wished, and were provided clear and easy directions in the Class Notice for doing so. Regarding factor (4), the Parties did not begin to discuss the issue of reasonable Class Counsel fees and expenses until after reaching agreement on the material terms of this Settlement, and the agreement ultimately reached is subject to this Court's approval. And finally, with respect to factor (5), the claims process is fair and reasonable, consistent with other automotive class settlements approved in this District, was clearly spelled out in the Class Notice, and is being administered by an experienced third-party claim administration company, JND Legal Administration.

Accordingly, all of the *Prudential* factors are clearly met as well.

IV. THE FEW OBJECTIONS TO THE SETTLEMENT ARE INVALID, WITHOUT MERIT, AND SHOULD BE OVERRULED

In view of the robust benefits afforded to the Settlement Class, only 5 of the 5,049,923 Settlement Class Members have filed purported objections: Martin Rowley (ECF 145); Samuel Weiler (ECF 148); Nancy Graziani (ECF 151); Catherine Eagle Stevens (and Nicholas Greif)[1] (ECF 147); and Bronwyn Getts (ECF 149). Three of the purported objections (Rowley, Weiler, and Graziani) are invalid

[1] As discussed below, Nicholas Greif is not a Settlement Class Member.

for failure to comply with the Court-ordered requirements for a valid objection, and all of the purported objections lack substantive merit.

A. The Rowley, Weiler, and Graziani Objections are Invalid and Should be Overruled

Mr. Rowley's purported objection is invalid for failure to comply with the Court-ordered requirements because it: (1) fails to submit proof of his current or former ownership or lease of any Class Vehicle (*i.e.*, that he is even a Settlement Class Member); (2) does not identify the model year or VIN of any Class Vehicle he owned or leased, (3) fails to state whether he has objected to any other class settlements in the past five years, either with a list of all such objections or an affirmative statement that he has not filed any such objections, and (4) fails to provide his phone number. All of these are necessary elements of a valid objection to the Settlement which were required by the Preliminary Approval Order and recited clearly in the Class Notice (Preliminary Approval Order, ECF 141 ¶ 21; Class Notice, ECF 140-6, ¶ 16).

Mr. Weiler's purported objection is likewise invalid for failure to comply with the Court-ordered requirements because it: (1) fails to identify the VIN or model year of any Class Vehicle that he allegedly owned or leased; and (2) fails to submit proof of his current or former ownership or lease of any Class Vehicle, both of which are required by the Preliminary Approval Order (ECF 141 ¶ 21), explicitly

enumerated in the Class Notice (ECF 140-6, ¶ 16), and go to the heart of whether he is even a Settlement Class Member that would have standing to object.

Ms. Graziani's purported objection is invalid for failure to comply with the Court-ordered requirements because it fails to state whether Ms. Graziani has objected to any other class settlements in the past five years and to provide either with a list of all such objections, or an affirmative statement that she has not filed any such objections (Preliminary Approval Order, ECF 141 ¶ 21; Class Notice, ECF 140-6, ¶ 16).

Accordingly, these purported objections are invalid and should be overruled accordingly.

B. All of the Purported Objections Lack Substantive Merit and Should be Overruled

As demonstrated *supra*, the proposed Class Settlement is eminently fair, reasonable, and adequate, and meets all of the legal criteria for final approval. The objectors, amounting to only 5 of the 5,049,923 Settlement Class Members, essentially complain that the Settlement should contain other or different benefits that comport with their unilateral subjective beliefs and situations (*i.e.*, a longer warranty extension (Rowley, Graziani), a "free diagnostic inspection" (Eagle), more broadly defined "Covered Repairs" (Eagle, Getts), or unspecified "fixes" or "recalls" for unidentified components (Graziani, Getts)). These objections lack merit and are of the type that courts have readily overruled.

The law is well-settled that a class settlement is a compromise of disputed claims that does not have to be perfect, the "best" possible, or fit every class member's individual desires, circumstances, or subjective beliefs. "[T]he possibility 'that a settlement could have been better…does not mean the settlement presented was not fair, reasonable or adequate.'" *Gray v. BMW of North America, LLC*, 2017 WL 3638771, at *3 (D.N.J. Aug. 24, 2017) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)); *see also Oliver v. BMW of North America, LLC*, 2021 WL 870662, at *6 (D.N.J. Mar. 8, 2021) ("[t]hat certain objectors would want additional miles or additional years does not mean that the resolution reached is unreasonable; instead, it is the product of negotiation"); *Henderson v. Volvo Cars of North America, LLC*, 2013 WL 1192479, at *9 (D.N.J. March 22, 2013) (citing *Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 242 (D.N.J. 2005)) (the court's role is to determine if the "proposed relief is fair, reasonable and adequate, not whether some other relief would be more lucrative to the Class"); *Careccio v. BMW of N. Am. LLC*, 2010 WL 1752347, at *6 (D.N.J. Apr. 29, 2010) ("the test of adequacy of settlement terms is whether they are 'fair and reasonable'… and not whether every member of the class is fully compensated"); *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) ("As our precedents have made clear, the question whether a settlement is fundamentally fair within the meaning of Rule 23(e) is different from the question whether the settlement is perfect in the

estimation of the reviewing court"); *Hendrick v. Starkist Co.*, 2016 WL 692739, at *6 (C.D. Cal. Sept. 29, 2016) (objections seeking a "more favorable result" denied in light of the overall fair and reasonable nature of the settlement).

In addition, while certain objectors subjectively want the warranty extension period to be longer, similar and substantially lower time and mileage periods are common and repeatedly approved by courts in automotive class action settlements. *Gray v. BMW of N. Am., LLC*, 2017 WL 3638771, at *3 (D.N.J. Aug. 24, 2017) (one-year warranty extension); *Dack v. Volkswagen Grp. of Am., Inc.*, No. 4:20-cv-00615 (W.D. Mo. Aug. 26, 2024) (granting final approval of class action settlement concerning automatic emergency braking and driver assistance systems, utilizing substantially similar warranty extension terms to those agreed here); *Oliver*, 2021 WL 870662, at *6 ("That certain objectors would want additional miles or additional years does not mean that the resolution reached is unreasonable; instead, it is the product of negotiation") (*citing Selfi v. Mercedes-Benz USA, LLC*, 2015 WL 12964340, at *204 (N.D.Cal. Aug. 18, 2015)); *Zakskorn v. Am. Honda Motor Co., Inc.*, 2015 WL 3622990, at *5 (E.D. Cal. June 9, 2015) (finding reimbursement limited to 3 years/36,000 miles sufficient); *Keegan v. Am. Honda Motor Co*, 2014 WL 12551213, at *14 (C.D. Cal. Jan, 21, 2014) (finding that a settlement providing "a sliding reimbursement scale depending on the age of the vehicle and the miles it

had been driven [is] reasonable" where the warranty period was 3 years/36,000 miles).

Finally, the purported objectors had ample opportunity to opt-out of the Settlement if they truly believed that they had valid claims to pursue, and they chose not to do so. *See* Preliminary Approval Order (ECF 141, ¶ 12); Class Notice (ECF 140-6); *Henderson*, 2013 WL 1192479, at *9; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Pracs., & Prod. Liab. Litig.*, 2013 WL12327929, at *4 (C.D. Cal. July 24, 2013).

The Court should overrule the objections for these reasons as well. Specific responses to the objectors' subjective complaints are discussed below.

Objection of Martin Rowley (ECF No. 145)

As shown above, Mr. Rowley's purported objection is invalid and should be overruled for failing to comply with the Court-Ordered requirements for a valid objection.

In addition, Mr. Rowley's objection is substantively without merit. His unilateral subjective belief that "[m]any Subaru owners opt for" the purchase of longer "extended Warrant[ies]" and might receive "no additional benefit" from the Settlement is sheer speculation which, aside from being completely unsupported, is obviously not shared by the Settlement Class. It also ignores the fact that any such

owner (i) will still receive exactly what they bargained for through their purchase of any service contract (incorrectly referred to as an "Extended Warranty"); (ii) will still receive a four-month window for the Warranty Extension if their vehicle "timed out" of the New Vehicle Limited Warranty as of the Notice Date; and (iii) will still be entitled, if they qualify, to submit a claim for reimbursement of 75% of any past-paid out-of-pocket expenses for Covered Repairs they may have incurred. Far from being "without consideration," as this objector erroneously postulates, the Settlement provides substantial benefits to the Settlement Class.

Regardless, as demonstrated above, it is well-settled that class settlements, including their time and mileage limitations, are compromises of disputed claims and are not required to be perfect or suit every person's conceivable subjective desires. This is especially true in this case, where only 5 out of 5,049,923 Settlement Class Members have submitted purported objections.

Mr. Rowley could readily have opted out of the Settlement, but chose not to. His purported objection should be overruled.

Objection of Samuel Weiler (ECF 148)

As shown above, Mr. Weiler's purported objection is likewise invalid and should be overruled for failing to comply with the Court-ordered requirements for a valid objection.

Mr. Weiler's purported objection also lacks substantive merit. His complaint of the "absence of a successful repair strategy" to "meaningfully address the defects" is nothing more than an unsupported subjective belief which (i) erroneously assumes the existence of a "defect," which does not exist, (ii) ignores the fact that this is a fair, reasonable, and adequate resolution of sharply disputed claims, as this Court recognized in preliminarily approving the Settlement (ECF 140-3),[2] and (iii) ignores the fact that the Settlement addresses necessary repairs in the form of both a Warranty Extension and reimbursement for past paid out-of-pocket expenses within very reasonable enumerated periods. Weiler's unilateral critique, while unfounded, contravenes the well-settled law that class settlements do not need to be perfect or satisfy the subjective whims, beliefs, or circumstances of every individual Settlement Class Member.[3]

Mr. Weiler could readily have opted out of the Settlement, but chose not to, and his objection should be overruled.

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[2] Mr. Weiler also makes an utterly vague and unsupported assertion that he purportedly "experienced" unidentified "symptoms" in unidentified "similar" Subaru vehicles (ECF 148). This meaningless assertion does not even implicate a Settlement Class Vehicle, is bereft of any evidentiary support, and provides no legitimate basis for not approving this Settlement.

[3] Mr. Weiler also complains that the class representative's $5,000 service awards are "too low," but this squarely contravenes what the class representatives themselves and class counsel have agreed as fair and reasonable, and he has no standing even to make such an argument.

Objection of Nancy Graziani (ECF 151)

As shown above, Ms. Graziani's purported objection is invalid and should be overruled for failure to comply with the Court-ordered requirements for a valid objection.

In addition, the purported objection lacks substantive merit. Graziani subjectively, and without any basis, complains that the Settlement provides "inadequate compensation," fails to "remedy" the alleged "defect," and that the Warranty Extension should be in perpetuity (ECF 151). This objection is unfounded and without any evidentiary support. It also (i) erroneously assumes the existence of a defect which does not exist, (ii) completely disregards the substantial benefits of the Settlement which is favored by the 99.99999% of the Settlement Class who have not objected, and (iii) overall, merely boils down to a subjective belief that the Settlement should provide more, which, under well-settled law discussed above, provides no legitimate basis for not approving this excellent Class Settlement.

Finally, Ms. Graziani could readily have opted out of the Settlement, but chose not to. Her purported objection should be overruled.

Objection of Catherine Eagle Stevens and Nicholas Greif (ECF 147)

The purported objection of Catherine Eagle Stevens and Nicholas Greif is, likewise, without merit. As a threshold matter, their submission confirms that Catherine Eagle Stevens is the sole registered owner of the Settlement Class Vehicle

(ECF 147), and therefore, the only Settlement Class Member of the two. Because Nicholas Greif is not a Settlement Class Member, he lacks standing to object to the Settlement. *In re Apple iPhone/iPod Warranty Litig.*, 2014 WL 12640497, at *10 (N.D. Cal. May 8, 2014) ("Mr. Casey is not a Settlement Class Member and does not have standing to object to the Settlement; thus his objections are overruled on this ground.").

While these objectors never "experienced or paid for a Covered Repair," and are unaware of any malfunction or problem with the Eyesight system in the subject vehicle (ECF 147), they subjectively complain that the definition of "Covered Repair" should be broader and the Settlement should provide for a recall or "free diagnostic inspection." This subjective belief is (i) unsupported by any evidence, (ii) lacks any basis in fact or law, (iii) unilaterally presupposes the existence of some unidentified "defect" which does not exist, and (iv) ignores the substantial benefits afforded by this Settlement. Furthermore, the definition of "Covered Repair" is not unduly restrictive, as it includes any "failure or malfunction of the EyeSight camera assembly and/or rear sonar sensors" regardless of whether it was hardware-related, software-related, or otherwise (Settlement Agreement, ECF 140-3 at I.K.). Essentially, like the others, this purported objection merely boils down to a subjective desire that the Settlement provide more, which, under well-settled law, provides no legitimate basis for not approving this excellent Class Settlement.

Finally, like the others, Ms. Eagle could readily have opted out of the Settlement, but chose not to. Accordingly, this objection should be overruled.

Objection of Bronwyn Getts (ECF 149)

The purported objection of Bronwyn Getts (ECF 149) also lacks merit and should be overruled. Ms. Getts' unsupported subjective belief that the Settlement should provide a free inspection and recall/retrofit fails for the same reasons discussed above. And while purporting to cite *Girsh*, she fails to address any of the *Girsh* factors—all of which overwhelmingly favor approval of the Settlement, as does 99.99999% of the Settlement Class.

Ms. Gett's subjective complaint that the Warranty Extension is too narrow and offers "minimal practical value" is, likewise, completely unsupported and ignores the fact that the Warranty Extension provides a significant 33% increase in the duration of the original applicable warranty for the EyeSight system functionalities, a four-month window for vehicles that "timed out" of the Warranty Extension time period as of the Notice Date, and that the Settlement includes a reimbursement program for qualifying past paid Covered Repairs.[4]

Finally, the proof requirements for reimbursement claims are not, as Getts erroneously claims, "disproportionate." They constitute basic and very reasonable

[4] There is no basis whatsoever for her speculation that "most owners will never have a qualifying failure" within that window, nor does she provide any valid rationale of how this Settlement is not fair, reasonable, and adequate as a whole.

documentary proof requirements which are standard in automotive class settlements and routinely approved by courts in this District (including this Court) and others throughout the country. *See*, *e.g.*, *Rieger v. Volkswagen Grp. of Am., Inc.*, 2024 WL 2207439, at *2 (D.N.J. May 16, 2024) (Kiel, J.) (approving settlement incorporating similar proof requirements for reimbursement claims); *Dack v. Volkswagen Grp. of Am., Inc.*, No. 4:20-cv-00615 (W.D. Mo. Aug. 26, 2024) (same, in settlement concerning automatic emergency braking and driver assistance systems).

Ms. Getts could have opted out of the Settlement but chose not to. Her purported objection should be overruled accordingly.

V. THE COURT SHOULD DENY THE INVALID REQUESTS FOR EXCLUSION

The Preliminary Approval Order (ECF 141, ¶ 19), as recited in the Class Notice (ECF 140-6 ¶ 10), mandated that in order to be valid, a request for exclusion from the proposed settlement must include all of the following information:

(a) the full name, address and telephone number of the person or entity seeking to be excluded from the Settlement Class;

(b) the model, model year, and VIN of the person's or entity's vehicle;

(c) a statement that he/she/it is a present or former owner or lessee of the vehicle; and

(d) a specific and unambiguous statement that he/she/it desires to be excluded from the Settlement Class.

These were basic and simple requirements, and pursuant to the Preliminary Approval Order, as well as the Class Notice, "[a]ny Settlement Class Member who fails to mail a timely and complete Request for Exclusion to the proper addresses shall remain in the Settlement Class and shall be subject to and bound by all determinations, orders, and judgments in the Action concerning the Settlement, including but not limited to the Released Claims set forth in the Settlement Agreement" (ECF 141; Class Notice, ECF 140-6, ¶ 10).

Of the 447 requests for exclusion that were received, 108 are untimely and/or failed to comply with one or more of the basic requirements enumerated in the Preliminary Approval Order for a valid request for exclusion. Their deficiencies are as follows:

1. Fifty-one (51) exclusion requests either provide an invalid VIN, fail to provide any VIN, or provide a VIN that does not correspond to a Settlement Class Vehicle. Some of these requests also have additional deficiencies, as follows (Exhibits A-1 to A-14):

    - Thirteen (13) requests provide an invalid VIN (Exhibit A-1).
    - One (1) request provides an invalid VIN, and fails to include the model year of the vehicle as required (Exhibit A-2).
    - One (1) request provides an invalid VIN, and fails to include the model year of the vehicle, and a phone number as required (Exhibit A-3).

- One (1) request provides an invalid VIN, and fails to include a phone number as required (Exhibit A-4).
- Three (3) requests provide an invalid VIN, and fail to include a statement of current or former ownership or lease as required (Exhibit A-5).
- One (1) request provides an invalid VIN, and fails to include a statement of current or former ownership or lease, and the model year of the vehicle as required (Exhibit A-6).
- One (1) request fails to include a VIN number as required (Exhibit A-7).
- Two (2) requests fail to include a VIN number, and a phone number as required (Exhibit A-8).
- Two (2) requests fail to include a VIN number, a statement of current or former ownership or lease, and the model year of the vehicle as required (Exhibit A-9).
- Nine (9) requests fail to include a VIN number, a statement of current or former ownership or lease, the model year of the vehicle, or a phone number as required (Exhibit A-10).
- Two (2) requests fail to include a VIN number, the model year of the vehicle, and a phone number as required (Exhibit A-11).

- Six (6) requests include a VIN number which is not a Class Vehicle (Exhibit A-12).
- One (1) request includes a VIN number which is not a Class Vehicle, and fails to include a phone number as required (Exhibit A-13).
- Eight (8) requests include a VIN number which is not a Class Vehicle, and fail to include a statement of current or former ownership or lease as required (Exhibit A-14).

2. Fifteen (15) exclusion requests are untimely because they were postmarked after the August 28, 2025 deadline. Some of these requests also have additional deficiencies, as follows: (Exhibits B-1 to B-4):

- Twelve (12) requests are untimely as postmarked after the August 28, 2025 deadline (Exhibit B-1).
- One (1) request is untimely as postmarked after the August 28, 2025 deadline, and fails to include a phone number as required (Exhibit B-2).
- One (1) request is untimely as postmarked after the August 28, 2025 deadline, and fails to include a statement of current or former ownership or lease as required (Exhibit B-3).
- One (1) request is untimely as postmarked after the August 28, 2025 deadline, fails to include a VIN number, the model year of the vehicle,

and a statement of current or former ownership or lease as required (Exhibit B-4).

3. Forty-two (42) exclusion requests fail to include a statement of current or former ownership or lease as required. Some of these requests also have additional deficiencies, as follows: (Exhibits C-1 to C-4):

- Thirty (30) exclusion requests fail to include a statement of current or former ownership or lease as required (Exhibit C-1).
- One (1) exclusion requests fail to include a statement of current or former ownership or lease, and a phone number as required (Exhibit C-2).
- Three (3) exclusion requests fail to include a statement of current or former ownership or lease, and the model year of the vehicle as required (Exhibit C-3).
- Six (8) exclusion requests fail to include a statement of current or former ownership or lease, the model year of the vehicle, and a phone number as required (Exhibit C-4).

Accordingly, these requests for exclusion are untimely and/or invalid for failing to comply with the Court-Ordered requirements for a valid request for exclusion, and should be rejected accordingly.

VI. CONCLUSION

For the foregoing reasons, SOA respectfully requests that this Court overrule the purported objections, reject the 108 invalid requests for exclusion, and grant final approval of the Class Settlement; together with such other and further relief as the Court deems just and proper.

Dated: October 1, 2025

Respectfully submitted,

By: */s/ Homer B. Ramsey*

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