

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

CHAD UDEEN, MARY JANE
JEFFERY, LYDIA RUNKEL,
MICHAEL BOLICK, GARY GILPIN,
ALICIA SMITH, and SUSAN
WILLIAMS, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC., and
SUBARU CORPORATION,

Defendants.

No. 1:18-cv-17334-RBK-JS

JURY TRIAL DEMANDED

CLASS ACTION

**DECLARATION OF DANIEL LAPINSKI IN SUPPORT
OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND ATTORNEY'S
FEES, LITIGATION EXPENSES, AND SERVICE AWARDS**

I, Daniel Lapinski, declare as follows:

1. I am a Member of the law firm of Motley Rice LLC and one of the attorneys appointed as Class Counsel in this litigation.

2. I am admitted to practice before the Supreme Courts of New Jersey, New York and Pennsylvania and in various federal courts in the United States. I submit this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Attorneys' Fees, Litigation Expenses, and Service Awards. I have personal knowledge of the matters discussed herein, and if called as a witness

could testify competently thereto.

Background of the Litigation

3. This case is a consumer class action against Subaru. Plaintiffs are owners and lessees of Subaru vehicles, namely the 2018 Outback, 2018 Legacy, 2018 Forester, 2018 Crosstrek, 2018 BRZ, and 2017-2018 Impreza (collectively “Class Vehicles”), with allegedly defective Starlink infotainment systems.

4. Specifically, Plaintiffs allege that the head units, the main physical component of the Starlink systems, that are equipped in Class Vehicles suffer a range of technical glitches that cause them to freeze, black-out, become non-responsive, or otherwise malfunction.

5. This action was originally filed in New Jersey Superior Court on November 28, 2018. It was removed to this Court on December 18, 2018. ECF No. 1. On January 31, 2019, Plaintiffs filed the operative Amended Complaint asserting 17 claims on behalf of a nationwide class and several state sub-classes. ECF No. 24.

6. On February 28, 2019, Subaru filed a motion to dismiss which the parties fully briefed. ECF Nos. 28, 32, 33. Additionally, counsel for Subaru sent a letter to the Court seeking to adjourn a previously scheduled Rule 16 conference, and to stay all discovery pending the disposition of its forthcoming motion to dismiss. *See* ECF No. 10. Magistrate Judge Schneider held conference calls with counsel on January 16 and February 15, to address Subaru’s stay request. *See* ECF

Nos. 15, 25. Following letter briefing from the parties and oral argument, Judge Schneider issued an opinion which denied Subaru's motion to stay, and permitted "limited and focused discovery on core issues." ECF No. 31. Judge Schneider required the parties to meet and confer further, and scheduled a Rule 16 conference. After the parties had several meet and confers, the Rule 16 conference was subsequently stayed when the parties advised the Court that they had scheduled a mediation.

7. On January 30, 2019, Judge Schneider issued an order appointing myself, Benjamin F. Johns and Andrew W. Ferich of Chimicles Schwartz Kriner & Donaldson-Smith LLP, and Kevin P. Roddy of Wilentz, Goldman & Spitzer, PA as interim co-lead counsel for Plaintiffs and the putative class. ECF No. 23.

8. The parties engaged in protracted settlement negotiations which included a full-day meeting on April 30, 2019, and two full-day mediations with Judge Dennis M. Cavanaugh in Newark, New Jersey. By the end of the second mediation, with substantial assistance from Judge Cavanaugh, the parties reached an agreement on the material terms of the settlement as well as attorneys' fees, expenses, and incentive awards.

9. After several months of negotiating and documenting the settlement, the parties signed the Settlement Agreement.

10. After reaching an agreement, the parties engaged in extensive

confirmatory discovery.

The Settlement

11. The Settlement Class consists of all persons in the United States who purchased or leased a model year 2017 Subaru Impreza, 2018 Subaru Impreza, 2018 Subaru Outback, 2018 Subaru Legacy, 2018 Subaru Forester, 2018 Subaru Crosstrek, and 2018 Subaru BRZ vehicle equipped with a Generation 3.0 Starlink Infotainment System, manufactured by Harman International Industries, Inc.

12. The parties have agreed to a claims-made settlement wherein Subaru will make available to the class benefits with an estimated value of over \$6,250,000. The notice and administrative costs will be paid by Subaru separately from the relief provided to the Class.

13. Under the Settlement, Subaru will provide an extended warranty of 5 years/100,000 miles on the Starlink Systems in Class Vehicles. Subaru estimates this extended warranty represents a value of \$2,451,546 to the class. Class Members will not need to submit a claim form in order to receive the warranty extension and it will be fully transferable to future Class Vehicle owners. Additionally, the Settlement provides for a \$5 payment to Class Members who already purchased extended service plans from Subaru.

14. The Settlement also provides for compensation to Class Members who had to take their vehicles into dealerships for two or more repairs. Class Members

will be entitled to \$150 for two visits and \$300 for three or more visits. The Settlement also affords the option of selecting coupons with a higher value than the cash relief.

15. The Settlement further allows Class Members to claim compensation in the amount of \$16 for each day spent without a functioning head unit during the period when replacement units were on backorder.

16. Additionally, Class Members may make claims for reimbursement of out of pocket damages such as rideshares or rental cars stemming from the alleged defect.

Attorneys' Fees, Expenses, and Incentive Awards

17. Subaru agreed not to oppose an award of attorneys' fees up to \$1,500,000 inclusive of fees and expense. Subaru has also agreed not to oppose incentive awards of \$3,500 to each of the named Plaintiffs in this case. The attorneys' fees, litigation expenses, and incentive awards are to be paid by Subaru separate from, and in addition to, the relief to be made available to the Class, estimated at more than \$6,250,000. Payment of requested attorneys' fees and incentive awards is a separate payment by Subaru, and will not decrease the recovery of the class.

18. All of the work performed by Plaintiffs' Counsel has been done on a contingency-fee basis, and the law firms have not been reimbursed for the billable

time or out of pocket expenses advanced to prosecute this case.

The Work Performed By Class Counsel

19. During the course of this litigation, my firm performed the following tasks for the benefit of Plaintiffs and the class:

- Investigated the alleged Starlink defect since approximately October 2018, including discussions with affected consumers;
- Researched complex issues of law related to various consumer protection statutes and warranty laws;
- Drafted and then filed the operative amended complaint in this Court on January 31, 2019;
- Researched and drafted a motion to appoint interim co-lead counsel, which was subsequently granted;
- Researched, wrote, and filed an opposition to Subaru's motion to dismiss;
- Prepared and served Plaintiffs' Initial Disclosures;
- Prepared and served a detailed set of requests for production of documents;
- Engaged in multiple meet and confers with Subaru's counsel to discuss the document requests served upon Subaru;
- Prepared document requests and a subpoena to third-party Harman International Industries, Inc.;
- Met and conferred with Subaru's counsel regarding a discovery confidentiality order;
- Researched and provided letter briefing to the Court in opposition to Subaru's request to stay discovery, which Plaintiffs prevailed upon;
- Prepared and sent a written settlement term sheet to Subaru, which was

negotiated and exchanged throughout the settlement process;

- Prepared for the mediation sessions with Subaru. This included selecting a mediator, speaking with him several times over the telephone, researching relevant data breach settlements, speaking with our clients and various intakes to gather facts, and submitting an ex parte mediation statement;
- Attended a pre-mediation meeting with defense counsel on April 30, 2019 in Philadelphia, Pennsylvania;
- Participated in two full-day mediation sessions with Judge Dennis M. Cavanaugh in Newark, New Jersey, on May 6 and May 14, 2019;
- Subsequent to reaching a settlement, assisted in the preparation of the settlement agreement, drafted the claim form and class notices, worked with the claims/notice administrator, and fielded questions from class members, among other tasks;
- Drafted and filed a motion seeking preliminary approval of the settlement, including submission of numerous settlement-related documents and a detailed brief in support of the motion for preliminary approval;
- Engaged in confirmatory discovery to verify that the terms of the settlement were fair, reasonable and adequate to Plaintiffs and Class Members; and
- Reviewed and analyzed 6,373 pages of documents produced by Subaru, including vehicle service and warranty history for each of the named Plaintiffs; Technical Service Bulletins; owners' manuals and warranty manuals for each of the Settlement Class Vehicles; warranty claims data for the Settlement Class Vehicles; and documents identifying Defendants' internal investigation, analysis, and conclusions.

20. As noted above, on May 6 and May 14, 2019 the parties engaged in two full-day mediation sessions with retired Judge Cavanaugh in Newark, New Jersey. With the assistance of Judge Cavanaugh, the parties reached agreement on the

material terms of the settlement. Thereafter, the parties were unable to reach agreement as to the amount of Plaintiffs' attorneys' fees and expenses that would be sought. By the end of the second full-day mediation session, fees and expenses, too, had been agreed upon. The parties did not discuss or negotiate the requested attorneys' fees and expenses until after all of the substantive terms of the settlement had been agreed upon. All negotiations regarding settlement were conducted at arm's length, in good faith, and free of any collusion.

21. After agreeing on the terms of the Settlement, we, along with defense counsel, drafted and negotiated the details of the written Settlement Agreement, and all related exhibits. Counsel for both parties and the claims administrator reviewed, negotiated, and made sure that all administrative aspects of the Settlement, including the notice plan, the form of the claim form, the settlement schedule, were in the best interest of Plaintiffs and Class Members.

22. Class Counsel, including my firm, worked diligently and vigorously to secure the best outcome and relief for members of the class.

23. From the inception of this case through January 24, 2020, my firm devoted a total of 51.90 billable hours of work on this case. This total excludes certain time that I have reduced or eliminated, based on the exercise of my billing judgment. Based upon hourly rates currently charged to my firm's clients, the total lodestar value of this billable time is \$ \$40,222.50. Attached as **Exhibit A** to this

Declaration is a chart that identifies the attorneys and paralegals who worked on this litigation, the number of hours billed by each by years of professional experience, their respective positions, and their respective billable rates.¹ Current personnel are billed at their current standard rates, while former personnel are billed at their most recent billable rate before they departed from the firm. This schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm. My firm's detailed time records are available to the Court for inspection upon request.

24. All of the time billed to this case by my firm was reasonable and necessary in the prosecution of this case. It was also performed on a contingency basis. My firm has not been compensated for any of its work on this matter to date.

25. As detailed in **Exhibit B** attached to this Declaration, my firm has incurred a total of \$389.28 in unreimbursed expenses in connection with the prosecution of this litigation through January 24, 2020. These expenses were also reasonable and necessary in the prosecution of this case. As with our billable time, my firm has not been reimbursed for these expenses.

¹ In addition to the hours reflected in this declaration, I have reviewed the Declaration of Kevin P. Roddy in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and Attorneys' Fees, Litigation Expenses, and Service Awards ("Roddy Declaration"). The Roddy Declaration properly reflects the hours I worked on this matter while a Shareholder of the Wilentz Law Firm prior to my joining Motley Rice in April 2019.

26. The expenses incurred in this action are reflected on my firm's books and records. These books and records are prepared from expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred. Underlying receipts are available for inspection upon request.

I declare pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated:

By: /s/ Daniel Lapinski
Daniel Lapinski

EXHIBIT A

**UDEEN V. SUBARU OF AMERICA
 FIRM NAME: MOTLEY RICE LLC
 LODESTAR REPORT
 INCEPTION THROUGH JANUARY 24, 2020**

NAME	TITLE	YRS. IN PRACTICE	HOURLY RATE	TOTAL HOURS	CUMULATIVE LODESTAR
Daniel Lapinski	Partner	19	775.00	51.9	\$40,222.50
TOTALS				51.9	\$40,222.50

EXHIBIT B

UDEEN V. SUBARU OF AMERICA
FIRM NAME: MOTLEY RICE LLC
EXPENSE REPORT
INCEPTION THROUGH JANUARY 24, 2020

DESCRIPTION	TOTAL EXPENSES
Travel/Food/Lodging	\$389.28
Mediation	
Computer Research	
Photocopies (Internal)	
Filing Fees	
Service	
Photocopies (Outside)	
Postage	
Telephone/Facsimile	
TOTALS	\$389.28