

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

IN RE SUBARU BATTERY DRAIN
PRODUCTS LIABILITY LITIGATION

No. 1:20-cv-03095-JHR-JS

JURY TRIAL DEMANDED

CLASS ACTION

CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs Amy Burd, Walter Gill, David Hansel, Glen McCartney, Roger Baladi, Tamara O’Shaughnessy, Anthony Franke, Matthew Miller, Steven Stone, Howard Bulgatz, Mary Beck, David Davis, and Colin George (“Plaintiffs”), individually and on behalf of all others similarly situated (the “Class” as defined below), by and through their attorneys, allege as follows against Defendants Subaru of America, Inc. and Subaru Corporation (collectively, “Subaru” or “Defendants”).

SUMMARY OF THE ACTION

1. Plaintiffs bring this action individually and on behalf of all current and former owners and lessees of the following model year (“MY”) Subaru vehicles: MY 2015-2020 Outback, MY 2015-2020 Forester, MY 2015-2020 Legacy, MY 2015-2020 WRX, and MY 2019-2020 Ascent (the “Class Vehicles”). These vehicles suffer from a defect that results in parasitic drain of the vehicle’s battery power (the

“Battery Drain Defect” or “Defect”), causing the battery to fail prematurely and ultimately leaving consumers with a disabled vehicle. The Battery Drain Defect manifests unexpectedly, requiring drivers to incur unforeseen expenses such as premature battery replacements, diagnosis, roadside service, and mobile battery jump packs. The Defect renders the Class Vehicles inoperable, impairing their core functionality, and poses a safety hazard for drivers and their passengers who may be left stranded.

2. Subaru has been aware of the Battery Drain Defect since at least 2014, when it began issuing a series of technical service bulletins to its dealerships and service technicians relating to problems associated with the Defect. Subaru also knew of the Defect because large numbers of consumers complained about it, including when they brought their Class Vehicles to Subaru’s authorized dealers for repairs. At least hundreds of drivers have reported a Class Vehicle experiencing an unexpected battery drain.

3. Despite knowing of the Defect, Subaru has not successfully remedied it. The purported fixes provided through Subaru’s service bulletins have been ineffective. As a result, Plaintiffs and Class Members have been forced to pay out of pocket for upgraded replacement batteries, jumper packs, and other repairs.

4. While Subaru provides a three-year/36,000 mile warranty with each Class Vehicle and sells extended warranties of up to ten years, Subaru engages in a

pattern and practice of avoiding its warranty obligations with respect to the Defect. When Plaintiffs and Class Members requested warranty service, Subaru representatives informed them that the battery was functioning normally and only needed to be recharged. On the few occasions when Subaru agreed to do more than recharge the battery, it simply replaced the battery without addressing the underlying cause of the parasitic battery drain. Replacement of the battery with the same type battery was therefore ineffective, exposing Plaintiffs and other drivers to repeat failure.

5. The Defect renders the Class Vehicles unsuitable for their intended purpose—transportation. The Defect is substantially certain to manifest in the Class Vehicles, and many Class Members have had a battery die more than once.

6. Because of the undisclosed Defect, Plaintiffs and Class Members were deprived of the benefit of their bargains in purchasing the Subaru vehicles at issue. Plaintiffs accordingly seek relief both for themselves and for other owners or lessees of these vehicles.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members; (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs; and (iii) there is minimal diversity

because at least one plaintiff and one defendant are citizens of different states. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

8. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391 because Subaru is headquartered and regularly transacts business in this district, is subject to personal jurisdiction in this district and, therefore, is deemed to be a citizen of this district. Additionally, Subaru advertises in this district and has received substantial revenue and profits from its sales and/or leasing of Class Vehicles in this district; therefore, a substantial part of the events and/or omissions giving rise to the claims herein occurred, in part, within this district.

9. This Court has personal jurisdiction over Subaru because it is headquartered in this judicial district, has conducted substantial business in this judicial district, and intentionally and purposefully placed Class Vehicles into the stream of commerce within New Jersey and throughout the United States.

PARTIES

Plaintiffs

10. Plaintiff Amy Burd is a citizen and resident of New Jersey.
11. Plaintiff Walter Gill is a citizen and resident of New Jersey.
12. Plaintiff David Hansel is a citizen and resident of New Jersey.
13. Plaintiff Glen McCartney is a citizen and resident of New York.

14. Plaintiff Roger Baladi is a citizen and resident of New York.
15. Plaintiff Tamara O'Shaughnessy is a citizen and resident of New York.
16. Plaintiff Anthony Franke is a citizen and resident of California.
17. Plaintiff Matthew Miller is a citizen and resident of California.
18. Plaintiff Steven Stone is a citizen and resident of Florida.
19. Plaintiff Howard Bulgatz is a citizen and resident of Illinois.
20. Plaintiff Mary Beck is a citizen and resident of Michigan.
21. Plaintiff David Davis is a citizen and resident of Texas.
22. Plaintiff Colin George is a citizen and resident of Washington.

Defendants

23. Defendant Subaru Corporation (formerly known as Fuji Heavy Industries, Ltd.) is a Japanese corporation with its principal place of business in Tokyo, Japan. Subaru Corporation is engaged in the business of designing, manufacturing, warranting, marketing, advertising, selling, and servicing Subaru vehicles around the world, including through a network of more than 600 dealerships in the United States.

24. Defendant Subaru of America, Inc. is a New Jersey corporation with its principal place of business in Camden, New Jersey. Subaru of America operates as a wholly-owned U.S. sales and marketing subsidiary of Defendant Subaru Corporation. It distributes, advertises, markets, sells, warrants and services Subaru

vehicles in the United States.

25. The design, manufacture, distribution, service, repair, modification, and installation of the batteries, electrical systems, and other components within the Class Vehicles were controlled exclusively by Subaru Corporation, Subaru of America, and their agents and affiliates.

26. There exists, and at all relevant times existed, a unity of ownership between Subaru Corporation, Subaru of America, and their agents such that any individuality or separateness between them has ceased and each of them is the alter ego of the others.

27. Subaru of America communicates with Subaru Corporation concerning virtually all aspects of the Subaru products Subaru of America distributes, sells, warrants and services within the United States, including appropriate repairs for defects and whether Subaru will repair defective parts and assemblies.

28. Subaru Corporation and Subaru of America jointly develop sales and marketing materials, advertisements, owner's manuals, warranty booklets, and maintenance recommendations and schedules for the Class Vehicles, as well as Technical Service Bulletins that Subaru issues to authorized dealerships in order to address known defects.

29. Subaru Corporation and Subaru of America also jointly design, determine the substance of, and affix to Subaru vehicles the window stickers visible

on every new Subaru vehicle offered for sale at their authorized dealerships. Subaru controls the content of these “Monroney” stickers—its authorized dealerships have no input with respect to their content. Vehicle manufacturers like Subaru are legally required to affix a window sticker to every vehicle offered for sale in the United States pursuant to the Automobile Information Disclosure Act of 1958, 15 U.S.C. § 1231 *et seq.*, which, among other things, prohibits the removal or alteration of the sticker by anyone other than the ultimate purchaser prior to the sale of the car, including the dealership at which the vehicle is offered for sale.

PLAINTIFF-SPECIFIC ALLEGATIONS

Plaintiff Amy Burd

30. Plaintiff Amy Burd is a citizen and resident of New Jersey. On or about August 23, 2016, she and her husband purchased a new 2017 Subaru Outback from Freehold Subaru, an authorized Subaru dealership located in Freehold, New Jersey.

31. Prior to purchasing her Outback, Mrs. Burd and her husband viewed Subaru marketing materials concerning the Class Vehicle, including Subaru television commercials and online advertising, viewed the Monroney sticker on the vehicle, and spoke with Subaru sales representatives concerning the vehicle’s features. Neither Defendants nor their agents, dealers, or other representatives disclosed the Defect to Plaintiff prior to or after the time of purchase.

32. Within six to nine months of ownership, with less than 5,000 miles,

and while the vehicle was covered by Subaru's New Vehicle Limited Warranty, the Defect manifested in Plaintiff's Class Vehicle.

33. For the next seven to ten months, the Defect manifested in Plaintiff's Class Vehicle repeatedly, when it failed to start on at least five to ten different occasions, including several times when it was parked at Plaintiff's child's school.

34. In or about October or November of 2018, Plaintiff's husband brought the vehicle to World Nissan in Tinton Falls, New Jersey to complain about the Defect. The dealership replaced the battery.

35. Even after this replacement, Plaintiff's vehicle continued to suffer from battery drain and Plaintiff was forced to spend approximately \$65 to purchase a portable booster capable of jump starting her Class Vehicle.

36. On or about September 23, 2019, Plaintiff brought her vehicle to Open Road Subaru to complain about the Defect. The dealer confirmed Plaintiff's complaint and replaced the battery in her Class Vehicle. When specifically asked about the battery, a representative at the dealer indicated the quality of the battery is a known issue.

37. After continued failures of the battery, on or about April 18, 2020, Plaintiff purchased a new third-party battery for \$295.00.

38. At all times, Mrs. Burd has driven the vehicle in a foreseeable manner and in the manner in which it was intended to be used.

39. Had Subaru disclosed the Defect to Plaintiff Burd prior to purchase, including on the vehicle's Monroney sticker, she would not have purchased the Class Vehicle or would have paid less for it.

Plaintiff Walter Gill

40. Plaintiff Walter Gill is a citizen and resident of New Jersey. In or about January 2017, he purchased a new 2017 Subaru Outback from Haldeman Subaru, an authorized Subaru dealership located in Trenton, New Jersey.

41. Prior to purchasing his Outback, Mr. Gill viewed Subaru marketing materials for the vehicle, viewed the Monroney sticker on the vehicle, and spoke with Subaru sales representatives concerning the vehicle's features. Neither Defendants nor their agents, dealers, or other representatives disclosed the Defect to Plaintiff prior to or after the time of purchase.

42. In or about January 2017, Plaintiff Gill also purchased a seven-year extended warranty from Subaru referred to as "Added Security Service Agreement."

43. Less than eight months after Plaintiff bought his Class Vehicle and while the vehicle was covered by Subaru's New Vehicle Limited Warranty, its battery failed for the first (but not the last) time. Plaintiff was forced to jump start his battery in order to restore functionality.

44. The Class Vehicle's battery thereafter failed three more times, most recently in late March 2020. Each time a failure occurred Plaintiff was forced to jump start his battery in order to restore functionality.

45. At all times, Mr. Gill has driven the vehicle in a foreseeable manner and in the manner in which it was intended to be used.

46. Had Subaru disclosed the Defect to Plaintiff Gill prior to purchase, including on the vehicle's Monroney sticker, he would not have purchased the Class Vehicle or would have paid less for it.

Plaintiff David Hansel

47. Plaintiff David Hansel is a citizen and resident of New Jersey. On or about June 19, 2019, he purchased a demo 2019 Subaru Outback from Haldeman Subaru, an authorized Subaru dealership located in Trenton, New Jersey.

48. Prior to purchasing his Outback, Mr. Hansel viewed Subaru marketing materials concerning the Class Vehicle, including Subaru television commercials, viewed the Monroney sticker on the vehicle, and spoke with Subaru sales representatives concerning the vehicle's features. Neither Defendants nor their agents, dealers, or other representatives disclosed the Defect to Plaintiff prior to or after the time of purchase.

49. In or about February 2020, with approximately 9,000 miles on the odometer, and while the vehicle was covered by Subaru's New Vehicle Limited

Warranty, the battery in Plaintiff's Class Vehicle failed. Plaintiff was forced to bring his vehicle to Haldeman Subaru and spent several hours at the dealership while they unsuccessfully attempted to charge the battery. The dealership replaced the battery.

50. To address the Defect and help prevent Plaintiff from being stranded somewhere, Plaintiff purchased jumper cables so he could jump start his Class Vehicle in the future.

51. In May 2020, Mr. Hansel's battery died again and the vehicle would not start. Accordingly, on June 1, 2020 Mr. Hansel took his vehicle to Flemington Subaru. The dealership tested the battery and elected to perform an "ECM update" to "help with battery health."

52. At all times, Mr. Hansel has driven the Class Vehicle in a foreseeable manner and in the manner in which it was intended to be used.

53. Had Subaru disclosed the Defect to Plaintiff Hansel prior to purchase, including on the vehicle's Monroney sticker, he would not have purchased the Class Vehicle or would have paid less for it.

Plaintiff Glen McCartney

54. Plaintiff Glen McCartney is a citizen and resident of New York. On or about July 28, 2016, Mr. McCartney purchased a new 2016 Subaru Outback from Ramsey Subaru, an authorized Subaru dealership located in Ramsey, New Jersey.

55. Prior to purchasing his Outback, Mr. McCartney viewed the Monroney sticker on the vehicle and spoke with Ramsey Subaru's sales representatives about the Class Vehicle, including concerning the vehicle's features. Neither Defendants nor their agents, dealers, or other representatives disclosed the Defect to Plaintiff at or after the time of purchase.

56. In 2019, with approximately 35,000 miles on the odometer, and while the vehicle was covered by Subaru's New Vehicle Limited Warranty, its battery failed. Plaintiff was forced to jump start the battery and take the Class Vehicle to Ramsey Subaru. The dealership tested the battery and declined to replace it.

57. After this incident, Plaintiff continued having problems with the battery and on or about December 24, 2019, he was forced to replace the battery at a cost of approximately \$125.

58. At all times, Mr. McCartney has driven the Class Vehicle in a foreseeable manner and in the manner in which it was intended to be used.

59. Had Subaru disclosed the Defect to Plaintiff McCartney prior to purchase, including on the vehicle's Monroney sticker, he would not have purchased the Class Vehicle or would have paid less for it.

Plaintiff Roger Baladi

60. Plaintiff Roger Baladi is a citizen and resident of New York. In April 2018, he purchased a new 2018 Subaru Outback from Milea Subaru, an authorized Subaru dealership in Bronx, New York.

61. Prior to purchasing his Outback, Mr. Baladi viewed Subaru marketing materials for the vehicle, including multiple online advertisements concerning the vehicle's reliability, viewed the Monroney sticker on the vehicle, and spoke with Subaru sales representatives about the Class Vehicle, including its reliability. Neither Defendants nor their agents, dealers, or other representatives disclosed the Defect to Plaintiff at or after the time of purchase.

62. In or about October 2018, while the Class Vehicle was covered by Subaru's New Vehicle Limited Warranty, Plaintiff's battery failed and had to be jump started. The battery subsequently failed again on multiple occasions between late 2018 and early 2019, each time leaving Mr. Baladi without the use of his vehicle and forcing him to jump start the battery.

63. Due to the unreliability of his Class Vehicle's battery and its inability to consistently start, in or around October 2018, Mr. Baladi purchased jumper cables for \$35 and a portable jump starter for \$150 from Walmart to have on hand in case he was again left stranded by the unpredictable failure of his vehicle's battery.

64. On or about March 13, 2019, Mr. Baladi took his Class Vehicle to Koepfel Subaru, an authorized Subaru dealership in Queens, New York, due to the

recent series of battery failures in his Class Vehicle. Koepfel Subaru replaced the battery in Plaintiff's Class Vehicle.

65. After this battery replacement, Mr. Baladi's battery then failed several additional times.

66. At all times, Mr. Baladi has driven his Class Vehicle in a foreseeable manner and in the manner in which it was intended to be used.

67. Had Subaru disclosed the Defect to Plaintiff Baladi prior to purchase, including on the vehicle's Monroney sticker, he would not have purchased the Class Vehicle or would have paid less for it.

Plaintiff Tamara O'Shaughnessy

68. Plaintiff Tamara O'Shaughnessy is a citizen and resident of New York. On or about August 12, 2019, she purchased a new 2019 Subaru Outback from Van Bortel Subaru of Rochester, an authorized Subaru dealership located in Rochester, New York.

69. Prior to purchasing her Outback, Ms. O'Shaughnessy viewed Subaru marketing materials concerning the Class Vehicle, including Subaru mailings that she received, viewed the Monroney sticker on the vehicle, and spoke with Subaru sales representatives concerning the vehicle's features. Neither Defendants nor their agents, dealers, or other representatives disclosed the Defect to Plaintiff prior to or after the time of purchase.

70. In or about October 2019, with approximately 1,000 miles on the odometer, and while the vehicle was covered by Subaru's New Vehicle Limited Warranty, Plaintiff's battery failed, and the vehicle repeatedly would not start.

71. On or about April 24, 2020, Plaintiff brought the vehicle to Van Bortel Subaru of Rochester, where the Class Vehicle also failed to start. The dealership confirmed that her battery was dead and replaced the battery under warranty.

72. Plaintiff also purchased a portable jump starter for approximately \$64, to avoid being stranded when her battery dies again.

73. At all times, Ms. O'Shaughnessy has driven her Class Vehicle in a foreseeable manner and in the manner in which it was intended to be used.

74. Had Subaru disclosed the Defect to Plaintiff O'Shaughnessy prior to purchase, including on the vehicle's Monroney sticker, she would not have purchased the Class Vehicle or would have paid less for it.

Plaintiff Anthony Franke

75. Plaintiff Anthony Franke is a citizen and resident of California. In February 2015, he purchased a new 2015 Subaru WRX from Subaru of El Cajon, an authorized Subaru dealership located in El Cajon, California. Mr. Franke purchased his vehicle for personal, family, or household use.

76. Prior to purchase, Mr. Franke viewed Subaru marketing materials concerning the Class Vehicles, viewed the Monroney sticker on the vehicle, and

spoke with Subaru sales representatives about the vehicle's features. Neither Defendants nor their agents, dealers, or other representatives disclosed the Defect to Plaintiff prior to or after the time of purchase.

77. In or about March 2015, while the vehicle was covered by Subaru's New Vehicle Limited Warranty, the battery in Mr. Franke's Class Vehicle failed, and the vehicle repeatedly failed to start. On at least four occasions, he found that his Class Vehicle would not start when it was left in his garage for several days. Mr. Franke had to call AAA each time to have someone help him jump start the car.

78. After the fourth occurrence and while under warranty, Mr. Franke took his Class Vehicle to Subaru of El Cajon for assistance. The dealership, however, refused to replace the battery.

79. At all times, Mr. Franke has driven the vehicle in a foreseeable manner and in the manner in which it was intended to be used.

80. Had Subaru disclosed the Defect to Plaintiff Franke prior to purchase, including on the vehicle's Monroney sticker, he would not have purchased the vehicle or would have paid less for it.

81. Mr. Franke prefers the features and aesthetics of Subaru vehicles to other vehicles. Although Subaru continues to advertise the high quality, performance, reliability, and functionality of its vehicles, because of his experience with his Subaru, he does not trust Subaru's representations about its vehicles. As a result,

although Mr. Franke would like to buy another Subaru vehicle, he will not do so unless Subaru takes sufficient steps to cure the defect and ensure the accuracy of its representations about its vehicles.

Plaintiff Matthew Miller

82. Plaintiff Matthew Miller is a citizen and resident of California. On or about July 21, 2018, Mr. Miller purchased a new 2017 Subaru Outback from Ocean Subaru, an authorized Subaru dealership located in Fullerton, California. Mr. Miller purchased his vehicle for personal, family, or household use.

83. Prior to purchasing his Outback, Mr. Miller viewed Subaru marketing materials regarding the reliability of the Class Vehicles (including a Subaru advertisement that stated most Subaru Outbacks were still operating after 10 years of use), viewed the Monroney sticker on the vehicle, and spoke with Subaru sales representatives concerning the vehicle's features and reliability. Neither Defendants nor their agents, dealers, or other representatives disclosed the Defect to Plaintiff at or after the time of purchase.

84. In or about January 2020, with about 15,000 miles on the odometer, and while the vehicle was covered by Subaru's New Vehicle Limited Warranty, the battery in Mr. Miller's Class Vehicle failed and he had to jump start it.

85. Over the next several months, Plaintiff's battery failed three more times and had to be jump started each time. After the fourth failure in March 2020, Mr.

Miller took his vehicle to a Subaru dealer, which replaced the battery under warranty. Just three days after the battery was replaced, the vehicle again failed to start and had to be jump started. The Class Vehicle then failed to start five more times, with the latest such incident occurring in late May 2020.

86. At all times, Mr. Miller has driven the vehicle in a foreseeable manner and in the manner in which it was intended to be used.

87. Had Subaru disclosed the Defect to Plaintiff Miller prior to purchase, including on the vehicle's Monroney sticker, he would not have purchased the vehicle or would have paid less for it.

88. Mr. Miller prefers the features and aesthetics of Subaru vehicles to other vehicles. Although Subaru continues to advertise the high quality, performance, reliability, and functionality of its vehicles, because of his experience with his Subaru, he does not trust Subaru's representations about its vehicles. As a result, although Mr. Miller would like to buy another Subaru vehicle, he will not do so unless Subaru takes sufficient steps to cure the defect and ensure the accuracy of its representations about its vehicles.

Plaintiff Steven Stone

89. Plaintiff Steven Stone is a citizen and resident of Florida. On or about September 15, 2016, Mr. Stone purchased a new 2017 Subaru Outback from Ocala Subaru Volvo, an authorized Subaru dealership located in Ocala, Florida.

90. Prior to purchasing his Outback, Mr. Stone viewed Subaru marketing materials concerning the subject vehicle, including Subaru advertisements and Subaru's website, viewed the Monroney sticker on the vehicle, and spoke with Subaru sales representatives concerning the vehicle's features. Neither Defendants nor their agents, dealers, or other representatives disclosed the Defect to Plaintiff prior to or after the time of purchase.

91. In or about May 2017, with approximately 9,000 miles on the odometer, and while the vehicle was covered by Subaru's New Vehicle Limited Warranty, Plaintiff's battery failed and the vehicle would not start. Mr. Stone had his vehicle towed to Ocala Subaru, and the dealership replaced Mr. Stone's battery under warranty.

92. In or about June 2018 while his vehicle was still under warranty, Mr. Stone's battery failed again and the car would not start. Mr. Stone paid approximately \$170 to replace the battery.

93. In or about October 2019, Mr. Stone's battery failed again. Plaintiff called AAA to jump start the Class Vehicle. The Class Vehicle's battery failed again the next day—but this time AAA could not get the vehicle started. The Class Vehicle was then towed to a local AAA tow provider and another new battery was installed at a cost to Plaintiff of approximately \$170.

94. Despite the new battery, the Defect has continued to manifest.

95. At all times, Mr. Stone has driven the vehicle in a foreseeable manner and in the manner in which it was intended to be used.

96. Had Subaru disclosed the Defect to Plaintiff Stone prior to purchase, including on the vehicle's Monroney sticker, he would not have purchased the Class Vehicle or would have paid less for it.

Plaintiff Howard Bulgatz

97. Plaintiff Howard Bulgatz is a citizen and resident of Illinois. On or about August 31, 2018, he leased a new 2019 Subaru Legacy from Napleton Subaru, an authorized Subaru dealership located at the time on Rand Road in Arlington Heights, Illinois. This dealership has since relocated to Rand Road in Palatine, Illinois.

98. Prior to leasing his Legacy, Mr. Bulgatz viewed Subaru marketing materials and advertisements for the vehicle, viewed the Monroney sticker on the vehicle, and spoke with Subaru sales representatives concerning the vehicle's features. Neither Defendants nor their agents, dealers, or other representatives disclosed the Defect to Plaintiff prior to or after the time of lease.

99. In or about October 2018, with less than 1,000 miles on the odometer, and while the vehicle was covered by Subaru's New Vehicle Limited Warranty, the battery in Plaintiff's Class Vehicle failed approximately three times over a roughly three month period, leaving him stranded each time. After the third incident, Mr. Bulgatz brought the vehicle into the Napleton dealership for repair, but the

dealership declined to replace the battery. The Class Vehicle's battery thereafter failed again.

100. At all times, Mr. Bulgatz, has driven the Class Vehicle in a foreseeable manner and in the manner in which it was intended to be used.

101. Had Subaru disclosed the Defect to Plaintiff Bulgatz prior to his lease, including on the vehicle's Monroney sticker, he would not have leased the Class Vehicle or would have leased it at a lower price.

Plaintiff Mary Beck

102. Plaintiff Mary Beck is a citizen and resident of Michigan. On or about December 14, 2019, Ms. Beck purchased a new 2020 Subaru Outback from Glassman Automotive Group, an authorized Subaru dealership located in Southfield, Michigan.

103. Prior to purchasing her Outback, Ms. Beck viewed the Monroney sticker on the vehicle and spoke with Subaru sales representatives about the Class Vehicle, including its reliability. Neither Defendants nor their agents, dealers, or other representatives disclosed the Defect to Plaintiff prior to or after the time of purchase.

104. In or about April 2020, with approximately 4,500 miles on the odometer, and while the vehicle was covered by Subaru's New Vehicle Limited Warranty, the battery in Plaintiff's Class Vehicle failed and she had to jump start the vehicle.

105. A few weeks later, the Class Vehicle's battery failed again and Ms. Beck had to jump start it once more. Plaintiff brought her Class Vehicle to Glassman Automotive Group, but the service representative declined to replace the battery.

106. Plaintiff purchased a replacement battery with a larger capacity from a third party for \$221.99.

107. At all times, Ms. Beck has driven her Class Vehicle in a foreseeable manner and in the manner in which it was intended to be used.

108. Had Subaru disclosed the Defect to Plaintiff Beck prior to purchase, including on the vehicle's Monroney sticker, she would not have purchased the Class Vehicle or would have paid less for it.

Plaintiff David Davis

109. Plaintiff David Davis is a citizen and resident of Texas. On or about August 20, 2018, Mr. Davis purchased a new 2019 Subaru Ascent from Austin Subaru, an authorized Subaru dealership located in Austin, Texas.

110. Prior to purchasing his Ascent, Mr. Davis viewed Subaru marketing materials concerning the Class Vehicles, including Subaru advertisements, viewed the Monroney sticker on the vehicle, and spoke with Subaru sales representatives concerning the vehicle's features. Neither Defendants nor their agents, dealers, or other representatives disclosed the Defect to Plaintiff at or after the time of purchase.

111. In or about April 2020, with approximately 20,000 miles on the odometer, and while the vehicle was still covered by Subaru's New Vehicle Limited Warranty, Plaintiff's battery failed and his Class Vehicle failed to start. Plaintiff called a tow truck to jump start the battery.

112. Mr. Davis then brought his Class Vehicle to Austin Subaru to address the Defect. The dealership inspected Plaintiff's Class Vehicle and replaced the battery.

113. At all times, Mr. Davis has driven his Class Vehicle in a foreseeable manner and in the manner in which it was intended to be used.

114. Had Subaru disclosed the Defect to Plaintiff Davis prior to purchase, including on the vehicle's Monroney sticker, he would not have purchased the Class Vehicle or would have paid less for it.

Plaintiff Colin George

115. Plaintiff Colin George is a citizen and resident of Washington. On or about January 23, 2016, Mr. George purchased a new 2016 Subaru Outback from Carter Subaru, an authorized Subaru dealership located in Seattle, Washington.

116. Prior to purchasing his Outback, Mr. George viewed Subaru marketing materials concerning the Class Vehicle, including Subaru and dealer websites, viewed the Monroney sticker on the vehicle, and spoke with Subaru sales representatives concerning the vehicle's features. Neither Defendants nor their

agents, dealers, or other representatives disclosed the Defect to Plaintiff at or after the time of purchase.

117. In or about January 2019, with approximately 33,000 miles on the odometer, and while the vehicle was covered by Subaru's New Vehicle Limited Warranty, Plaintiff's battery failed and his Class Vehicle failed to start. Mr. George was forced to wait until a passerby was able to jump start the vehicle.

118. Plaintiff's battery then failed several additional times, including one incident that left him stranded at a rest stop at 1:00 a.m., forcing him to find others willing to jump start his vehicle.

119. Since purchasing the Class Vehicle, Mr. George has had the battery replaced twice.

120. In or about August 2019, Mr. George purchased a AAA membership and, in or about April 2020, Mr. George also purchased a jump starter for approximately \$100, to offset the risk of being stranded due to the Defect.

121. At all times, Mr. George has driven his Class Vehicle in a foreseeable manner and in the manner in which it was intended to be used.

122. Had Subaru disclosed the Defect to Plaintiff George prior to purchase, including on the vehicle's Monroney sticker, he would not have purchased the Class Vehicle or would have paid less for it.

FACTUAL ALLEGATIONS

A. The Battery Drain Defect

123. People depend on their vehicles to provide reliable and safe transportation. The battery is an essential component of any vehicle: it powers the electrical system within the vehicle and also provides the electrical energy needed to start the vehicle's engine.

124. The Class Vehicles suffer from a Defect that prematurely renders them inoperable. The electrical systems within the Class Vehicle are subject to a continuous parasitic drain—including when the engine is not running—thereby resulting in premature battery failure under ordinary and expected use.

125. The electrical system within the Class Vehicles is referred to as a Controller Area Network (“CAN”). A CAN system is a serial communication bus that was originally designed for robust and flexible performance in harsh environments, and particularly for industrial and automotive applications. CAN was developed to reduce cable wiring, so the separate electronic control units (ECUs) inside a vehicle could communicate with only a single pair of wires.

126. Onboard diagnostics (OBD) is a vehicle's diagnostic and reporting system that allows a technician to troubleshoot problems via diagnostic trouble codes (DTCs). When the “check engine” light comes on, a technician will often use a handheld device to read the engine codes off of the vehicle. At the lowest level,

this data is transmitted via a signaling protocol, which in most cases is CAN.

127. According to Subaru, “a key framework of every Subaru vehicle today is the Controller Area Network (CAN), designed to let components like electronic units, microcontrollers, devices, sensors and actuators communicate and work together without a host computer.”¹

“Why is this important? Because almost every action in your Subaru, from hitting the gas to opening the windows, is not only a mechanical function but also a connected electrical activity. When you hit the headlight control, for example, you’re not turning on the lights directly – you’re sending a signal to its control module over the CAN. In short, the CAN harmonizes the interaction between modules.”

128. The CAN system allows ECUs to communicate with each other without complex dedicated wiring in between. In turn, this allows for many features, modifications, and repairs to be accomplished via software alone.

129. Subaru began to implement CAN technology in the early 2000s. After first appearing on the 2005 Legacy, CAN has been implemented in all Subaru models. Starting with the 2015 Legacy and Outback, Subaru vehicles were shipped with a new high-speed CAN configuration.²

130. The high-speed CAN in all Class Vehicles is substantially similar and/or closely related. The CAN in the Class Vehicles is made up of two wires, which

¹ <https://subarudrive.com/articles/Blueprint%20CAN> (last visited June 18, 2020)

² *Id.*

connect all the devices in the network. Each control module has both a transmitter and a receiver, enabling it to receive data from and transmit data to other modules and subsystems at 500 kilobytes per second.³

131. The CAN system in the Class Vehicles is divided into two separate high-speed circuits, the main CAN and the body CAN.⁴ According to Subaru, critical systems such as the engine, transmission, and ABS are controlled through the main CAN. Less critical electrical systems like power windows, turn signals, and HVAC are controlled through the body CAN. The main and body CANs are connected through a gateway, which Subaru calls a Body Integrated Unit (“BIU”).

132. The BIU is responsible for controlling many systems, including (but not limited to) lighting, instrument panels, door locks, windshield wipers, HVAC and power windows. The BIU is separate from the Engine Control Module (“ECM”), Transmission Control Module (“TCM”) and Data Communications Module (“DCM”) but communicates with these modules through the CAN system.

133. When the vehicle is in use, the CAN system in the Class Vehicles relies on electrical current so that the vehicle can be operated as intended. When the vehicle is not being operated, the CAN system should enter a sleep mode in which it stops drawing significant electrical current.

³ *Id.*

⁴ *Id.*

134. The Class Vehicles contain a manufacturing defect (including software errors) that results in the CAN system not entering the necessary sleep mode when the vehicle is turned off. As a result, the CAN system draws significant “dark current” (parasitic battery draw) even when the vehicle is turned off and not being operated.

135. The presence of dark current when the Class Vehicles are turned off prematurely renders them inoperable. The battery in each Class Vehicle is subject to continuous parasitic drain—including when the engine is not running—thereby resulting in premature battery failure under ordinary use.

136. As detailed below, Subaru knew about the Defect, its underlying cause, and the symptoms associated with it since at least 2014, before any Class Vehicles were sold.

B. The Defect Poses a Safety Hazard

137. When the Defect manifests and the battery fails, the electrical components lose power, the engine in the Class Vehicle will not start, and the vehicle becomes completely inoperable. As a result, drivers become stranded and must seek roadside assistance or alternative means of transportation.

138. Moreover, the loss of battery power also renders many safety features in the vehicle inoperable, including hazard lights and headlights, increasing the danger of a disabled vehicle being struck by another vehicle and making it harder for

roadside assistance to locate the disabled vehicle.

139. Given the serious and varied dangers from being left stranded with a dead battery and vehicle electrical failure, the Defect presents a clear safety hazard. Drivers may become stranded in locations where there is no immediate available assistance or in inclement weather. Children and pets also may become locked inside a vehicle that cannot be opened without battery power.

C. Subaru's Deficient Warranty Performance

140. Subaru provides a three-year/36,000 mile New Vehicle Limited Warranty (“New Vehicle Limited Warranty”) for the Class Vehicles. With limited exclusions, the New Vehicle Limited Warranty covers the entire vehicle—including the electric system and battery—as well as “any repairs needed to correct defects in material or workmanship reported during the applicable warranty period and which occur under normal use.” The repairs are to be made without charge to the customer and within a “reasonable time.”

141. Subaru also provides an “Authorized Genuine Subaru Replacement Battery Warranty” which states:

Authorized Genuine Subaru Replacement Batteries are warranted by the 30-month/unlimited mileage Authorized Genuine Subaru Replacement Battery Warranty or the balance of the Basic New Vehicle Limited Warranty, whichever is longer. During the 30-month Authorized Genuine Subaru Replacement Battery Warranty period, or the balance of the Basic New Vehicle Limited Warranty period, coverage includes reimbursement for testing and replacement labor costs provided the battery was installed by an authorized Subaru retailer. In addition, if the vehicle cannot be driven due to

a defect covered by this warranty, the cost of towing to the nearest authorized Subaru retailer is covered. Authorized Genuine Subaru Replacement Batteries that fail after the 30-month Authorized Genuine Subaru Replacement Battery Warranty period or the Basic New Vehicle Limited Warranty has expired are eligible for prorated warranty coverage for a limited period of 85 months. Reimbursement for testing, replacement labor or towing is not covered. Prorating begins on the date the battery was originally installed.

142. Subaru also sells extended warranties such as “Classic Coverage” or “Gold Plus Coverage” plans extending warranty coverage for up to 10-years/120,000 miles, depending on the plan. These plans cover repairs to the Class Vehicle’s electrical systems.

143. The Defect arises from defective materials and/or workmanship in the Class Vehicles’ electrical systems and is therefore covered under Subaru’s warranties. Yet Subaru has refused to fix the Defect. Instead, when owners and lessees take their Class Vehicles into Subaru dealerships for service, they are told that the batteries in their vehicles are performing normally and instructed to avoid driving Class Vehicles for short distances. At most, Subaru instructs the dealerships to replace the batteries in the Class Vehicles. But since Subaru replaces the batteries with the same type batteries, or performs ineffective software updates, without addressing the underlying cause of the parasitic battery drain, the Defect inevitably manifests again. Absent a repair to the vehicle that resolves the parasitic draw of the electrical system, drivers whose battery is replaced with the same type battery or whose software is updated will experience the Defect again. Thus, Subaru’s

warranties provide only a temporary, ineffective solution, and expose their customers to repeat failure.

144. As reflected in Plaintiffs' experiences with their original and replacement batteries and given the nature of the Defect, Plaintiffs are likely to suffer more battery failures, which will not be covered by their Subaru New Vehicle Limited Warranty once it expires.

145. The Defect impacts the core functionality of the Class Vehicles—when it manifests, the Defect prevents consumers from operating their automobiles and using them for reliable transportation. Subaru's refusal to honor its warranty obligations shifts the costs of the Defect onto its customers, who must resort to purchasing larger capacity batteries or battery chargers in order to have a vehicle that will function properly and consistently.

D. Subaru's Exclusive Knowledge of the Defect

146. Subaru had exclusive and superior knowledge of the Defect before Plaintiffs purchased their Class Vehicles through a variety of sources unavailable to consumers, including internal pre-release testing data, consumer complaints to Subaru and its dealers, Subaru's testing in response to the complaints and in connection with service bulletins, warranty data from its dealers, replacement parts sales data from its internal databases, and reimbursement claims paid to Subaru dealers for work performed in response to warranty claims.

147. For decades, Subaru has used a Product Quality Management System for developing, manufacturing, and distributing its products. During the design and development and production stages, Subaru conducts extensive testing and quality inspection of all the critical components of a vehicle—including the electrical systems and battery—to uncover defects and variations in manufacture.

148. The distribution and sales stage of Subaru's quality management system begins when the vehicles are shipped to dealers. Subaru then collects and analyzes sales data from its dealership network and Customer Center for possible defects. Subaru therefore has exclusive access to data on how its vehicles are performing or not performing after they are sold.

149. Subaru's Quality Assurance Division works closely with authorized service technicians to detect and examine potentially widespread vehicle problems and to assist dealerships in diagnosing vehicle issues. The division collects and analyzes data from dealership service centers, parts sales reports, warranty claim data, and technical reports from Subaru engineers who examine vehicles brought in for warranty repairs. Subaru tests the batteries in particular, using specialized Subaru-specific equipment including electrical diagnostic platforms.

150. Subaru's dealership service centers are required to provide Subaru with detailed documentation—e.g., the actual parts that were replaced—for repairs made pursuant to its warranties, and Subaru sometimes audits dealerships to verify that the

work was completed. Subaru's National Warranty Department reviews warranty data submitted by its dealership service centers and authorized technicians in order to identify trends in warranty repairs and customer complaints, as well as potential vehicle defects.

151. Subaru service centers and independent repair shops order replacement parts, including batteries, directly from Subaru. Subaru monitors sales reports for these replacement parts and consequently has real-time information about the number, frequency, and trends of replacement part orders.

152. Subaru's knowledge of the Defect in the Class Vehicles is demonstrated by a series of Technical Service Bulletins ("TSB") it began issuing in 2014 to address problems with parasitic battery draw and other battery performance issues in its vehicles. TSBs are only issued when there have been a sufficient number of consumer complaints for a manufacturer to justify devoting resources to investigate, diagnose, and attempt to remedy a reported problem in its vehicles. It takes at least several months for a manufacturer to investigate, source and issue a TSB.

153. In June 2014, Subaru issued TSB, Number 07-85-14 for "Parasitic Battery Draw" in response to "[c]ustomer concerns of batteries going dead over a period of time"⁵ This TSB applied to "All Models" and directs service

⁵ Available at <https://static.nhtsa.gov/odi/tsbs/2014/SB-10068295-0699.pdf> (last visited June 18, 2020).

technicians to measure the current draw and determine if a vehicle was “exhibiting an unusual current draw.”

154. In February 2015, Subaru released another TSB, Number 07-89-15R for MY 2015 Legacy and Outback models to address reports that the vehicles would not start or that the vehicles’ instrument panels and HVAC systems would become inoperative—common symptoms of the Defect. The TSB tells technicians to replace the fuse box.⁶ The TSB was later amended to include MY 2016 Legacy and Outback vehicles.

155. In February 2016, Subaru issued a TSB, Number 07-106-16R directing its dealerships to replace the battery sensor in MY 2015-2016 Legacy, Outback, and WRX models.⁷

156. In June 2017 (and subsequently revised in June, August, and October 2017), Subaru issued another TSB, Number 11-174-17R, covering MY 2015-2017 Legacy, Outback, and WRX models, as well as MY 2017-2018 Forester models.⁸ This TSB was intended to address customer concerns about “[p]otential battery discharge (dead battery) after repeated periods of short-trip driving” by

⁶ Available at <https://static.nhtsa.gov/odi/tsbs/2016/SB-10081068-0699.pdf> (last visited June 18, 2020).

⁷ Available at <https://testing-public.carmd.com/Tsb/Download/114155/120445> (last visited June 18, 2020).

⁸ Available at <https://static.nhtsa.gov/odi/tsbs/2017/MC-10131689-9999.pdf> (last visited June 18, 2020).

reprogramming the vehicle's ECM with "New Charging Logic."

157. In June 2017, Subaru also issued a separate TSB, Number 11-175-17, making ECM reprogramming available for the MY 2017 Forester for "[p]otential battery discharge (dead battery) after repeated periods of short-trip driving."

158. In November 2017, Subaru released yet another TSB, Number 11-176-17, covering MY 2015-2016 Legacy and Outback models, for "Reprogramming to Optimize ECM for Improved Battery Life."⁹ The TSB tells dealerships to reprogram the ECM to "optimize . . . control of battery charging functions" in order to "enhance charging system control and result in improved battery life."

159. In October 2019, Subaru issued TSB, Number 11-192-19, for MY 2019-2020 Ascent models to reprogram the ECM to "address isolated concerns of extended cranking (hard starting) condition," another common symptom of the Defect.¹⁰

160. Given that TSBs are only issued after a significant number of complaints that are generally investigated over a period of months, Subaru was aware of the Defect and the parasitic battery draw issues in its vehicles well before June 2014.

161. As Plaintiffs' experiences show, Subaru's bulletins and purported

⁹ Available at <https://static.nhtsa.gov/odi/tsbs/2017/MC-10125883-9999.pdf> (last visited June 18, 2020).

¹⁰ Available at <https://static.nhtsa.gov/odi/tsbs/2019/MC-10166949-0001.pdf> (last visited June 18, 2020).

“fixes” did not address the underlying cause of the parasitic battery drain and have repeatedly proven ineffective. The internet also is replete with driver complaints on message boards, social media, and other websites concerning the Defect. A Facebook group called the “Subaru Ascent Dead Battery Club” now has several hundred members.¹¹

162. Numerous complaints about the Defect appear on websites Subaru actively monitors, such as the website for the National Highway Traffic Safety Administration (“NHTSA”) and Subaru’s owner message boards. Many of the related complaints posted on social media websites such as Facebook and Twitter also tag Subaru in the posts. Although Subaru monitors these forums, it is difficult for consumers with limited resources to do so. The following are a representative sampling of the complaints submitted by Class Vehicle owners, organized by model.¹²

OUTBACK

Long L., on 1/4/19¹³

- “As of now, I bought the 2019 Subaru Outback for less than a week, with

¹¹ <https://www.facebook.com/groups/875597246107705/> (last visited June 18, 2020).

¹² The following complaints are reproduced as they appear online. Any typographical errors are attributable to the original author.

¹³

https://www.carcomplaints.com/Subaru/Outback/2019/electrical/dead_battery.shtml (last visited June 18, 2020).

only 89 miles on it. I found the battery was totally dead two days ago. Called for jumper start assistance (it took the vendors a few hours to arrive). The vehicle was restarted and I drove it for 20 minutes, hoping that the battery was able to recharge by this. However, on the next day the same thing happened again. Totally unexpected and really disappointed”

@eugenia618 responded on 1/7/19¹⁴

- “Same happened to me. Missed niece’s performance in the Nutcracker due to 2wk old Subaru having a dead battery. Svc said it was fine. Then required five jumps this weekend now may be up to 1/17 before they can replace it.”

NHTSA Complaint 11185059 on 3/8/2019¹⁵

- DEAD BATTERY IF THE CARS SITS PARKED 2 DAYS. NOTHING LEFT ON, IT IS A PARASITIC BATTERY DRAIN. HAPPENED TWICE AND BATTERY WAS TOTALLY DEAD EACH TIME, NEEDING TO BE FULLY RECHARGED AS IT WOULDN’T TAKE A JUMP. LESS THAN 2000 MILES ON THE CAR.

Stephen B, on 5/13/19¹⁶

- “2019 OUTBACK Limited 3.6. Would not start, battery dead for the fourth time. Roadside service had to jump start the car. Complained to Stateside Subaru, they sent a tow truck and car was carried to them and they replaced the battery. I made sure nothing was left on and put the car in my garage. Two days later tried to start car, would not start. Roadside service came and jumped started the car for the fourth time. This is my first Subaru. We are afraid to take the Subaru anywhere for fear it will leave us stranded. Any suggestions would be appreciated”

¹⁴ <https://twitter.com/donnap2397/status/1211074132059791360> (last visited June 18, 2020).

¹⁵ <https://www.nhtsa.gov/vehicle/2019/SUBARU/OUTBACK#complaints> (last visited June 18, 2020).

¹⁶

https://www.carcomplaints.com/Subaru/Outback/2019/electrical/dead_battery.shtml (last visited June 18, 2020).

Kevin F. on 8/25/19¹⁷

- “The battery has drained down twice in the same week. Car is only 6 months old. Nothing plugged in. Very annoying. I had Subaru Roadside Assistance tow it 45 miles to nearest dealer. We will see what happens. Clearly a defect in the 2019 Subaru Outback.”

broggonni on 11/13/19¹⁸

- “I went to my Subaru Outback to unlock and the battery was dead again. This is the second time my battery was dead and I had to get a replacement that cost me \$180. Thanks Subaru.”

Henry S. on 3/24/19¹⁹

- “Had 3 separate occasions where we had to have the Subaru jump started. Took it in to the dealership where they cannot find anything wrong with the battery or electrical system. *They replaced battery just for good measure. Had to get it jumped again* at an airport lot where we were gone for 4 days.”

Susan H. on 3/26/19²⁰

- “2nd Dead battery March 26, 2019. Car parked in garage for most of day. Needed to go out in early evening. Battery Dead, Called Triple A who jumped started car, checked charging system, battery voltage way down. suggested I should drive car for 30 - 45 min to recharge battery. Drove car around for 45min to an hour but afraid to stop to do the errand I originally had to do because I didn’t want to turn off engine. 5 days later repeat

17

https://www.carcomplaints.com/Subaru/Outback/2019/electrical/dead_battery.shtm
1 (last visited June 18, 2020).

18

https://www.carcomplaints.com/Subaru/Outback/2018/electrical/dead_battery.shtm
1 (last visited June 18, 2020).

¹⁹ *Id.* (emphasis added).

²⁰ *Id.*

incident.”

@soulshine39 on 4/14/19²¹

- “Sadly getting fed up with repeated dead battery on my @subaru_usa 2018 Outback. If I go 3 days without driving it, the battery is DEAD. #strandedagain #dealerexcuses #canttrustmycartostart #wantedtolovesubaru”

@clarkbreyman on 5/30/19²²

- “@subaru_usa – When are you going to deal with the dead battery pattern on Outbacks?”

2018outback, on 4/10/19²³

- “Battery has died twice. Last time down to one volt. Dealership (Camelback Subaru) would not replace battery because it still showed that it was charged. Was told by ‘battery expert’ if the charge is ‘1’ or less, the battery will not take a full charge again. They WILL NOT replace it because it took a half charge. Was told by dealership that these new cars need to be driven 18 miles often in order to keep the battery charged. My car is dead. . . . There is obviously some electrical system that is draining the battery when the car is turned off. The 1st time when the Subaru tech came out to recharge the battery, I was his 12th customer that morning. . . . I purchased a trickle charger to give it a little boost. I AM SCARED to drive it because it could die at anytime!”

²¹ <https://twitter.com/soulshine39/status/1117394958808383493> (last visited June 18, 2020).

²² <https://twitter.com/clarkbreyman/status/1134220946200358913> (last visited June 18, 2020).

²³

https://www.carcomplaints.com/Subaru/Outback/2018/electrical/dead_battery.shtml (last visited June 18, 2020).

Bob L. on 7/1/19²⁴

- “This is just the latest dead battery. The car electrical system has been checked at least 3 times by the dealer, the latest being today. . . . My conclusion is the electronic system drains the battery while sitting. This is exacerbated by the electric key fob turning on the electronics when brought near the car. i.e leaving the key fob in the car while working on or near it is now a no for me unless I put the fob in a tin box. I now carry a backup battery to jump start the car. I also have a Deltran 5amp Battery Tender which I plug into a wire connection permanently attached to the battery when leaving the car home for any extended time. I also turned off all the overhead lights so to prevent that from being the issue.”

m85, on 2/19/19²⁵

- “I have a 2017 Subaru, the dead battery issue occurred at a dangerous time and place where it left me with a 12 mile hike to find the nearest person that could provide a jump start. In the morning I drove out to a remote section of a large lake, fished for a couple hours, came back and the battery was dead. After hiking 12 miles for the jump start the dealer said the drain was from repeated software update failures. This issue is extremely concerning as I’m often out fishing in far more remote places occurred with this recent incident.”

NHTSA Complaint 11254696 on 9/10/2019²⁶

- BATTERY DEAD SEVERAL TIMES. HAVE HAD TO HAVE IT JUMPED SIX TIMES. BATTERY REPLACED BY DEALER ONCE. I NOTE THAT MANY SUBARU OWNERS HAVE SIMILAR PROBLEM.

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https://www.carcomplaints.com/Subaru/Outback/2017/electrical/dead_battery.shtml
1 (last visited June 18, 2020).

25

https://www.carcomplaints.com/Subaru/Outback/2017/electrical/dead_battery.shtml
1 (last visited June 18, 2020).

²⁶ <https://www.nhtsa.gov/vehicle/2017/SUBARU/OUTBACK> (last visited June 18, 2020).

Mmva on 11/10/2015²⁷

- “car is barely 2 months old, it wouldn’t start. i was told that i left my backdoor light on but I don’t believe it. I took it to the dealer/service and that is what they told me. Two weeks later same problem.”

Update from 11/19/15

“engine turns over but car won’t start

i have to say, i am not surprised. after it happened once, before i even had the car for two months, i just knew something was very wrong. so when it didn’t start this evening -- all i could say, was oh well, what a horrible situation to be in. my 16 year old son is now driving me around with my 13 year old Honda CRV.”

Samvid D. on 5/3/2016²⁸

- “Brand new 2016 Outback bought in 2/2016. Battery has died about 4 times over the last 15 months. they replaced battery after it happened the first time - still continues to happen.
Has about 11,000 miles currently, but problem started with under a 1000 miles on the vehicle.”

Andreaak on 10/31/2016²⁹

- “I researched various reports before settling on the 2016 Subaru Outback. This was supposed to be the last car I would ever buy Even before the cold weather set in, we came out to the car one Fall morning and it wouldn’t start. I had to call for service The man explained that the battery that came with the new car is not the best quality, and that it should be replaced. While replacing the battery was done under warranty, I was charged for the trickle charger. Since the car is plugged in whenever it is

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https://www.carcomplaints.com/Subaru/Outback/2016/electrical/wont_start.shtml
(last visited June 18, 2020).

28

https://www.carcomplaints.com/Subaru/Outback/2016/electrical/drained_battery.shtml
(last visited June 18, 2020).

²⁹ *Id.*

not in use, I thought that would be all it needed. Boy, was I wrong.”

Sandra F. on 11/24/2016³⁰

- “Decided to drive my new car, tried to start it, battery appeared dead. Was able to jump start it with portable starter. Drove 15 minutes to first business, car restarted. Drove 5 minutes to 2nd business, car wouldn’t start.”

Update from 7/1/16

“After battery service from dealer 4 days ago, car won’t start again and this time the portable starter won’t start it. Called Subaru Roadside Assistance got a jump and drove directly to dealer. This time, battery tested BAD and was replaced with a new battery.”

Fred R. on 11/24/2016³¹

- “We have had our Subaru for about 5 months. . . . had a problem starting it 5 or 6 times already. For instance, trying to use accessory position seems to kill the battery in about 5 minutes. And now that weather is cold I have had two cases where it just won’t start. I bought a jump start battery and that has always started it right up. I have to get to the bottom of what is killing the battery!”

John A. on 11/25/2016³²

- “I was on a fishing trip in a fairly remote area and when my partner and I returned to the car to leave I could not start the car. The entire electrical system was down - no lights functioning, etc. I tried all suggestions in the ownership manual and nothing worked. I called the local dealer and was informed that they could not respond. I next called AAA and eventually help arrived and we were able to get the car started with a cable jump start.

³⁰ *Id.*

³¹

https://www.carcomplaints.com/Subaru/Outback/2016/electrical/wont_start.shtml
(last visited June 18, 2020).

³² *Id.*

My fishing partner purchased a similar Subaru about a month before I purchased mine and his wife experienced a similar problem while on a shopping trip. She was unable to start the car because the electrical system was dead. I took my car into the dealership the day after my car had failed to start and after keeping it for a day to trouble shoot the problem I was informed that they found the battery fully charged and that they could not find anything wrong with the electrical system. . . . I do not have confidence that I won't experience this non-starting problem again - especially now that I am aware that it has happened to someone else who also purchased a 2016 outback. . . . When 2 of 3 people I know experienced the same problem it doesn't seem like a coincidence. How widespread is this problem and is Subaru aware of it??"

NHTSA Complaint 11058155 on 1/2/2018³³

- CAR BATTERY DIES COLD WEATHER. NO WARNING. OBVIOUS DEFECT EITHER BATTERY OR ELECTRICAL DRAINAGE. I NOT ONLY OWNER WITH PROBLEM. ON LINE MANY COMPLAINTS WITH BATTERY DYING AND LEAVING ONE STRANDED COLD WEATHER. SUBARU AND DEALER KNOW OF DEFECT WILL NOT WARRANTY PROBLEM. TWICE STUCK WHEN CAR PARKED ON STREET AND GARAGE. WOULDN'T START

NHTSA Complaint 11062973 on 1/16/2018³⁴

- VEHICLE STARTING BECOMES SLOWER FOR ABOUT 1 WEEK AND THEN IT WILL NOT START AT ALL. I THEN GOT A BOOST FROM A SERVICE GARAGE IN THE FIRST INSTANCE AND DROVE THE CAR TO MY SELLING DEALER 40 KM. AWAY. . . . THEY ONLY DID DIAGNOSTIC WORK AND NO ACTUAL REPAIRS THIS HAPPENED AT 25,000 KM ON THE ODOMETER IN SEPTEMBER OF 2017. IT IS NOW JANUARY 15, 2018 THE CAR HAS 33,000 KM. ON IT THE EXACT SAME THING HAPPENED, WITH A SLOW TO TURN OVER FOR ABOUT 1 WEEK AND THEN FAILURE TO START. I TESTED THE BATTERY WITH A LOAD TESTER AND IT TESTED AS "BAD" ON THE GAUGE. WE THEN

³³ <https://www.nhtsa.gov/vehicle/2016/SUBARU/OUTBACK/SUV/AWD> (last visited June 18, 2020).

³⁴ *Id.*

BOOSTED IT TO START AND TESTED THE VOLTAGE FROM THE ALTERNATOR WHICH WAS 14 VOLTS AND THE BATTERY TESTED 12 VOLTS. AFTER A FEW MINUTES OF RUN TIME WE TURNED IT OFF AND IT FAILED TO START AGAIN. . . . IT LEAVES YOU WONDERING WHEN YOU WILL BE STRANDED IN THE WILDERNESS OR THE SIDE OF AN INTERSTATE HIGHWAY.

GuruW291 about a year ago³⁵

- “I also have a 2016 Subaru Outback that has failed to start on 3 occasions and each time after boosting it tests OK, but testing before the boost it says bad battery. The 3rd time this happened I had it taken to the dealer this is a safety issue if you are a long way from help. Too bad Subaru engineers don’t find the solution. POOR SERVICE”

GuruXNCQZ about a year ago³⁶

- “We just had to get rid of our 2016 Outback. The battery kept dying, usually after driving it several hours. . . . Our neighbor got rid of his 2016 Outback with the same problem.”

Guru BJTG2 about a year ago³⁷

- “Just purchased a Subaru yesterday. We got it home and it died. Also died at the dealership before we drove it out of the lot. We called and told them to come get this car and that we don’t want it.”

@joe_aravindan on 9/2/19³⁸

- “@subaru_usa – Having Starting problems with ’16 Outback not fixed for last 3 years, with 3 dead batteries replaced and lot of msgs in form about same issue why this shouldn’t be a recall ? . . . its time for manufacturer to fix”

³⁵ https://www.cargurus.com/Cars/Discussion-t58701_ds833514 (last visited June 18, 2020).

³⁶ *Id.*

³⁷ *Id.*

³⁸ https://twitter.com/joe_aravindan/status/1168584383432781825 (last visited June 18, 2020).

ASCENT

Lynn P. on 1/9/19³⁹

- “The first time it happened to me, I was the last person on a large, remote training property with my 2 dogs (hunting training). Battery died, locking the two dogs in the rear with no way to get them out. I was fortunate enough to have cell service and was able to reach another person I had trained with and she circled back to the property to help jump start my car. that was the beginning of several dead battery incidents which then occurred while I was out of state training my dogs. In fact, it happened 3 days in a row while training on huge plantations in GA with no cell service. . . . After my car died 3 days in a row in GA, I bought a battery disconnect switch (which I then made Subaru pay for and the dealer install) and I now cut the battery off every time I train my dogs. I ended up buying a new non-Subaru battery (Odyssey) . . . Take a look at the Facebook group called Subaru Ascent Dead Battery Club to see what others have experienced. . . . Hopefully if enough people complain, Subaru will realize that this is a real problem for people who want to use this \$45k car in the manner in which Subaru advertises!!”

phiggins630ph on 7/7/19⁴⁰

- “I went out in my garage and noticed the tailgate was up. The car is used only occasionally, maybe once a week. I tried to close the tailgate but nothing happened. The battery was dead. I did not operate the tailgate earlier and don’t know how it opened. I jumped started the car and it started easily. However . . . now the car does not recognize my Bluetooth cell phone nor does it respond to the time and date updates on the phone. . . . I will send a letter to Subaru to see if this is a problem with other Ascents. This is the first time I noticed the tailgate apparently causing the battery drain but on three other occasions I had to jump start the Ascent.”

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https://www.carcomplaints.com/Subaru/Ascent/2019/electrical/open_tailgate_drains_battery.shtml (last visited June 18, 2020).

⁴⁰ *Id.*

Jean R. on 10/25/19⁴¹

- “I’m experiencing the same as other postings here, which is disappointing at best, and scary at worst. The first time my Ascent had no power, I got a jump start and took it to the dealer - they replaced the battery claiming a ‘bad cell’. Then - about 5 months later, lost complete power again. Jump started it, took it to the dealer. They kept it 2 days, couldn’t find anything wrong. And now - it happened again! I also bought the Ascent for use with my dogs and thank God they haven’t been in their kennels in the back when the power was lost - I would not be able to get them out!”

@rich_comeau on 7/16/19⁴²

- “@SubaruLegitNews I just had my 2019 Subaru Ascent battery changed due to dead battery and stranded 5 times calling AAA for a jump. There is an issue with this model and Subaru should recall for the battery drain.”

Laura J Carpent, on 10/20/19⁴³

- “I too have brand new 2020 ascent now 3200mi bought aug ’19, battery draining issue, jump 3 times, now alternator wont recharge battery after 6 hr drive, and now Car Play, bluetooth phone microphone not working -- all in one weekend... has anyone tried getting dealer full refund using lemon law attorney general lawsuit? I cant believe a jump start kit ill have to keep w me after car ownership of 40 yrs, never have i had to do this, Ive owned range rovers, mercedes, tahoes, denalis...in subzero buffalo NY.”

Jennifer G., on 7/27/19⁴⁴

- “I, too, have a 2019 Ascent and only left the hatchback open for 10-15 minutes as I was loading up the car. Closed the hatchback, got into the car and... car battery DEAD with my dogs LOCKED INSIDE and no way to

⁴¹

https://www.carcomplaints.com/Subaru/Ascent/2019/electrical/doesnt_start.shtml (last visited June 18, 2020).

⁴² https://twitter.com/rich_comeau/status/1151329124897701888 (last visited June 18, 2020).

⁴³ <https://www.torquenews.com/1084/new-subaru-ascent-owners-say-glitch-suvs-tailgate-could-leave-you-dead-battery> (last visited Nov. 1, 2019).

⁴⁴ *Id.* (last visited June 18, 2020).

get them out in 100 DEGREE WEATHER!! Dogs were in crates that faced the hatchback too! INCREDIBLY SCARY SITUATION!!

Alison Harris, on 10/19/19⁴⁵

- “Here is our latest dead battery saga. Our battery started dying about 2 months into buying it brand new. We would jump it and run it, only to have it die later in the evening. . . . We had jumped it enough to hit the roadside button in the car, so it started for [the dealer]. Lo and behold it died again for them. Told us it was a bad battery.”

NHTSA Complaint 11306550 on 2/2/2020⁴⁶

- MY 2019 ASCENT WAS PARKED IN GARAGE OVERNIGHT. WENT OUT TO CAR AND FOUND REAR TAILGATE WOULD NOT OPEN AND CAR WOULD NOT START. BATTERY WAS DEAD. JUMPSTARTED CAR AND DROVE IT TO THE STORE. WHEN I PARKED THE CAR IT WENT DEAD, CAR WOULD NOT RESTART, AND WOULD NOT LOCK, TAILGATE WOULD NOT OPEN. HAD TO GET ROADSIDE SERVICE TO COME OUT AND START CAR. TOOK CAR TO DEALER AND THEY SAID THEY COULD NOT FIND ANYTHING WRONG BUT DID REPLACE THE BATTERY. SEVERAL WEEKS LATER WHILE CAR WAS PARKED AND LOCKED IN A STORE PARKING LOT I CAME OUT AND FOUND THE REAR TAILGATE OPEN. NO ONE HAD PUSHED THE REMOTE TO OPEN THE TAILGATE? TODAY I FOUND THE CAR PARKED IN THE GARAGE AND THE TAILGATE WOULD NOT OPEN, THE CAR WOULD NOT START, AND THE BATTERY WAS DEAD AGAIN. . . . THE CAR HAD BEEN DRIVEN NORMALLY AROUND TOWN FOR THE LAST FEW DAYS. . . . ALL THE DOORS WERE SHUT AND NO LIGHTS HAD BEEN LEFT ON. THE CAR WAS PURCHASED IN JUNE 2019 AND HAS LESS THAN 6000 MILES ON IT I AM CONCERNED ABOUT DRIVING THE CAR AND BEING LEFT ON THE ROAD BY A DEAD BATTERY OR

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<https://www.facebook.com/groups/875597246107705/permalink/992580571076038/> (last visited June 18, 2020).

⁴⁶ <https://www.nhtsa.gov/vehicle/2019/SUBARU/ASCENT> (last visited June 18, 2020).

COMING OUT AND FINDING THE REAR TAILGATE OPEN IN A PARKING LOT.

FORESTER

NHTSA Complaint 10760335 on 8/31/2015

- THIS IS NOT EXACTLY A SAFETY PROBLEM, BUT COULD BE A CRITICAL ISSUE. WE LEFT THE BRAND NEW SUBARU 1015 FORESTER FOR TWO WEEKS WHILE WE WERE ON VACATION. WHEN WE CAME BACK THE BATTERY WAS DEAD. AAA TECH TOLD US THIS IS NOT AN UNCOMMON PROBLEM IN 2015 CARS WITH FULL COMPLEMENT OF FEATURES, AND TYPING "SUBARU BATTERY DRAINAGE PROBLEM" INTO GOOGLE BRINGS UP A LITANY OF COMPLAINTS. APPARENTLY ALL THE ELECTRONICS IN THE CAR DRAIN THE BATTERY EVEN WHEN THE CAR ISN'T RUNNING. SUBARU IMPLIED IT WAS OUR FAULT FOR NOT STARTING THE CAR. THAT'S ABSURD. WE HAVE A 2010 HONDA CIVIC THAT WAS UNDER THE SNOW FOR 6 WKS. AND IT STARTED RIGHT UP. SUBARU CHECKED OUR BATTERY, PRONOUNCED IT HEALTHY, SUGGESTED WE BUY A TRICKLE CHARGER (WHICH WE HAVE DONE), AND SENT US \$100 FOR OUR LOYALTY. NOWHERE IN THE SUBARU LITERATURE DOES IT SAY THAT THE CAR MUST BE STARTED EVERY FEW DAYS OR WARN ABOUT BATTERY DRAINAGE. IF WE'D HAD AN EMERGENCY THAT REQUIRED US TO USE THE CAR WHEN WE FIRST GOT HOME, WE'D HAVE BEEN OUT OF LUCK. THIS TECHNOLOGY IS NOT READY FOR PRIME TIME, AND AT THE VERY LEAST CONSUMERS SHOULD BE WARNED.

NHTSA Complaint 10853245 on 4/4/2016

- FORESTER SAT FOR 2 WEEKS AND BATTERY WAS DRAINED COMPLETELY THOUGH NO LIGHTS OR ACCESSORIES WERE LEFT ON. RECHARGED BATTERY, DROVE IT FOR TWO DAYS THEN CAR SAT FOR TWO DAYS. AGAIN BATTERY WAS COMPLETELY DEAD. VERY DISAPPOINTED AND CONCERNED OVER LACK OF RELIABILITY

NHTSA Complaint 11098426 on 4/4/2016

- I HAVE A TOTAL OF ELECTRICAL POWER LOST FOR 7 TIMES. 2

TIMES WHILE DRIVING I EXPERIENCE ALL ELECTRICAL LOST WHILE DRIVING ON THE HIGHWAY. I WAS ABLE TO PULL OVER TO THE SIDE AND WAS ABLE TO JUMP STARTED THE CAR WITH A JUMPER BATTERY OTHER 5 TIMES IT HAPPENED WHEN I TRY TO START THE CAR AND I DID NOT GET ANY ELECTRICAL POWER AT ALL. I TOOK THE CAR TO THE DEALER TWICE AND THEY CHANGE/FIX THE CAR GROUND THE FIRST TIME THAT I LOST ELECTRICAL POWER. THEN THEY CHANGE THE BATTERY AFTER 5 ELECTRICAL POWER FAILURES. I AM ABOUT TO BRING IT IN FOR THE 7TH TIME FOR THEM TO LOOK AT IT. I AM TOTALLY LOST CONFIDENT AND NO LONGER FEEL COMFORTABLE OR FEEL SAFE DRIVING MY TWO BOYS ON THIS CAR.

NHTSA Complaint 10995726 on 6/5/2017

- SINCE BUYING IT NEW, THE CAR SEVERAL TIMES HAS FAILED TO START AND HAD TO BE JUMP-STARTED. TWICE TOWED TO DEALER, CHECKED SEVERAL TIMES THERE, NO PROBLEM COULD BE FOUND. THIS HAS HAPPENED A NUMBER OF TIMES (SPORADICALLY, WITH NO INDICATION AS TO WHY). THE FIRST TIME AT 4,000 MILES, SEVERAL TIMES SINCE AND AGAIN THIS MONTH.

NHTSA Complaint 11150103 on 11/8/2018

- I WAS TRAPPED INSIDE MY VEHICLE WHEN THE BATTERY DIED. WHILE SITTING IN MY CAR USING THE ACCESSORIES TO CHARGE MY PHONE, THE CAR BATTERY DIED AND I WAS UNABLE TO UNLOCK THE DOORS TO GET OUT. THE KEY FOB DID NOT WORK EITHER. THERE IS NO INSIDE HANDLE ON THE REAR HATCH. THE DASHBOARD LIGHTS FLICKERED A COUPLE TIMES AND AFTER ABOUT THREE MINUTES THE DOOR DID UNLOCK. WHAT IF THE BATTERY WAS COMPLETELY DEAD? WHAT IF I DID NOT HAVE ACCESS TO A CELL PHONE AND IT WAS COLD TEMPERATURES? I DO NOT THINK I WOULD BE STRONG ENOUGH TO KICK OUT THE WINDOWS. I AM CONCERNED AND HOPE YOU WILL INVESTIGATE. THANK YOU.

NHTSA Complaint 11196601 on 4/15/2019

- WEVE HAD THE CAR FROM NEW LEASE THE BATTERY HAS DIED AT LEAST 4 TIMES. AFTER THE 2ND TIME, WE TOOK IT TO THE DEALER TO BE CHECKED. THEY SAID BATTERY AND CHARGER WERE FINE. IT IS NOT FINE IF THE BATTERY CANT HOLD ENOUGH POWER TO START CAR AFTER LEAVING KEY ON ACC FOR 15 MINUTES WITH NO LIGHTS, NO RADIO, NOTHING KNOWINGLY DRAWING POWER. EVEN WHEN THE BATTERY STARTS THE CAR NORMALLY, CRANKING IS SLOW, ALMOST UNABLE TO CRANK. I HAVE HAD TO RESCUE MY WIFE, HER SON-IN-LAW HAS HAD TO, BUT WHAT IF WE AREN'T AVAILABLE. A CAR SHOULD BE GENERALLY ABLE TO START UNLESS YOUVE LEFT THE LIGHTS ON FOR HOURS. THE LAST SITUATION . . . PARKED AND ENGINE OFF, KEY WAS TURNED TO ACC TO ROLL DOWN WINDOW; NOTHING ELSE. AFTER 15-20 MINUTES, CAR WOULD NOT START, DEAD BATTERY. I HAD TO COME AND JUMP IT

NHTSA Complaint 11204462 on 2/18/2019

- WE HAVE HAD THIS VEHICLE FOR ALMOST 4 YEARS AND HAVE HAD TO GET 2 NEW BATTERIES WITH LESS THAN 2500 MILES ON THIS VEHICLE. WE ARE SENIORS AND . . . HAD TO HAVE THE BATTERY CHARGED AT LEAST TWICE NOT INCLUDING THE TIMES IT FAILED ON US. WE WERE TOLD THAT THIS WAS A VERY SAFE VEHICLE FOR SENIORS. OUR WARRANTY WILL BE UP IN A YEAR. IS THIS NORMAL FOR A VEHICLE WITH SO MANY ELECTRONICS, THEY SHOULD HAVE A STRONGER BATTERY IF IT IS USED SO MUCH. WE HAVE NOT USED IT FOR LONG TRIPS, AS WE ARE UNSURE OF OUR SAFETY... IS THERE ANY FIX THAT SUBARU IS WORKING ON. WE NOW KEEP ALL OUR LIGHT SWITCHES IN THE OFF POSITION

NHTSA Complaint 11282979 on 11/30/2019

- MY CAR WAS PARKED IN MY GARAGE AND HAD NOT BEEN STARTED FOR ONE DAY. THE BATTERY WOULD NOT START THE CAR, I HAD TO CALL FOR A JUMP. I WAITED APPROXIMATELY ONE HOUR FOR SOMEONE TO COME THROUGH SUBARU ROAD SIDE ASSIST. THE BATTERY WAS

RELATIVELY NEW, AS THE ORIGINAL WAS REPLACED 1/2019. WE TOOK IT TO THE DEALER AND THEY TESTED THE BATTERY AND ALTERNATOR, WHICH WERE FINE. THEY RECHARGED THE BATTERY. I PAID FOR THE BATTERY INSPECTION

NHTSA Complaint 11288705 on 12/12/2019

- BATTERY DRAINS SO THAT CAR WON'T START. AFTER HAVING A NEW BATTERY INSTALLED, THE BATTERY IS STILL SO WEAK THAT THE CAR WILL NOT START, AND THE ELECTRICAL POWER IS COMPLETELY DRAINED. EVEN THE CLOCK HAS TO BE RESET. THIS STARTED AROUND 35,000 MILES. I STOPPED FOR GAS AFTER DRIVING FOR AN HOUR, AND THE CAR WON'T START WITHOUT A JUMP.

NHTSA Complaint 11309279 on 2/14/2020

- CAR SUFFERED 10 UNEXPLAINED ORIGINAL BATTERY DISCHARGES IN YEARS 2-3 OF OWNERSHIP. UPON JUMP START, AUTO WOULD START AND OPERATE NORMALLY FOR 2-5 MONTHS BEFORE NEXT DISCHARGE. SUBARU AUTHORIZED WARRANTY REPLACEMENT THROUGH DEALERSHIP WITH NEW LARGER POWERED BATTERY AT END OF YEAR 3 OF OWNERSHIP. REPAIR STATED FAILURE DUE TO BATTERY LEAKAGE ALTHOUGH NONE WAS OBSERVED BY OWNERS. 13 MONTHS AFTER REPLACEMENT BATTERY WAS INSTALLED, IT DISCHARGED TWICE IN SAME DAY AND WAS TAKEN TO ORIGINAL DEALERSHIP (SUBARU OF PORTLAND). SERVICE TECHNICIAN CHECK DETERMINED BATTERY COULD NOT BE RECHARGED, COULD NOT DETERMINE REASON FOR ITS FAILURE, COULD NOT FIND ANY ELECTRICAL PARASITIC DRAWS AND FOUND ALL SOFTWARE WAS UP TO DATE. OWNER WAS CHARGED FOR NEW BATTERY AND INSTALLATION AS FAILED BATTERY WAS NOW OUT OF 1-YEAR SUBARU REPLACEMENT POLICY. BRIEF INTERNET REVIEW SHOWS THIS HAS BECOME A COMMON PROBLEM WITH 2016-2017 SUBARUS. SUBARU U.S. CORPORATE CUSTOMER CARE DEPARTMENT DEMONSTRATED NO INTEREST IN TAKING COMPLAINT OR LOGGING IN ANY DETAIL INFORMATION, DIRECTING OWNER BACK TO

REPAIRING DEALERSHIP. DEALERSHIP CLAIMS NO RESPONSIBILITY FOR FAILED BATTERIES.

NHTSA Complaint 11323435 on 5/6/2020

- CONTINUOUS BATTERY DRAINAGE ISSUES. OVER THE PAST HALF A YEAR I'VE HAD 3 BATTERY REPLACEMENTS. MY CAR WAS UNDER WARRANTY WHEN THE FIRST BATTERY REPLACEMENT HAPPENED BUT HAS SINCE THEN LAPSED. IN ALL OF THE CASES, THE BATTERY WOULD DIE AFTER 2-3 DAYS OF NOT STARTING THE CAR. DEALERSHIP INSISTS THAT THIS IS NORMAL

WRX

Poster deleted, on 1/4/2015⁴⁷

- “2015 WRX. Less then two months old. I think the battery must be dead, as the car won't start or even react at all. Waiting for Subaru roadside assistance to get here. But Im more concerned how this could happen to a brand new car. Temps have been in the low 10's, but that shouldn't be an issue would it?”

Miket0429, on 9/19/2018⁴⁸

- “I had heard all the stories about how bad the battery is and I finally experienced them myself. Sat with ignition on, hazards on, and fan on for 10 mins tops.....won't turn over. Luckily my friend was able to give me a jump within a few minutes. But still, wow. Battery is less than 2 years old.”

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https://www.reddit.com/r/subaru/comments/2rch59/so_my_brand_new_car_is_dead_bad_battery/ (last visited June 18, 2020).

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https://www.reddit.com/r/WRX/comments/9hbdt2/reminder_oem_wrx_battery_is_garbage/ (last visited June 18, 2020).

WoRteX, on 12/4/2018⁴⁹

- “My 15 wrx batt died within two years. Dealer replaced it for free. Said the factory batteries in the new models are crap, they’ve replaced almost all of them that were sold.”

TJnova, on 1/7/2019⁵⁰

- “Hey just wondering if anyone else has been left stranded by their new(ish) wrx. This car is less than two and a half years old, less than 30k miles, and the battery is dead . . . Roadside assistance is coming out to jump me, and it’s under warranty, but it’s a huge inconvenience to get stuck in 40 degree weather with a young kid. My lease is up in 6 months and this has me seriously reconsidering buying another Subaru. EDIT - it was just the battery. Still not thrilled with Subaru right now.”

CpuDoc67, on 1/17/2019⁵¹

- “The stock WRX battery is crap, it sucked from the start. I put up with it for almost 2 years. When I got a new battery I was amazed by how light in weight the stock battery was for its size. Before swapping the battery if I listened to the radio too long I was risking not being able to start the car. New battery I can have the seat heater on and listen to the radio while at lunch.”

LEGACY

NHTSA Complaint 11269328 on 10/18/2019

- I PURCHASED A BRAND NEW 2019 SUBARU LEGACY 3.6R LIMITED AND 3 MONTHS LATER WITH APPROXIMATELY 900 TOTAL MILES THE BATTERY DIED TWICE WHILE PARKED.

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<https://forums.nasioc.com/forums/showthread.php?t=2819115&highlight=battery+drain&page=18> (last visited June 18, 2020).

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https://www.reddit.com/r/WRX/comments/adnbke/2017_wrx_wless_than_30k_miles_wont_start/ (last visited June 18, 2020).

⁵¹ *Id.*

SubieN8, on 7/6/2015⁵²

- “I woke this morning to a dead battery. I have a 2015 Legacy 2.5 with about 800 miles on it (I bought it with 39 miles). Checked Light Switch, and it was set to Auto as normal (30 second delay). Roadside came and jumped it as it sat in the garage. It stayed running for a few minutes with the battery pack removed. I turned the car off, the headlights stayed on as normal and slowly dimmed and then there was a soft clicking sound coming from under the hood as the headlights were dimming. Even the LEDs were barely on and flickering. We jumped it again to get it out onto the street so it could be loaded on the flatbed. I’ve read that our batteries are weak, from the factory.”

Rob_m, on 8/31/2015⁵³

- “Ok ... add me to the ‘dead battery’ club. No electrical mods since I added the cupholder lighting last March. Drove the car to work Friday, moved it out and in the driveway Saturday, unlocked and locked it to get my mail house keys Sunday. Completely dead Monday. . . .”
- “After over a year from the last time, my battery was almost totally dead this morning. The lights worked and I was able to unlock the car, but it wouldn’t even crank over. After a feeble attempt with my little Genius jump starter, I ended up jump starting it with old school cables and the wife’s Outback”

Mehilovich, on 10/13/2015⁵⁴

- “Almost exact same story here. Around 900 miles on my car now, and walk out to a dead battery this morning. I checked all of the doors to make sure they were closed (I found out the battery was dead when my keyless entry wouldn't work), no trunk propped open or anything. Open the car and

⁵² <https://legacygt.com/forums/showthread.php/dead-battery-242870.html?s=b8835d1bdf6fb079684709492942cb5f&>; (last visited June 18, 2020).

⁵³ *Id.*

⁵⁴ *Id.*

the headlight switch is on ‘Auto’. The only thing I can think of is that a dome light somehow got left on. But this shouldn’t have COMPLETELY drained my battery within ~36 hours since the last time I drove it. Waiting for roadside assistance now, and will be driving it down to AutoZone to do a battery, charging system, and starting system check on it. I will report back with any updates!”

shiftdelete, on 03/31/2016⁵⁵

- “2015 legacy. Battery has died 5 times. 2 times were from dome lights being left on for approx 12 hrs. The other 3 times had no known cause. Been to the dealer 2 times. First time they did a load test and said nothing was wrong. 2nd time they did load test and overnight parasitic draw test-- - still said no issue. we do drive short trips often... But this is ridiculous. any suggestions? Wait for 1 more time and try lemon law? . . .”

163. In addition to being on notice of the Defect through NHTSA and other complaints, Subaru also directly learned of the vehicle battery problems from its network of dealerships. Many of the customers who wrote online or to Subaru about their negative experiences with the Defect reported having taken their Class Vehicles into Subaru dealerships because of the Defect.

164. Further, Subaru itself has seen a significant increase in warranty claims relating to batteries, starting as early as 2015 or 2016 when it began selling the 2016 Outback.

165. Despite its knowledge of the Battery Drain Defect, Subaru failed to disclose it to Plaintiffs and other Class Members.

E. Subaru Conceals the Defect and Continues Selling Class Vehicles

⁵⁵ *Id.*

166. Subaru markets its vehicles as safe and reliable. For example, Subaru advertises its Outback models as having “go-everywhere capability.” Subaru also represents that Class Vehicles are “built to take you to the place you’ve never been,”⁵⁶ “mak[ing] more destinations possible,” “the most adventurous, most reliable, and safest,” and “built to minimize limits and maximize versatility, durability and all-around safety. This means you can explore that new destination you have in mind, take the scenic route, and go without hesitation.”⁵⁷ “When you’re ready for life’s next big adventure, the all-new 2019 Ascent™ is ready to take you to new heights,”⁵⁸ Subaru boasts. “And you’ll always drive with confidence, thanks to legendary Subaru quality, durability and reliability.”⁵⁹ Subaru also touts that 97% of the

⁵⁶ <https://www.subaru.com/vehicles/outback/previous-year/index.html> (Outback 2019 Model)(last visited June 18, 2020).

⁵⁷

https://www.subaru.com/guides/outback/my19/?utm_source=com&utm_medium=cta&utm_term=OBK&utm_campaign=VSP&utm_content=MY19 (Outback 2019 model) (last visited June 18, 2020).

⁵⁸

https://www.subaru.com/guides/ascent/my19/?utm_source=com&utm_medium=cta&utm_term=ASC&utm_campaign=VSP&utm_content=MY19 (2019 Ascent model) (last visited June 18, 2020).

⁵⁹

https://www.subaru.com/guides/ascent/my19/?utm_source=com&utm_medium=cta&utm_term=ASC&utm_campaign=VSP&utm_content=MY19 (2019 Ascent model) (last visited June 18, 2020).

vehicles it has sold in the past 10 years are still on the road today.⁶⁰

167. Subaru easily could have provided Class Vehicle owners and lessees with adequate and satisfactory notice of the Defect, including through its sales and marketing representations, its network of agents and dealers, in owners' manuals, on its website, in Class Vehicle brochures, and on Class Vehicle Monroney stickers. Had Subaru disclosed the Defect in any of these places, reasonable consumers would have been aware of it. But, instead of notifying the consuming public or Class Vehicle owners and lessees of the Defect, Subaru actively concealed this material information from Plaintiffs and similarly situated consumers and continued to sell and lease Class Vehicles.

168. Despite Subaru's representations of reliability and safety, the Defect renders the vehicles prone to premature battery degradation and, ultimately, failure that causes the Class Vehicles to lose battery power. The Defect prevents the Class Vehicles from working and poses a safety hazard for drivers and their passengers who may be left stranded.

169. Because of the recurring failures from the Defect, many Class Members, including Plaintiffs Burd, Hansel, O'Shaughnessy, and George, have had to purchase equipment to jump or charge their batteries. They purchased this equipment out of

⁶⁰ <https://www.subaru.com/why-subaru/reviews-awards/brz.html> (last visited June 18, 2020).

necessity to avoid being without use of their vehicles or finding themselves unexpectedly stranded. Even so, the Defect cannot be remedied simply by jumping or re-charging the battery.

170. Vehicle batteries are not designed to be continually drained down to low volumes of power; their purpose is to provide a quick surge of electricity to start the engine. After the engine starts, the alternator provides the power the vehicle needs. When a vehicle's battery is drained to a low percentage of its total charge, its lifespan is shortened, until the battery loses all power. The Defect therefore makes it necessary to replace the battery in Class Vehicles far more often than is typical with other, non-defective vehicles. Until the Defect is fixed by Subaru, replacing batteries will continue to be an ongoing expense and persistent problem for owners and lessees.

171. The Defect first manifested before June 2014, when Subaru issued a TSB for parasitic battery draw covering all of its models. Despite continuing to receive numerous consumer complaints about persistent premature battery failures across its fleet, Subaru continued to design, manufacture, and sell vehicles with the same Defect for years without informing prospective buyers.

172. The Defect continues to plague even Subaru's newest models. Despite receiving complaints about the Defect pertaining to MY 2016-2018 Outbacks, Subaru did not address the Defect in its 2019 Outback.

173. Subaru introduced the Ascent, a larger SUV, to its vehicle lineup for the 2019 model year. The 2019 and 2020 Subaru Ascents suffer from the Defect.

174. An internal report dated April 26, 2019, from Subaru's Quality Improvement Committee noted that Subaru was already concerned with battery failure problems in the 2020 Outback, which was set to enter production in the summer of 2019.⁶¹

175. Despite its long-running knowledge of the Defect, Subaru still does not inform prospective buyers about the Defect. Nor has Subaru developed an effective fix for the sudden failures the Defect causes.

176. As a consequence of Subaru's actions and inaction, Class Vehicle owners have been deprived of the benefit of their bargain, lost use of their Class Vehicles for extended periods of time, been exposed to dangerous conditions from being left stranded, and incurred lost time and out-of-pocket costs, including from payments for (1) alternative means of transportation such as rideshares or rental cars, (2) roadside assistance to tow or jump start their cars, and (3) equipment to charge, attempt to preserve, or jump start their vehicle batteries. Class Vehicles also have

⁶¹ Hans Greimel, *Behind the scenes, Subaru races to boost quality; Problems Blamed on Workers, Suppliers, Designers*, 93 AUTOMOTIVE NEWS 1 (June 24, 2019), <https://www.autonews.com/sales/behind-scenes-subaru-races-boost-quality> (reporting that a Subaru document from April 2019 notes that Subaru Outbacks have a problem with "battery failure") (last visited June 18, 2020).

suffered a diminution in value due to the Defect.

177. Had Plaintiffs and Class Members known about the Defect, they would not have purchased or leased their Class Vehicles or would have paid significantly less in doing so.

TOLLING OF STATUTES OF LIMITATIONS

178. Subaru's knowing and active concealment and denial of the facts alleged herein have tolled any applicable statutes of limitations. Plaintiffs and Class Members could not have reasonably discovered the true facts regarding the Class Vehicles, including the latently defective nature of vehicles' battery systems until shortly before this litigation commenced.

179. Even after Plaintiffs and Class Members contacted Subaru and/or its authorized dealers for vehicle repairs or battery replacement as a result of the Defect, Subaru routinely informed its customers that Class Vehicles are not defective, that the batteries were functioning normally, and that the batteries simply needed to be recharged.

180. Subaru was and remains under a continuing duty to disclose to Plaintiffs and Class Members the true facts concerning the Class Vehicles, i.e. that the Class Vehicles' electrical systems suffer from a Defect that causes OEM batteries to fail prematurely, and that the existence of the Defect diminishes the intrinsic and resale value of the Class Vehicles and costs consumers an increased expense to replace or

jump start the OEM batteries in their Class Vehicles far more frequently than normal. As a result of Subaru's active concealment of the Defect, any and all applicable statutes of limitations otherwise applicable to the allegations herein have been tolled.

CLASS ACTION ALLEGATIONS

181. This action is brought and may be maintained as a class action, pursuant to Rules 23(a), (b)(2), (b)(3) and/or (c)(4) of the Federal Rules of Civil Procedure.

182. The Class is defined as follows:

All persons in the United States who bought or leased, other than for resale, a Class Vehicle.

183. In addition, state subclasses are defined as follows:

New Jersey Subclass

All persons who bought or leased, other than for resale, a Class Vehicle in the state of New Jersey.

California Subclass

All persons who bought or leased, other than for resale, a Class Vehicle in the state of California.

Florida Subclass

All persons who bought or leased, other than for resale, a Class Vehicle in the state of Florida.

Illinois Subclass

All persons who bought or leased, other than for resale, a Class Vehicle in the state of Illinois.

Michigan Subclass

All persons who bought or leased, other than for resale, a Class Vehicle in the state of Michigan.

New York Subclass

All persons who bought or leased, other than for resale, a Class Vehicle in the state of New York.

Texas Subclass

All persons who bought or leased, other than for resale, a Class Vehicle in the state of Texas.

Washington Subclass

All persons who bought or leased, other than for resale, a Class Vehicle in the state of Washington.

184. Excluded from the Class are Subaru, its affiliates, employees, officers and directors; persons or entities that purchased the Class Vehicles for resale; and the Judge(s) assigned to this case. Plaintiffs reserve the right to modify, change, or expand the class definitions in light of discovery and/or further investigation.

185. **Numerosity**: The Class is so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Class is unknown at this time, as such information is in the sole possession of Subaru and is obtainable by Plaintiffs only through the discovery process, publicly available sales information shows that Subaru sold or leased hundreds of thousands of each model of Class Vehicles nationwide during the class period. Members of the Class can be readily identified based upon, *inter alia*, the records (including databases, e-mails, and dealership records and files) maintained by Subaru in connection with its sales and leases of Class Vehicles.

186. **Existence and Predominance of Common Questions of Fact and**

Law: Common questions of law and fact exist as to all members of the Class and predominate over any individual questions. These common legal and factual questions include, but are not limited to:

- a. whether Subaru engaged in the conduct alleged herein;
- b. whether Class Vehicles are unfit for their ordinary purpose;
- c. whether Subaru placed Class Vehicles into the stream of commerce in the United States with knowledge of the Defect;
- d. whether Subaru knew or should have known of the Defect, and if so, for how long;
- e. when Subaru became aware of the Defect in the Class Vehicles;
- f. whether Subaru knowingly failed to disclose the existence and cause of the Defect in the Class Vehicles;
- g. whether Subaru's conduct alleged herein violates consumer protection laws, warranty laws, and other laws as asserted herein;
- h. whether Plaintiffs and Class Members overpaid for their Class Vehicles as a result of the Defect;
- i. whether Plaintiffs and Class Members have suffered an ascertainable loss as a result of their loss of their Class Vehicles' features and functionality;
- j. whether Plaintiffs and Class Members are entitled to damages,

including punitive damages, as a result of Subaru's conduct alleged herein, and if so, the amount or proper measure of those damages; and

k. whether Plaintiffs and Class Members are entitled to equitable relief, including but not limited to restitution and/or injunctive relief.

187. **Typicality**: Plaintiffs' claims are typical of the claims of the Class because the Plaintiffs purchased or leased a Class Vehicle containing the Defect, as did each member of the Class. Plaintiffs and Class Members sustained economic harm in the same manner by Subaru's uniform course of conduct alleged herein. Plaintiffs and Class Members have the same or similar claims against Subaru relating to the conduct alleged herein, and the same conduct on the part of Subaru gives rise to all the claims for relief.

188. **Adequacy**: Plaintiffs are adequate representatives of the Class, whose interests do not conflict with those of any other Class Member. Plaintiffs have retained counsel competent and experienced in complex class action litigation—including consumer warranty and automobile defect class actions—who intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

189. **Superiority**: A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiffs and members of the Class. The injury suffered by each individual Class Member is relatively small in

comparison to the burden and expense of individual prosecution of these claims, including from the need for expert witness testimony on highly technical and economic issues bound up with the claims. Individualized litigation also would risk inconsistent or contradictory judgments and increase the delay and expense to all parties and the courts. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

190. **Injunctive Relief**: Subaru has acted, and refuses to act, on grounds generally applicable to the Class, thereby making appropriate final equitable relief with respect to the Class as a whole.

CLAIMS FOR RELIEF

COUNT I

Breach of the Implied Warranty of Merchantability Plaintiffs, Individually and on Behalf of the Class or, Alternatively, the State Subclasses

191. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

192. Plaintiffs bring this claim individually and on behalf of the Class under New Jersey law. Alternatively, Plaintiffs bring this claim individually and on behalf of their respective state subclasses under the laws of their respective home states.

193. Subaru is a “merchant” as defined under the UCC.

194. The Class Vehicles are “goods” as defined under the UCC.

195. A warranty that the Class Vehicles were in merchantable quality and condition arises by operation of law with respect to transactions for the purchase and lease of Class Vehicles. Subaru impliedly warranted that the Class Vehicles were of good and merchantable condition and quality, fit for their ordinary intended use, including with respect to safety, reliability, operability, and the absence of material defects, and that the vehicles would pass without objection in the automotive trade.

196. The Class Vehicles, when sold and leased, and at all times thereafter, were not in merchantable condition or fit for the ordinary purpose for which vehicles are used. The Class Vehicles were not merchantable in that the Defect renders the vehicle completely inoperable, which may also leave drivers and passengers stranded, unexpectedly, in perilous locations. The Defect therefore renders the Class Vehicles unfit to provide safe and reliable transportation.

197. The Defect was present in the Class Vehicles when they were placed into the stream of commerce and inevitably manifests well before the end of the useful life of the vehicles’ battery system.

198. Subaru was provided notice of the issues complained of herein within a reasonable time by numerous complaints online, directly to Subaru and its authorized dealers, class members taking their vehicle to its dealers, Plaintiffs’ demand letters, and the instant lawsuit.

199. Plaintiffs and the other Class Members have had sufficient direct dealings with either Subaru or its agents, including its authorized dealerships, to establish privity of contract between Subaru on the one hand and Plaintiffs and each Class Member on the other hand. Subaru directly communicated with Plaintiffs and Class Members through its agents, including its authorized dealerships, during the sales process. In addition, Subaru directly communicated with Plaintiffs and Class Members via its television, print, and online advertisements. Subaru also provided it warranties directly to Plaintiffs and Class Members. Plaintiffs and other Class Members relied on Subaru's direct representations regarding the high quality, durability, reliability, dependability, and functionality of Subaru vehicles in making their purchasing decision.

200. Regardless, privity is not required here because Plaintiffs and each of the Class Members are the intended third-party beneficiaries of contracts between Subaru and its dealers, and specifically of Subaru's implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles. The warranty agreements, such as the Limited Warranty, were designed for and intended to benefit consumer end-users only. Furthermore, Subaru was aware that the Class Vehicles were ultimately intended for use by consumers such as Plaintiffs and not dealers. Subaru also understood Plaintiffs' and consumers' requirements—including

that Class Vehicles would provide reliable transportation, function in a manner that does not pose a safety hazard, and be free from known defects—and expectation that a vehicle manufacturer would disclose any such defects prior to sale. Subaru delivered the Class Vehicles to Plaintiffs and other Class Members to meet those requirements.

201. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by Subaru to limit its express warranty in a manner that would exclude or limit coverage for the Defect would be unconscionable. Subaru's warranties were adhesive and did not permit negotiations. Subaru possessed superior and exclusive knowledge of the Defect, which is a latent defect, prior to offering Class Vehicles for sale. Subaru concealed and did not disclose this Defect, and Subaru did not remedy the Defect prior to sale (or afterward).

202. As a direct and proximate result of the breach of these warranties, Plaintiffs and Class Members were injured and are entitled to damages.

COUNT II
Breach of Express Warranty
Plaintiffs, Individually and on Behalf of the Class or, Alternatively, the State
Subclasses

203. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

204. Plaintiffs bring this claim individually and on behalf of the Class under New Jersey law. Alternatively, Plaintiffs bring this claim individually and on behalf

of their respective state subclasses under the laws of their respective home states.

205. Subaru is a “merchant” as defined under the Uniform Commercial Code (UCC).

206. The Class Vehicles are “goods” as defined under the UCC.

207. Subaru provides a Limited Warranty with every Class Vehicle that expressly warrants that Subaru will repair any defects in materials and/or workmanship free of charge during the applicable warranty period. The Defect is a defect in materials and/or workmanship and therefore should have been repaired for free under the Limited Warranty.

208. Subaru also sells extended warranty plans providing additional warranty coverage of the Class Vehicles’ electrical systems. Because the Defect is a material and/or workmanship defect in the vehicles’ electrical systems, the Defect should have been repaired for free under these warranty plans.

209. Subaru breached its written warranties by failing to provide an adequate repair when Plaintiffs and the Class Members presented their Class Vehicles to authorized Subaru dealers following manifestation of the Defect. Despite its knowledge that Plaintiffs’ and class members’ vehicles were exhibiting the symptoms of the Defect, instead of providing an effective repair, Subaru claimed that the batteries were performing normally and told customers to avoid driving short distances. When Subaru did agree to provide service under the relevant warranty, it

merely replaced the battery, thereby failing to address the underlying defect in materials and/or workmanship in the Class Vehicles.

210. Subaru failed to perform its written warranty obligations as part of a uniform pattern and practice that extended to all of its dealerships.

211. The warranties formed the basis of the bargain that was reached when Plaintiffs and Class Members purchased or leased their Class Vehicles. Plaintiffs and Class Members experienced the Defect within the warranty period. Despite the existence of the express warranty and multiple repair attempts, Subaru failed to inform Plaintiffs and Class Members of the Defect and failed to adequately repair the Defect.

212. Plaintiffs and the other Class Members have had sufficient direct dealings with either Subaru or its agents, including its authorized dealerships, to establish privity of contract between Subaru on the one hand and Plaintiffs and each Class Member on the other hand. Subaru directly communicated with Plaintiffs and Class Members through its agents and dealerships. In addition, Subaru directly communicated with Plaintiffs and Class Members via its television, print, and online advertisements. Subaru also issued vehicle warranties directly to Plaintiffs and Class Members. Plaintiffs and other Class Members also relied on Subaru's direct representations regarding the high quality, durability, reliability, dependability, and functionality of Subaru vehicles in making their purchasing decision.

213. Regardless, privity is not required here because Plaintiffs and each of the Class Members are the intended third-party beneficiaries of contracts between Subaru and its dealers, and specifically of Subaru's express warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles. The warranty agreements, such as the Limited Warranty, were designed for and intended to benefit consumer end-users only. Furthermore, Subaru was aware that the Class Vehicles were ultimately intended for use by consumers such as Plaintiffs and not dealers. Subaru also understood Plaintiffs and consumers requirements, including that Class Vehicles would provide reliable transportation, that they will function in a manner that does not pose a safety hazard, that they would be free from known defects, and that a vehicle manufacturer would disclose any such defects prior to sale. Subaru delivered the Class Vehicles to Plaintiffs and other Class Members to meet those requirements.

214. As a result of Subaru's breach of its express warranty, Plaintiffs and Class Members have suffered economic damages including, but not limited to, the loss of the benefit of their bargain, loss of vehicle use, diminished value, substantial loss in value and resale value, out-of-pocket expenses to purchase battery chargers and larger batteries, and for maintenance and service expenses to temporarily fix the Defect as well as towing, roadside assistance, and alternative transportation costs

that they otherwise would not have incurred but for the Defect.

215. Subaru was provided notice of the issues complained of herein within a reasonable time by numerous complaints online, directly to Subaru and its authorized dealers, Class Members taking their vehicles to its dealers, Plaintiffs' demand letters, and this lawsuit.

216. Plaintiffs and Class Members have complied with all obligations under the warranty or otherwise have been excused from performance of such obligations as a result of Subaru's conduct described herein.

217. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by Subaru to limit its express warranty in a manner that would exclude or limit coverage for the Defect, including benefit-of-the-bargain, incidental, or consequential damages, would cause the warranty to fail of its essential purpose. Plaintiffs and Class Members have presented their Class Vehicles to Subaru's authorized dealers on numerous occasions and Subaru has failed to remedy the Defect. As a result, Plaintiffs and Class Members are left with defective vehicles that do not function as intended and, therefore, have been deprived of the benefit of their bargains.

218. In its capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by Subaru to limit its express warranty in a manner that would exclude or limit coverage for the Defect would be unconscionable.

Subaru's warranties were adhesive and did not permit negotiations. Subaru possessed superior knowledge of the Defect, which is a latent defect, prior to offering Class Vehicles for sale. Subaru concealed and did not disclose this Defect, and Subaru did not remedy the Defect prior to sale (or afterward).

COUNT III
Violations of the Magnuson–Moss Warranty Act (“MMWA”)
15 U.S.C. §§ 2301–2312
All Plaintiffs, Individually and on Behalf of the Class

219. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

220. Plaintiffs bring this claim individually and on behalf of the Class.

221. Plaintiffs are “consumers” within the meaning of the MMWA, 15 U.S.C. § 2301(3).

222. Subaru is a “supplier” and “warrantor” within the meaning of the MMWA, 15 U.S.C. § 2301(4)-(5).

223. The Class Vehicles are “consumer products” within the meaning of the MMWA, 15 U.S.C. § 2301(1).

224. 15 U.S.C. § 2310(d) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

225. Subaru's express warranties are written warranties within the meaning of the MMWA, 15 U.S.C. § 2301(6). The Class Vehicles' implied warranties are covered under the MMWA, 15 U.S.C. § 2301(7).

226. Subaru breached its express and implied warranties as described in more detail above. Without limitation, the Class Vehicles contain the Defect that cause the vehicles to be inoperable, which renders the vehicles unfit for their intended use and unsafe. Subaru refused to honor its warranties by failing to effectively repair or replace the defective components.

227. Plaintiffs and the other Class Members have had sufficient direct dealings with either Subaru or its agents, including its authorized dealerships, to establish privity of contract between Subaru on the one hand and Plaintiffs and each Class Member on the other hand. Subaru directly communicated with Plaintiffs and Class Members through its agents and dealerships. In addition, Subaru directly communicated with Plaintiffs and Class Members via its television, print, and online advertisements. Subaru also issued vehicle warranties directly to Plaintiffs and Class Members. Plaintiffs and other Class Members also relied on Subaru's direct representations regarding the high quality, durability, reliability, dependability, and functionality of Subaru vehicles in making their purchasing decision.

228. Regardless, privity is not required here because Plaintiffs and each of the Class Members are the intended third-party beneficiaries of contracts between Subaru and its dealers, and specifically of Subaru's express and implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles.

The warranty agreements, such as the Limited Warranty, were designed for and intended to benefit consumer end-users only. Furthermore, Subaru was aware that the Class Vehicles were ultimately intended for use by consumers such as Plaintiffs and not dealers. Subaru also understood Plaintiffs and consumers requirements, including that Class Vehicles would provide reliable transportation, that they will function in a manner that does not pose a safety hazard, that they would be free from known defects, and that a vehicle manufacturer would disclose any such defects prior to sale. Subaru delivered the Class Vehicles to Plaintiffs and other Class Members to meet those requirements.

229. Plaintiffs and Class Members have afforded Subaru a reasonable opportunity to cure its breach of written warranties, and any further opportunity would be unnecessary and futile here as Subaru has failed to remedy the Defect.

230. At the time of sale or lease of each Class Vehicle, Subaru knew, should have known, or was reckless in not knowing of its misrepresentations and omissions concerning the Class Vehicles' inability to perform as warranted, but it nonetheless failed to rectify the situation and/or disclose the Defect. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution procedure under the MMWA and/or afford Subaru a reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

231. Plaintiffs and the Class Members would suffer economic hardship if they returned their Class Vehicles but did not receive the return of all payments made by them. Because Subaru is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the other Class Members have not re-accepted their Class Vehicles by retaining them.

232. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

233. Plaintiffs individually and on behalf of the other Class Members, seek all damages permitted by law, including diminution in value of the Class Vehicles, in an amount to be proven at trial.

COUNT IV
Violations of the Song-Beverly Consumer Warranty Act
For Breach of Express Warranty
Cal. Civ. Code §§ 1790–1795.8
Plaintiffs Franke and Miller, Individually and on Behalf of the California
Subclass

234. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

235. Plaintiffs Franke and Miller bring this claim individually and on behalf of the California Subclass.

236. Plaintiffs Franke, Miller, and the California Subclass members who

purchased or leased the Class Vehicles are “buyers” within the meaning of Cal. Civ. Code. § 1791(b).

237. The class vehicles are “consumer goods” within the meaning of Cal. Civ. Code § 1791(a).

238. Subaru is a “manufacturer” of the Class Vehicles within the meaning of Cal. Civ. Code § 1791(j).

239. Subaru made express warranties to Plaintiffs and the California Subclass members within the meaning of Cal. Civ. Code §§ 1791.2 & 1793.2(d).

240. Subaru breached these express warranties by selling and leasing defective Class Vehicles that required repair or replacement within the applicable warranty period. Despite a reasonable number of attempted repairs, Subaru has failed to adequately repair the Defect.

241. Subaru has failed to promptly replace or buy back the vehicles of Plaintiffs and the proposed California Subclass members as required under Cal. Civ. Code § 1793.2(d)(2).

242. As a direct and proximate result of Subaru’s breach of its express warranties, Plaintiffs Franke, Miller, and the California Subclass members received goods in a condition that substantially impairs their value to Plaintiffs and the other Subclass members. Plaintiffs Franke, Miller, and the California Subclass members have been damaged as a result of, *inter alia*, overpaying for the Class Vehicles, the

diminished value of the Class Vehicles, the Class Vehicles' malfunctioning, out-of-pocket costs incurred, and actual and potential increased maintenance and repair costs.

243. Pursuant to Cal. Civ. Code §§ 1793.2 & 1794, Plaintiffs Franke, Miller, and the California Subclass members are entitled to damages and other legal and equitable relief, including, at their election, the purchase price of their Class Vehicles or the overpayment or diminution in value of their Class Vehicles as well as reimbursement of out-of-pocket expenses incurred as a result of the Defect.

244. Pursuant to Cal. Civ. Code § 1794(d), (e), Plaintiffs Franke, Miller, and the California Subclass members are entitled to reasonable costs and attorneys' fees.

COUNT V
Violations of the Song-Beverly Consumer Warranty Act
For Breach of Implied Warranty
Cal. Civ. Code §§ 1790–1795.8
Plaintiffs Franke and Miller, Individually and on Behalf of the California
Subclass

245. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

246. Plaintiffs Franke and Miller bring this claim individually and on behalf of the California Subclass.

247. Plaintiffs Franke, Miller, and the California Subclass members who purchased or leased the Class Vehicles are “buyers” within the meaning of Cal. Civ. Code. § 1791(b).

248. The class vehicles are “consumer goods” within the meaning of Cal. Civ. Code § 1791(a).

249. Subaru is a “manufacturer” of the Class Vehicles within the meaning of Cal. Civ. Code § 1791(j).

250. Subaru impliedly warranted to Plaintiffs Franke, Miller, and the California Subclass members that Class Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792.

251. Section 1791.1(a) provides that: “Implied warranty of merchantability” or “implied warranty that goods are merchantable” means that the consumer goods must meet each of the following:

- (1) Pass without objection in the trade under the contract description.
- (2) Are fit for the ordinary purposes for which such goods are used.
- (3) Are adequately contained, packaged, and labeled.
- (4) Conform to the promises or affirmations of fact made on the container or label.

252. The Defect in the Class Vehicles is present in them when sold and substantially certain to manifest. The Class Vehicles would not pass without objection in the automotive trade because the Defect causes all or substantially all of the vehicles to experience complete battery and power failure and to fail to operate as intended. The Defect thus affects the central functionality of the vehicle and poses a serious safety risk to driver and passenger safety, leading to hundreds of dollars in

repair expenses, out-of-pocket costs to purchase battery chargers, and inconvenient service calls.

253. Because the Defect creates an unreasonable risk to driver and passenger safety, and because the Defect causes complete loss of power and inoperability, the Class Vehicles are not fit for the ordinary purposes for which such vehicles are used.

254. Class Vehicles are not adequately labeled because the labeling fails to disclose the Battery Drain Defect and does not advise the California Subclass members of this Defect.

255. Any attempt by Subaru to disclaim its implied warranty obligations under the Song-Beverly Act is ineffective due to its failure to adhere to Sections 1792.3 and 1792.4. Those sections of the Civil Code provide that, in order to validly disclaim the implied warranty of merchantability, a manufacturer must “in simple and concise language” state each of the following: “(1) The goods are being sold on an ‘as is’ or ‘with all faults’ basis. (2) The entire risk as to the quality and performance of the goods is with the buyer. (3) Should the goods prove defective following their purchase, the buyer and not the manufacturer, distributor, or retailer assumes the entire cost of all necessary servicing or repair.” Cal. Civ. Code § 1792.4(a). Subaru’s attempted implied warranty disclaimer does not conform to these requirements.

256. The Battery Drain Defect deprived Plaintiffs Franke, Miller, and the

California Subclass members of the benefit of their bargain and have resulted in Class Vehicles being worth less than what Plaintiffs and other California Subclass members paid.

257. As a direct and proximate result of Subaru's breach of its implied warranties, Plaintiffs Franke, Miller, and California Subclass members received goods that contain a defect that substantially impairs their value. Plaintiffs Franke, Miller, and the California Subclass members have been damaged by the diminished value of the vehicles, the vehicles' malfunctioning, out-of-pocket costs incurred, and actual and potential increased maintenance and repair costs.

258. Under Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs Franke, Miller, and California Subclass members are entitled to damages and other legal and equitable relief, including, *inter alia*, benefit-of-the-bargain damages, overpayment or diminution in value of their Class Vehicles, and reasonable attorneys' fees and costs.

COUNT VI

Violations of the New Jersey Consumer Fraud Act

N.J. Stat. Ann. § 56:8-1 *et seq.* ("NJCFA")

**Plaintiffs Burd, Gill, Hansel, and McCartney, Individually and on Behalf of
the New Jersey Subclass**

259. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

260. Plaintiffs Burd, Gill, Hansel, and McCartney bring this claim

individually and on behalf of the New Jersey Subclass.

261. Plaintiffs Burd, Gill, Hansel, McCartney, New Jersey Subclass members, and Subaru are persons within the meaning of N.J. Stat. Ann. § 56-8-1(d).

262. Subaru engaged in the “sale” of “merchandise” within the meaning of N.J. Stat. Ann. § 56:8-1(c).

263. Subaru’s advertisements described herein are “advertisements” within the meaning of N.J. Stat. Ann. § 56:8-1(a).

264. The NJCFA prohibits “any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise” N.J. Stat. Ann. § 56:8-2.

265. Subaru employed unconscionable commercial practices in its advertisement and sale of the Class Vehicles, which are defective. Subaru’s practices in connection with its advertisement and sale of the Class Vehicles were unscrupulous and demonstrate a lack of honesty and fair dealing.

266. Subaru engaged in fraudulent and deceptive trade practices, in violation of the NJCFA, by misrepresenting and knowingly concealing the existence of the Defect. Such information was material to a reasonable consumer because, among other things, the Defect renders the vehicle inoperable, forces consumers to incur

additional repair expenses, diminishes the value of Class Vehicles, and represents an unreasonable safety risk to consumers.

267. Subaru's material misrepresentations and knowing omissions are highly likely to mislead the public and induce consumers to make misinformed purchases.

268. Subaru owed a duty to disclose material facts about the defective nature of the Class Vehicles because: (1) Subaru had exclusive or superior knowledge of the Class Vehicles' propensity to fail; (2) Subaru knew that Plaintiffs Burd, Gill, Hansel, McCartney, and New Jersey Subclass members were unaware of the Defect in the Class Vehicles; (3) Subaru understood the true facts regarding the Defect in the Class Vehicles, including that they are defective and prone to battery failure, would be important to reasonable prospective buyers of the Class Vehicles; and (4) Subaru made representations regarding the quality and functionality of the Class Vehicles that were misleading, deceptive, and incomplete without the disclosure of the true facts regarding the Defect in the Class Vehicles.

269. The misrepresentations and knowing material omission described above were uniform across the New Jersey Subclass. All of the advertising, promotional materials, manuals, contained the same material misrepresentations and knowing omissions.

270. The misrepresentations and knowing material omissions were intended to induce Plaintiffs Burd, Gill, Hansel, McCartney, and New Jersey Subclass

members to purchase Class Vehicles. Plaintiffs Burd, Gill, Hansel, McCartney, and New Jersey Subclass members would not have purchased or leased a Class Vehicle, or would have paid less for them, in the absence of Subaru's misrepresentations and knowing material omissions.

271. Plaintiffs Burd, Gill, Hansel, McCartney, and New Jersey Subclass members suffered ascertainable loss as a direct and proximate result of Subaru's unconscionable and deceptive acts and practices. Among other injures, Plaintiffs and New Jersey Subclass members overpaid for their Class Vehicles, and their Class Vehicles suffered a diminution in value.

272. As permitted under N.J. Stat. Ann. § 56:8-19, Plaintiffs Burd, Gill, Hansel, McCartney, and New Jersey Subclass members seek trebled damages, appropriate injunctive relief, and reasonable attorney's fees.

COUNT VII

Violations of the California Consumers Legal Remedies Act ("CLRA") Cal. Civ. Code §§ 1750–1785 Plaintiffs Franke and Miller, Individually and on Behalf of the California Subclass

273. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

274. Plaintiffs Franke and Miller bring this claim individually and on behalf of the California Subclass.

275. Plaintiffs Franke, Miller, and the members of the California Subclass are

“consumers” as defined under the CLRA. *See* Cal. Civ. Code § 1761(d).

276. Subaru is a “person” as defined under the CLRA. *See* Cal. Civ. Code § 1761(c).

277. Class Vehicles are “goods” as defined under the CLRA. *See* Cal. Civ. Code § 1761(a).

278. The CLRA proscribes “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.” Cal. Civ. Code § 1770(a).

279. Subaru engaged in unfair and deceptive acts in violation of the CLRA by the practices described above and by knowingly and intentionally concealing from Plaintiffs Franke, Miller, and the California Subclass members that the Class Vehicles suffer from the Battery Drain Defect (and the costs, risks, and diminished value of the Class Vehicles as a result of this Defect). Subaru’s conduct violated at least the following enumerated CLRA provisions:

- a. Subaru represented that the Class Vehicles have characteristics, uses, or benefits that they do not have, which is in violation of section 1770(a)(5);
- b. Subaru represented that the Class Vehicles are of a particular standard, quality, or grade when, in fact, they are not, which is in violation of section 1770(a)(7);
- c. Subaru advertises its Class Vehicles with the intent not to sell

them as advertised, which is in violation of section 1770(a)(9);

- d. Subaru represents that its Class Vehicles have been supplied in accordance with a previous representation when they have not, which is in violation of section 1770(a)(16); and
- e. Subaru inserts an unconscionable provision into its warranty in violation of section 1770(a)(19).

280. Subaru's unfair or deceptive acts or practices occurred repeatedly in its trade or business, were capable of deceiving a substantial portion of the purchasing public and created a serious safety hazard for the public.

281. Subaru knew, should have known, or was reckless in not knowing that the Class Vehicles were defective, would fail prematurely, and were not suitable for their intended use.

282. Subaru was under a duty to Plaintiffs Franke, Miller, and the California Subclass members to disclose the defective nature of the Class Vehicles and the Defect because:

- a. Subaru knew of but actively concealed the Defect from Plaintiffs and the California Subclass;
- b. Subaru was in a superior and exclusive position to know the true facts about the Defect, which affects the central functionality of the vehicle and poses safety concerns, and Plaintiffs and the Subclass members could not reasonably have been expected to discover that the Class Vehicles contained the Defect until it manifested, which Subaru knew; and
- c. Subaru made partial representations regarding the reliability,

safety, and quality but suppressed material facts regarding the Defect.

283. The facts that Subaru misrepresented to and concealed from Plaintiffs Franke, Miller, and the other California Subclass members are material because a reasonable consumer would have considered them to be important in deciding whether to purchase or lease their Class Vehicles or pay a lesser price for them.

284. The Defect poses a serious safety defect and affects the central functionality of a vehicle because it renders the vehicle inoperable.

285. In failing to disclose the material Defect, Subaru has knowingly and intentionally concealed material facts in breach of its duty to disclose.

286. Plaintiffs Franke, Miller, and the California Subclass have suffered injury in fact and actual damages resulting from Subaru's material misrepresentations and omissions, including by paying an inflated purchase price for their Class Vehicles and incurring additional out-of-pocket expenses to deal with the Defect. Had Plaintiffs Franke, Miller, and the California Subclass known about the defective nature of the Class Vehicles and the Defect, they would not have purchased or leased their Class Vehicles or would have paid less in doing so.

287. As a direct and proximate result of Subaru's unfair and deceptive conduct, therefore, Plaintiffs Franke, Miller, and the California Subclass members have been harmed.

288. Pursuant to Cal. Civ. Code § 1782(a), Plaintiffs Franke and Miller sent a letter to Subaru notifying it of its CLRA violations and providing them with an opportunity to correct their business practices. If Subaru does not correct its business practices, Plaintiffs will amend (or seek leave to amend) the complaint to add claims for monetary relief, including for actual, restitutionary, and punitive damages under the CLRA.

289. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs Franke and Miller, individually and on behalf of the California Subclass, seek injunctive relief for Subaru's violation of the CLRA.

290. Additionally, pursuant to Cal. Civ. Code §§ 1780 and 1781, Plaintiffs Franke and Miller, individually and on behalf of the California Subclass, seeks compensatory and punitive damages under the CLRA and to recover their attorneys' fees and costs.

291. Plaintiffs Franke and Miller's CLRA venue declarations are attached as Exhibit A to this complaint in accordance with Cal. Civ. Code § 1780(d).

COUNT VIII
Violations of the California Unfair Competition Law ("UCL")
Cal. Bus. & Prof. Code §§ 17200–17210
Plaintiffs Franke and Miller, Individually and on Behalf of the California
Subclass

292. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

293. Plaintiffs Franke and Miller bring this claim individually and on behalf of the California Subclass.

294. The UCL proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200. Subaru’s conduct violates each of these prohibitions.

Unlawful Conduct

295. Subaru’s conduct is unlawful, in violation of the UCL, because, as set forth herein, it violates the Song–Beverly Consumer Warranty Act, the MMWA, and the CLRA.

Unfair Conduct

296. Subaru’s conduct is unfair because it violated California public policy, legislatively declared in the Song–Beverly Consumer Warranty Act, which requires a manufacturer to ensure that goods it places on the market are fit for their ordinary and intended purposes. The Defect renders the Class Vehicles completely inoperable.

297. Subaru acted in an immoral, unethical, oppressive, and unscrupulous manner, in at least the following respects:

- a. Selling Plaintiffs and California Subclass members defective Class Vehicles;

- b. Failing to disclose the Defect despite the opportunity to do so in numerous locations that people in the market for a vehicle would be likely to encounter;
- c. Directing and furnishing replacement parts it knew would not adequately remedy the defect, and repairing defective parts with more defective parts and otherwise failing to adequately remedy the Defect during the warranty period;
- d. Refusing to repair or replace the Class Vehicles when the known Defect manifested outside the warranty period;
- e. Failing to exercise adequate quality control and due diligence over the Class Vehicles before placing them on the market; and
- f. Failing to acknowledge the scope and severity of the Defect, which poses serious safety concerns, refusing to acknowledge the Class Vehicles are defective, and failing to provide adequate relief to Plaintiffs and California Subclass members.

298. The gravity of the harm resulting from Subaru's unfair conduct outweighs any potential utility of the conduct. The practice of selling defective Class Vehicles without providing an adequate remedy to cure the Defect harms the public at large and is part of a common and uniform course of wrongful conduct.

299. There are reasonably available alternatives that would further Subaru's business interests of increasing sales and preventing false warranty claims. For example, Subaru could have: (a) acknowledged the Defect and provided a permanent, effective fix for the Defect; and/or (b) disclosed the Defect prior to prospective consumers' purchases.

300. The harm from Subaru's unfair conduct was not reasonably avoidable by consumers. The Class Vehicles all suffer from the latent Defect, and Subaru has failed to disclose it. Plaintiffs Franke, Miller, and California Subclass members did not know of, and had no reasonable means of discovering, the Defect.

Fraudulent Conduct

301. Subaru's conduct is fraudulent in violation of the UCL. Subaru's fraudulent acts include knowingly and intentionally concealing from Plaintiffs Franke, Miller, and the California Subclass members the existence of the Defect and falsely marketing and misrepresenting the Class Vehicles as being functional and not possessing a defect that would render them inoperable.

302. Subaru's misrepresentations and omissions alleged herein caused Plaintiffs and the California Subclass members to purchase or lease their Class Vehicles or pay more than they would have had Subaru disclosed the Defect.

303. At all relevant times, Subaru had a duty to disclose the Defect because it had superior and exclusive knowledge of the Defect, which affects the central functionality of the vehicle and creates a safety risk for drivers and passengers, and because Subaru made partial representations about the reliability, quality, and safety of the Class Vehicles but failed to fully disclose the Defect.

304. Accordingly, Plaintiffs Franke, Miller, and California Subclass members have suffered injury in fact, including lost money or property, as a result

of Subaru's unlawful, unfair, and fraudulent acts. Absent these acts, Plaintiffs Franke, Miller, and California Subclass members would not have purchased or leased their Class Vehicles at the prices they paid or would not have purchased or leased them at all.

305. Plaintiffs Franke and Miller seek appropriate relief under the UCL, including such orders as may be necessary: (a) to enjoin Subaru from continuing its unlawful, unfair, and fraudulent acts or practices, and (b) to restore Plaintiffs and California Subclass members any money Subaru acquired by its unfair competition, including restitution. Plaintiffs also seeks reasonable attorneys' fees and expenses under applicable law.

COUNT IX

**Violations of the Florida Deceptive and Unfair Trade Practices Act
Fla. Stat. § 501.201 *et seq.* ("FDUTPA")
Plaintiff Stone, Individually and on Behalf of the Florida Subclass**

306. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

307. Plaintiff Stone brings this claim individually and on behalf of the Florida Subclass.

308. Plaintiff Stone and Florida Subclass members are "consumers" within the meaning of Fla. Stat. § 501.203(7).

309. Subaru engages in "trade or commerce" within the meaning of Fla. Stat. § 501.203(8).

310. The FDUTPA prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.204(1).

311. Subaru’s acts and practices, described herein, are unfair and deceptive in violation of the FDUTPA. Subaru engaged in unfair and deceptive trade practices by promoting the quality and functionality of the Class Vehicles while willfully failing to disclose and actively concealing the Defect. Subaru owed a duty to disclose all material facts concerning the Class Vehicles and the Defect because it possessed exclusive or superior knowledge, intentionally concealed material information from consumers, and/or made misrepresentations that were rendered misleading because they were contradicted by facts that were withheld.

312. Subaru committed such unfair and deceptive acts and practices with the intent that consumers, such as Plaintiff Stone and Florida Subclass members, would rely on Subaru’s misrepresentations and omissions when deciding whether to purchase a Class Vehicle.

313. Plaintiff Stone and Florida Subclass members suffered ascertainable loss as a direct and proximate result of Subaru’s unfair and deceptive acts and practices. Had Plaintiff Stone and Florida Subclass members known that the Class Vehicles are defective, they would not have purchased or leased them, or would have paid significantly less for a Class Vehicle. Among other injuries, Plaintiff Stone and

Florida Subclass members overpaid for their Class Vehicles, and their Class Vehicles suffered a diminution in value.

314. Plaintiff Stone and Florida Subclass members are entitled to recover their actual damages, under Fla. Stat. § 501.211(2) and reasonable attorneys' fees under Fla. Stat. § 501.2105(1).

315. Plaintiff Stone also seeks an order enjoining Subaru's unfair and deceptive acts and practices pursuant to Fla. Stat. § 501.211, and any other just and proper relief available under the FDUTPA.

COUNT X

Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act

815 Ill. Comp. Stat. § 505/1 *et seq.* ("ICFA")

Plaintiff Bulgatz, Individually and on Behalf of the Illinois Subclass

316. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

317. Plaintiff Bulgatz brings this claim individually and on behalf of the Illinois Subclass.

318. Plaintiff Bulgatz and Illinois Subclass members are "consumers" within the meaning of 815 Ill. Comp. Stat. § 505/1(e).

319. Plaintiff Bulgatz, Illinois Subclass members, and Subaru are "persons" within the meaning of 815 Ill. Comp. Stat. § 505/1(c).

320. Subaru engages in "trade" or "commerce" within the meaning of 815 Ill.

Comp. Stat. § 505/1(f).

321. Subaru engages in the “sale” of “merchandise” as those terms are defined by 815 Ill. Comp. Stat. § 505/1(b) and (d).

322. The ICFA prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce.” 815 Ill. Comp. Stat. § 505/2.

323. Subaru’s acts and practices, described herein, are unfair and deceptive in violation of Illinois law. By selling defective Class Vehicles with exclusive or superior knowledge of the defect, and by failing to disclose the defect or honor warranty claims in good faith, Subaru acted unscrupulously in a manner that is substantially oppressive and injurious to consumers. Subaru owed a duty to disclose all material facts concerning the Class Vehicles and the Defect because it possessed exclusive or superior knowledge, intentionally concealed material information from consumers, and/or made misrepresentations that were rendered misleading because they were contradicted by facts that were withheld.

324. Subaru committed these unfair and deceptive acts and practices with the intent that consumers, such as Plaintiff Bulgatz and Illinois Subclass members,

would rely upon Subaru's misrepresentations and omissions when deciding whether to purchase or lease a Class Vehicle.

325. Plaintiff Bulgatz and Illinois Subclass members suffered ascertainable loss as a direct and proximate result of Subaru's unfair and deceptive acts and practices. Had Plaintiff Bulgatz and Illinois Subclass members known that the Class Vehicles are defective, they would not have purchased or leased a Class Vehicle, or would have paid significantly less for one. Among other injuries, Plaintiff Bulgatz and Illinois Subclass members overpaid for their Class Vehicles and their Class Vehicles suffered a diminution in value.

326. Accordingly, pursuant to 815 Ill. Comp. Stat. § 505/10a(a), Plaintiff Bulgatz and the Illinois Subclass seek actual compensatory, and punitive damages (pursuant to 815 Ill. Comp. Stat. § 505/10a(c)), injunctive relief, and reasonable attorneys' fees and costs.

COUNT XI

Violations of the Michigan Consumer Protection Act

Mich. Comp. Laws § 445.901, *et seq.* ("MCPA")

Plaintiff Beck, Individually and on Behalf of the Michigan Subclass

327. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

328. Plaintiff Beck brings this claim individually and on behalf of the Michigan Subclass.

329. Beck, Michigan Subclass members, and Subaru are "persons" within the

meaning of the MCPA.

330. Subaru engaged in trade practices prohibited by the MCPA, including:

- a. § 445.903(c): representing that goods or services have characteristics that they do not have;
- b. § 445.903(e): representing that goods or services are of a particular standard if they are of another;
- c. § 445.903(s): failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;
- d. § 445.903(bb): making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and
- e. § 445.903(cc): failing to reveal facts which are material to the transaction in light of representations of fact made in a positive manner.

331. By selling the defective Class Vehicles with exclusive or superior knowledge of the defect, and by failing to disclose the defect or honor warranty claims in good faith, Subaru engaged in deceptive practices that violate Michigan law.

332. Subaru engaged in these deceptive practices with the intent that

consumers like Beck would rely on Subaru's representations and omissions when deciding whether to purchase a Class Vehicle.

333. Plaintiff Beck and Michigan Subclass members suffered ascertainable loss as a direct and proximate result of Subaru's deceptive acts or practices. Had Plaintiff Beck and Michigan Subclass members known that the Class Vehicles contain a latent defect, they would not have purchased or leased a Class Vehicle or would have paid significantly less for it. Among other injuries, Beck and Michigan Subclass members overpaid for their Class Vehicle, and their Class Vehicle suffered a diminution in value.

334. Accordingly, Beck and Michigan Subclass members seek actual damages, punitive damages, reasonable attorneys' fees and costs, and all other relief permitted under the MCPA.

COUNT XII
Violations of the New York General Business Law
N.Y. Gen. Bus. Law § 349 ("NYGBL § 349")
Plaintiffs Baladi and O'Shaughnessy, Individually and on Behalf of the New
York Subclass

335. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

336. Plaintiffs Baladi and O'Shaughnessy bring this claim individually and on behalf of the New York Subclass.

337. NYGBL § 349 makes unlawful "[d]eceptive acts or practices in the

conduct of any business, trade or commerce.”

338. In the course of Subaru’s business in the conduct of trade or commerce, it willfully failed to disclose and actively concealed the Defect and the true reliability, safety, and quality of the Class Vehicles as set forth herein.

339. Accordingly, Subaru engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices as defined in NYGBL § 349, including representing that Class Vehicles have characteristic, uses, benefits, and qualities that they do not have; representing that Class Vehicles are of a particular standard and quality when they are not; advertising Class Vehicles with the intent not to sell them as advertised; and otherwise engaging in conduct likely to deceive.

340. Subaru’s deceit was directed at widely purchased consumer vehicles and consequently affects the public interest. Subaru’s unlawful conduct constitutes unfair acts or practices that have the capacity to deceive consumers and are harmful to the public at large.

341. Subaru’s conduct proximately caused injuries to Plaintiffs Baladi, O’Shaughnessy, and New York Subclass members.

342. Plaintiffs Baladi, O’Shaughnessy, and New York Subclass members have suffered ascertainable loss as a result of Subaru’s conduct in that Plaintiffs and New York Subclass members paid more than they otherwise would have for their

Class Vehicles and did not receive the benefit of their bargain, paid out-of-pocket costs relating to the Defect, and their Class Vehicles have suffered a diminution in value. These injuries are the direct, natural, and reasonably foreseeable consequence of Subaru's misrepresentations and omissions.

343. Plaintiffs Baladi and O'Shaughnessy, individually and on behalf of the New York Subclass, request that this Court enter such orders or judgments as may be necessary to enjoin Subaru from continuing their unfair, unlawful, and deceptive practices. Plaintiffs and New York Subclass members are entitled to recover their actual damages or \$50, whichever is greater. Subaru acted willfully or knowingly, so Plaintiffs and New York Subclass members are entitled to recover three times their actual damages. Plaintiffs and the New York Subclass are also entitled to reasonable attorneys' fees and expenses.

COUNT XIII

Violations of the New York General Business Law

N.Y. Gen. Bus. Law § 350 ("NYGBL § 350")

Plaintiffs Baladi and O'Shaughnessy, Individually and on Behalf of the New York Subclass

344. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

345. Plaintiffs Baladi and O'Shaughnessy bring this claim individually and on behalf of the New York Subclass.

346. NYGBL § 350 makes unlawful "[f]alse advertising in the conduct of any

business, trade or commerce”

347. False advertising includes “advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect,” taking into account “the extent to which the advertising fails to reveal facts material in the light of . . . representations [made] with respect to the commodity” NYGBL § 350-a.

348. Subaru caused to be made or disseminated through New York, through advertising, marketing, and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Subaru, to be untrue and misleading to consumers, including Plaintiffs Baladi, O’Shaughnessy, and New York Subclass members.

349. Subaru violated NYGBL § 350 because the representations or omissions regarding the Battery Drain Defect in Class Vehicles as described above were material and likely to deceive a reasonable consumer.

350. Plaintiffs Baladi, O’Shaughnessy, and New York Subclass members have suffered injury, including lost money or property, as a result of Subaru’s false advertising. In purchasing or leasing Class Vehicles, Plaintiffs Baladi, O’Shaughnessy, and Class Members relied on the misrepresentations and/or omissions of Subaru with respect to the reliability, safety, and quality of the Class Vehicles. Subaru’s representations were untrue because the Class Vehicles are prone

to suffer excessive battery failure, total loss of functionality, and serious safety risks as described herein due to the Defect. Had Plaintiffs Baladi, O'Shaughnessy, and the New York Subclass members known these true facts, they would not have purchased or leased their Class Vehicles and/or paid as much for them.

351. Accordingly, Plaintiffs Baladi, O'Shaughnessy, and New York Subclass members paid more than they otherwise would have for their Class Vehicles and did not receive the benefit of their bargain.

352. Plaintiffs Baladi and O'Shaughnessy, individually and on behalf of the New York Subclass, request that this Court enter such orders or judgments as may be necessary to enjoin Subaru from continuing its unfair, unlawful, and deceptive practices. Plaintiffs and New York Subclass members are entitled to recover their actual damages or \$50, whichever is greater. Subaru acted willfully or knowingly, so Plaintiffs and New York Subclass members are entitled to recover three times their actual damages (of up to \$10,000 per individual). Plaintiffs and New York Subclass members are also entitled to reasonable attorneys' fees.

COUNT XIV

**Violations of the Washington Consumer Protection Act
Wash. Rev. Code § 19.86.010 *et seq.* ("WCPA")**

Plaintiff George, Individually and on Behalf of the Washington Subclass

353. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

354. Plaintiff George brings this claim individually and on behalf of the

Washington Subclass.

355. Plaintiff George, Washington Subclass members, and Subaru are “persons” under Wash. Rev. Code § 19.86.010(1).

356. Subaru’s acts and practices, as set forth above, occurred in the conduct of “trade” or “commerce” within the meaning of Wash. Rev. Code § 19.86.010(2).

357. The WCPA prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or practices.” Wash. Rev. Code § 19.86.020.

358. Subaru’s acts and practices, described herein, are unfair and deceptive in violation of Washington law. By selling defective Class Vehicle with exclusive or superior knowledge of the Defect, and by failing to disclose the Defect or honor warranty claims in good faith, Subaru acted unscrupulously in a manner that is substantially oppressive and injurious to consumers.

359. Subaru also engaged in unfair and deceptive trade practices in violation of Washington law by promoting the quality and functionality of the Class Vehicles, while willfully failing to disclose and actively concealing the Defect.

360. Subaru committed the deceptive acts and practices with the intent that consumers, such as Plaintiff George and Washington Subclass members, would rely on Subaru’s representations and omissions when deciding whether to purchase a Class Vehicle.

361. Plaintiff George and Washington Subclass members suffered ascertainable loss as a direct and proximate result of Subaru's unfair and deceptive acts and practices. Had Plaintiff George and Washington Subclass members known that the Class Vehicles are defective, they would not have purchased or leased a Class Vehicle or would have paid significantly less for one. Among other injuries, Plaintiff George and Washington Subclass members overpaid for their Class Vehicles, and their Class Vehicles suffered a diminution in value.

362. Subaru's violations of the WCPA present a continuing risk to Plaintiff George and Washington Subclass members, as well as to the general public. Subaru's unlawful acts and practices adversely affect the public interest.

363. Under Wash. Rev. Code § 19.86.090, Plaintiff George and the Washington Subclass seek an order enjoining Subaru's unfair and deceptive acts and practices, providing for appropriate monetary relief, including trebled damages, and awarding reasonable attorneys' fees and costs.

364. In accordance with Wash. Rev. Code § 19.86.095, a copy of this Consolidated Complaint has been served on the Attorney General of Washington.

COUNT XV

Fraudulent Concealment

All Plaintiffs, Individually and on Behalf of the State Subclasses

365. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

366. Plaintiffs bring this claim, under the laws of their respective home states, individually and on behalf of their respective State Subclasses.

367. Subaru made material omissions concerning a presently existing or past fact in violation of common law. Subaru did not fully and truthfully disclose to its customers the true nature of the Battery Drain Defect. A reasonable consumer would not have expected the Defect in a new vehicle and especially not a Defect that rendered the vehicle inoperable, presenting a danger to drivers and passengers.

368. Subaru made these omissions with knowledge of their falsity and with the intent that Plaintiffs and Class Members rely upon them.

369. The facts concealed, suppressed, and not disclosed by Subaru to Plaintiffs and Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease Class Vehicles at all or at the offered price.

370. Subaru had a duty to disclose the true quality and reliability of the Class Vehicles because the knowledge of the Defect and its details were known and/or accessible only to Subaru; Subaru had superior knowledge and access to the relevant facts; and Subaru knew the facts were not known to, or reasonably discoverable by, Plaintiffs and Class Members. Subaru also had a duty to disclose because it made many affirmative representations about the qualities and reliability of its vehicles, including references as to safety and general operability, as set forth above, which

were misleading, deceptive, and incomplete without the disclosure of the additional facts set forth above regarding the actual reliability of their vehicles.

371. Had Plaintiffs and the Class known about the defective nature of the Class Vehicles, they would not have purchased or leased the Class Vehicles or would have paid less in doing so. Thus, Plaintiffs and the other Class Members were fraudulently induced to lease or purchase Class Vehicles, containing the Defect.

372. Plaintiffs and Class Members reasonably relied on Subaru's material omissions and suffered damages as a result. Subaru's conduct was willful, wanton, oppressive, reprehensible, and malicious. Consequently, Plaintiffs and Class Members are entitled to an award of punitive damages.

COUNT XVI
Unjust Enrichment
In the Alternative to Plaintiffs' Claims at Law
All Plaintiffs, Individually and On Behalf of the State Subclasses

373. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

374. Plaintiffs bring this claim, under the laws of their respective home states, individually and on behalf of their respective State Subclasses.

375. This claim is pleaded in the alternative to the other claims set forth herein.

376. Plaintiffs lack an adequate remedy at law.

377. As the intended and expected result of its conscious wrongdoing, Subaru

has profited and benefited from the purchase and lease of Class Vehicles that contain the Defect.

378. Subaru has voluntarily accepted and retained these profits and benefits, knowing that, as a result of its misconduct alleged herein, Plaintiffs and the Class were not receiving Class Vehicles of the quality, nature, fitness, reliability, safety, or value that Subaru had represented and that a reasonable consumer would expect. Plaintiffs and the Class Members expected that when they purchased or leased a Class Vehicle, it would not contain a Defect that makes the vehicle inoperable and unreliable and poses a serious safety risk.

379. Subaru has been unjustly enriched by its deceptive, wrongful, and unscrupulous conduct and by its withholding of benefits and unearned monies from Plaintiffs and the Class rightfully belonging to them.

380. Equity and good conscience militate against permitting Subaru to retain these profits and benefits from its wrongful conduct. They should accordingly be disgorged or placed in a constructive trust so that Plaintiffs and Class Members can obtain restitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all other similarly situated, request that this Court enter an Order against Subaru providing for the following:

- A. Certification of the proposed Class and/or Subclasses, appointment of Plaintiffs and their counsel to represent the Class, and provision of notice to the Class;
- B. An order permanently enjoining Subaru from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;
- C. Injunctive relief in the form of a recall or free replacement program;
- D. Equitable relief, including in the form of buyback of the Class Vehicles;
- E. Costs, restitution, damages, including punitive damages, penalties, and disgorgement in an amount to be determined at trial;
- F. An Order requiring Subaru to pay pre- and post-judgment interest as provided by law;
- G. An award of reasonable attorneys' fees and costs as permitted by law; and
- H. Such other or further relief as may be appropriate.

JURY DEMAND

Plaintiffs hereby demand a trial by jury for all claims so triable.

Dated: June 18, 2020

Respectfully submitted,

By: /s/ Matthew D. Schelkopf
Matthew D. Schelkopf
SAUDER SCHELKOPF LLC
1109 Lancaster Avenue
Berwyn, Pennsylvania 19312
Telephone: (610) 200-0581
mds@sstrialawyers.com

By: /s/ Matthew Mendelsohn
Matthew Mendelsohn
**MAZIE SLATER KATZ
& FREEMAN, LLC**
103 Eisenhower Parkway
Roseland, NJ 07068
Telephone: (973) 228-9898
mrm@mazieslater.com

By: /s/ Adam Polk
Adam Polk
GIRARD SHARP LLP
601 California St #1400
San Francisco, CA 94108
Telephone: (866) 981-4800
apolk@girardsharp.com

Plaintiffs' Interim Co-Lead Counsel

Bruce D. Greenberg
Lite DePalma Greenberg, LLC
570 Broad Street, Suite 1201
Newark, New Jersey 07102
Telephone: (973) 623-3000
bgreenberg@litedepalma.com

Plaintiffs' Liaison Counsel

Benjamin F. Johns
Andrew W. Ferich
Alex M. Kashurba
**CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP**
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
Telephone: 610-642-8500
bfj@chimicles.com
awf@chimicles.com
amk@chimicles.com

Chair of Plaintiffs' Executive Committee

Todd Garber
**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**
One North Broadway
Suite 900
White Plains, NY 10605
Telephone: (914) 298-3281
tgarber@fbfglaw.com

Daniel Herrera
**CAFFERTY CLOBES MERIWETHER
& SPRENGEL LLP**
150 S. Wacker Drive, Suite 3000
Chicago, IL 60606
Telephone: (312) 782-4880
dherrera@caffertyclobes.com

Tina Wolfson
AHDOOT & WOLFSON, P.C.
1016 Palm Ave
West Hollywood, CA 90069
Telephone: (310) 474-9111
twolfson@ahdootwolfson.com

Plaintiffs' Executive Committee

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

IN RE SUBARU BATTERY DRAIN
PRODUCT LIABILITY LITIGATION

CIVIL ACTION NO.:

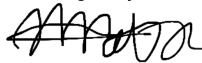
1:20-CV-03095-JHR-JS

**CLRA VENUE DECLARATION
OF PLAINTIFF MATTHEW
MILLER PURSUANT TO
CALIFORNIA CIVIL CODE
SECTION 1780(D)**

I, Matthew Miller, declare as follows:

1. I have personal knowledge of the facts stated herein and, if called upon to do so, could competently testify thereto.
2. I am a Plaintiff in the above-captioned action.
3. I submit this declaration in support of the Consolidated Class Action Complaint, which is based in part on violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*
4. The Consolidated Class Action Complaint has been filed in the proper place for trial of this action.
5. Defendant Subaru of America, Inc. has its principal place of business in Camden, New Jersey, which is within Camden County. Subaru conducts substantial business, including the acts and practices at issue in this action, within Camden County.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on June ^{Mm} ____, 2020 in Long Beach, CA.

DocuSigned by:

71636A3AE5204B4...

Matthew Miller

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

IN RE SUBARU BATTERY DRAIN
PRODUCT LIABILITY LITIGATION

CIVIL ACTION NO.:

1:20-CV-03095-JHR-JS

**CLRA VENUE DECLARATION
OF PLAINTIFF ANTHONY
FRANKE PURSUANT TO
CALIFORNIA CIVIL CODE
SECTION 1780(D)**

I, Anthony Franke, declare as follows:

1. I have personal knowledge of the facts stated herein and, if called upon to do so, could competently testify thereto.
2. I am a Plaintiff in the above-captioned action.
3. I submit this declaration in support of the Consolidated Class Action Complaint, which is based in part on violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*
4. The Consolidated Class Action Complaint has been filed in the proper place for trial of this action.
5. Defendant Subaru of America, Inc. has its principal place of business in Camden, New Jersey, which is within Camden County. Subaru conducts substantial business, including the acts and practices at issue in this action, within Camden County.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on June 17, 2020 in San Diego, CA.


Anthony Franke (Jun 18, 2020 06:50 PDT)

Anthony Franke