

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 15-22870-Civ-COOKE/TORRES

JANET PARKS, DUANE GOOCH,  
REDMOND KELLEY and GABOR VIGH,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

SUBARU OF AMERICA, INC. and FUJI  
HEAVY INDUSTRIES, LTD.,

Defendants.

**CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE**

This Confidential Settlement Agreement and Release (“Agreement”) is entered into and effective this \_\_\_ day of March, 2016 (“Effective Date”) by and between Janet Parks, Duane Gooch, Redmond Kelley, and Gabor Vigh (collectively, “Plaintiffs”) and Plaintiffs’ Counsel<sup>1</sup> on the one hand and Subaru of America, Inc. (“SOA”) and Fuji Heavy Industries Ltd. (“FHI,” and collectively, “Defendants”), on the other (each a “Party” and collectively, “the Parties”).

**I. RECITALS**

WHEREAS, on July 31, 2015, Plaintiffs Janet Parks, Duane Gooch, Redmond Kelley, and Gabor Vigh filed a Class Action Complaint in the United States District Court for the Southern District of Florida, Case No. 15-22870-Civ-COOKE/TORRES (the “Lawsuit”), alleging claims on behalf of themselves and a proposed nationwide class and subclasses of Florida, Oklahoma, and Texas owners and lessees of model year (“MY”) 2005-2009 Subaru Legacy and Subaru Outback vehicles arising from a purported “defect” wherein the dashboards become sticky and/or melt as a result of exposure to heat or humidity. *See e.g.*, Compl. (Doc. 1) at ¶ 1;

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<sup>1</sup> “Plaintiffs’ Counsel” means all counsel-of-record in the Lawsuit. *See, e.g.*, Doc. 1 at p. 26.

WHEREAS, on October 19, 2015, SOA filed a Fed. R. Civ. P. 12(b)(6) Motion to Dismiss Plaintiffs' Complaint (Doc. 25);

WHEREAS, on October 20, 2015, the Parties filed a Joint Notice of Mediator Selection, wherein the Parties informed the Court of their selection of mediator Rodney A. Max of Upchurch, Watson, White & Max (Doc. 26);

WHEREAS, on November 12, 2015, Plaintiffs filed a Motion for an Order Appointing International Process Server in order to complete service of process on FHI in Japan in accord with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Doc. 33), which the Court granted on December 1, 2015 (Doc. 36);

WHEREAS, on November 25, 2015, Plaintiffs filed their Opposition to SOA's Motion to Dismiss Plaintiffs' Complaint (Doc. 35);

WHEREAS, on January 14, 2016, FHI filed a Fed. R. Civ. P. 12(b)(6) Motion to Dismiss Plaintiffs' Complaint and Joinder in SOA's Motion to Dismiss (Doc. 39);

WHEREAS, on February 16, 2016, subsequent to the filing of Plaintiffs' Complaint, SOA announced a Dashboard Warranty Extension program, pursuant to which, after March 31, 2017, SOA will extend its New Car Limited Warranty coverage period as it applies to the dashboard to 10 years from the warranty start date on all 2005-2009 Subaru Outback and Subaru Legacy vehicles sold or leased in the United States;

WHEREAS, on February 22, 2016, Plaintiffs filed their Opposition to FHI's Motion to Dismiss Plaintiffs' Complaint (Doc. 43);

WHEREAS, on February 23, 2016, a Court-ordered mediation was held between the Parties before mediator Rodney A. Max at the offices of Upchurch, Watson White & Max in Miami, Florida. By the conclusion of the mediation, the Parties had not reached a settlement, but agreed to continue negotiations.

WHEREAS, on February 25, 2016, the Parties reached a private settlement in principle, including the terms set forth below;

WHEREAS, on February 26, 2016, the Parties filed a Joint Request for Stay of Litigation

in order to finalize the details of the agreed-upon private settlement (Doc. 45);

WHEREAS, on February 26, 2016, the Court entered an Order Administratively Closing Case Upon Joint Request for Stay (Doc. 46);

WHEREAS, Plaintiffs in the Lawsuit own certain 2005-2009 Subaru Legacy and Subaru Outback vehicles in which the dashboards have become sticky and/or melted as a result of exposure to heat or humidity (Doc. 1 at 38, 41, 44, 46 and 47);

WHEREAS, Plaintiffs and Plaintiffs' Counsel no longer wish to pursue the Lawsuit and have agreed to enter into a Joint Stipulation of Dismissal of the Class Action Complaint;

WHEREAS, SOA and FHI expressly deny the allegations in the Lawsuit, expressly deny they have engaged in any wrongdoing, expressly deny the claims Plaintiffs have asserted on behalf of themselves and members of the proposed classes;

WHEREAS, the Parties desire to fully settle and resolve the claims in the Lawsuit in the manner set forth in this Agreement; and

WHEREAS, these Recitals are hereby made a part of, and are expressly incorporated into, this Agreement.

## **II. TERMS AND CONDITIONS**

NOW, THEREFORE, in consideration of these promises and the mutual obligations and promises contained herein, the adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Upon execution of this Agreement, the Parties will file in the Lawsuit a Joint Stipulation of Dismissal of the Class Action Complaint with Prejudice without fees or costs awarded to any Party, in the form attached hereto as Exhibit A, which is expressly incorporated herein by reference.

2. Within thirty (30) days after the entry of dismissal attached hereto as Exhibit A, Defendants shall (a) pay to Plaintiffs the amount of seven-hundred and fifty dollars and no cents (\$750.00) each in addition to the relief available, if any, under the Dashboard Warranty Extension program described below; and (b) pay to Plaintiffs' Counsel attorneys' fees and costs in the amount

of one-hundred and fifty-thousand dollars and no cents (\$150,000.00). ;, which shall be full and fair consideration for the execution of this Agreement and dismissal of the Lawsuit by Plaintiffs in accordance with the terms set forth herein and in Exhibit A. The Parties agree that upon payment by Defendants of the \$750.00 to each Plaintiff, and \$150,000.00 to Plaintiffs' Counsel, Defendants' obligations to Plaintiffs and to Plaintiffs' Counsel shall be fully satisfied and discharged. Plaintiffs' Counsel further represents that there are no attorneys' liens for the Lawsuit or relating to the claims of Plaintiffs.

3. As a further condition of the settlement, Defendants further agree to honor the Dashboard Warranty Extension program as it applies to Plaintiffs Janet Parks, Duane Gooch, Redmond Kelley, and Gabor Vigh to the extent that they qualify as described in the Customer Notification Letter sent to current owners and lessees of all 2005-2009 Subaru Legacy and Subaru Outback vehicles in the United States, which included the following information:

- a. The Dashboard Warranty Extension extends the vehicle's original "New Car Limited Warranty" as it applies to the dashboard in two ways:
  - i. An immediate coverage period is available for ALL affected vehicles regardless of mileage and warranty start date, and is effective now through March 31, 2017. Inspections or repairs under this immediate coverage period must be completed on or before March 31, 2017; and
  - ii. A supplemental coverage period extends the vehicle's "New Car Limited Warranty" as it applies to the dashboard to 10 years from the warranty start date, regardless of mileage, providing additional coverage for some vehicles. Inspections or repairs under this second coverage period must be completed prior to the expiration of that 10-year period. The specific condition covered by the extension is a sticky and/or melted dashboard caused by heat or humidity. If that condition is verified by an authorized Subaru retailer, a repair will be performed at no charge to you. A maximum of one dashboard replacement, if eligible, will be covered by this program;

- b. If the customer's vehicle is currently experiencing symptoms, and he/she would like to have the dashboard inspected regardless of mileage or warranty start date, he/she can schedule an appointment with an authorized Subaru retailer for a free visual inspection. The inspection itself will take approximately 15 minutes. However, it may be necessary for the customer to leave the vehicle for a longer period of time on the day of the scheduled appointment to allow the retailer flexibility in scheduling. This offer for inspection and repair expires March 31, 2017;
- c. That due to the nature of this condition, the actual demand and locations where parts may need to be shipped is difficult to predict. For this reason, there may be a delay before a part replacement can be performed. In such a case, retailers will perform inspections and document any confirmed condition to ensure coverage under the terms of this warranty extension. Repairs will be performed as parts become available. Inspection must take place prior to the expiration of the above listed coverages for this to apply.
- d. That the Dashboard Warranty Extension is subject to the same terms and conditions set forth in customers' New Car Limited Warranty unless expressly modified by the Customer Notification Letter. For example, damage caused by abuse, vandalism or exposure to harsh chemicals is not covered by the New Car Limited Warranty, and therefore it is not covered by the Dashboard Warranty Extension.

4. SOA further agrees to reimburse Plaintiffs Janet Parks, Duane Gooch, Redmond Kelley, and Gabor Vigh for any out-of-pocket expenses incurred in connection with prior replacements of sticky and/or melted dashboards caused by heat or humidity, to the extent that they qualify as described in the Customer Notification Letter sent to current owners and lessees of all 2005-2009 Subaru Legacy and Subaru Outback vehicles in the United States.

5. In consideration of the mutual agreements contained herein, the adequacy and sufficiency of which are hereby acknowledged, Plaintiffs, and any and all agents, counsel,

employees, successors, assigns and other persons acting on their behalf (collectively, the “Plaintiff Releasers”) hereby generally release and forever discharge Subaru of America, Inc. and Fuji Heavy Industries Ltd. and any and all of their past and present affiliates, parents, subsidiaries, agents, partners, shareholders, dealers, insurers, related or affiliated SOA or FHI entities, officers, directors, employees, successors, assigns, and assignors (collectively, the “Defendant Releasees”), jointly and severally, from any and all claims, demands, controversies, actions, causes of action, obligations, liabilities, and damages in law or in equity, relating in any way to the claims and allegations that were asserted or that could have been asserted in the Lawsuit regarding 2005-2009 Subaru Legacy and Subaru Outback vehicles, including but not limited to claims or actions for contribution and/or indemnity of whatever nature now existing or which may hereafter arise out of the alleged actions or inactions of SOA, FHI or the Defendant Releasees arising from allegations made by Plaintiffs in the Lawsuit, including any consequences now existing or which may develop, whether or not such consequences are known or anticipated, to the broadest extent permitted under applicable law.

6. The terms of this Agreement shall be kept strictly confidential; provided, however, that any Party may disclose the existence of and the terms of this Agreement to their financial advisors or tax preparers. Any Party may also disclose the existence of and terms of this Agreement in response to a court order, governmental reporting requirement, or lawful subpoena after having promptly provided to all other Parties written notice of such requirement or subpoena, at least ten (10) days before producing documents in response to such requirement or subpoena. Notwithstanding the foregoing, the Parties agree that any Party may disclose to third parties the fact of the existence of this Agreement; provided, however, that the terms of the Agreement are not disclosed. When asked about the resolution of this lawsuit, the Parties may state that it was dismissed pursuant to a confidential settlement agreement.

7. This Confidential Settlement Agreement and Release is intended as the complete, final and exclusive statement of the terms of the agreement between the Plaintiff Releasers on the one hand and SOA and FHI on the other with regard to the subject matter hereof and supersedes

all prior oral and written agreements, understandings, commitments, negotiations, and practices between the parties relating to such subject matter. No additional promise or agreement has been made as consideration for this Agreement and the signing hereof has not been induced by any representations of the Parties except as expressly provided herein. The terms of this Agreement may be waived, modified and/or amended by the Parties only by way of a waiver, modification and/or amendment that specifically references this Agreement, is made in writing and is signed by the Party or Parties to be bound.

8. All notices required or permitted to be given hereunder shall be given in writing, sent by facsimile and first class mail, and shall be sent as follows:

If to Plaintiffs:

Gregory F. Coleman  
Adam Edwards  
Mark Silvey  
greg@gregcolemanlaw.com  
adam@gregcolemanlaw.com  
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GREG COLEMAN LAW, P.C.  
800 S. Gay Street, Suite 1100  
Knoxville, TN 37929  
Fax: (865) 522-0049

Jonathan B. Cohen  
John A. Yanchunis  
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MORGAN & MORGAN  
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201 N. Franklin Street, 7th Floor  
Tampa, FL 33602  
Fax: (813) 222-2434

If to SOA or FHI:

Neal Walters  
waltersn@ballardspahr.com  
BALLARD SPAHR LLP  
210 Lake Drive East  
Cherry Hill, NJ 08002  
Fax: (856) 761-9021

Scott M. Sarason  
ssarason@rumberger.com  
RUMBERGER KIRK & CALDWELL  
80 SW 8th Street, Suite 3000  
Miami, FL 33130  
Fax: (786) 536-3446

9. The Parties, and each of them, acknowledge that they have been advised by counsel concerning the contents and effect of this Agreement, that they understand all of its provisions and that they are entering into this Agreement knowingly and voluntarily.

10. By entering into this Agreement, no Party admits any liability whatsoever to any other Party arising out of any claims heretofore or hereafter asserted by any other Party, and the Parties expressly deny any and all such liability.

11. Except as otherwise expressly indicated in this Agreement, the Parties to this Agreement expressly agree to bear their own fees, expenses and costs in connection with the Lawsuit including the resolution thereof. Plaintiffs and Plaintiffs' Counsel expressly represent and warrant that this settlement and the payment called for hereunder by Defendants is in full, final and complete satisfaction of any fee demand that was or could have been made in connection with the Lawsuit.

12. This Agreement may be executed in counterparts, all of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

13. This Agreement shall be construed and governed in accordance with the substantive laws of the State of Florida without regard to its choice of law provisions.

14. Neither Party shall be considered the drafter of this Agreement, and no provision of this Agreement shall be construed against either Party for purposes of interpreting this Agreement.

15. The undersigned hereby represent, promise, and warrant that they possess the ability to bind the Parties identified below for all purposes related to this Confidential Settlement Agreement and Release. This Confidential Settlement Agreement and Release is binding upon and inures to the benefit of the signers and their next of kin, personal representatives, administrators, heirs, successors and assigns.


NAMED PLAINTIFFS:

*April*  
Dated: ~~March~~ 12 2016

*Janet Parks*  
\_\_\_\_\_  
JANET PARKS



Dated: ~~March~~ <sup>April</sup> 11, 2016

  
DUANE GOOCH

Dated: March \_\_, 2016

\_\_\_\_\_  
REDMOND KELLEY

Dated: March \_\_, 2016

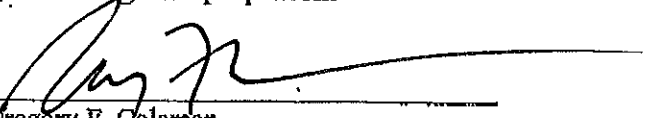
\_\_\_\_\_  
GABOR VIGH

COUNSEL FOR PLAINTIFFS:

Dated: March \_\_, 2016

\_\_\_\_\_  
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jyanchunis@forthepeople.com

Dated: ~~March~~ <sup>April 12</sup> \_\_, 2016

  
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mark@gregcolemanlaw.com

DEFENDANTS:

Dated: March \_\_, 2016

\_\_\_\_\_  
DUANE GOOCH

Dated: ~~March~~ April \_\_, 2016

\_\_\_\_\_  
REDMOND KELLEY

Dated: March \_\_, 2016

\_\_\_\_\_  
GABOR VIGH

COUNSEL FOR PLAINTIFFS:

Dated: March \_\_, 2016

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Dated: March \_\_, 2016

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DEFENDANTS:

Dated: March \_\_, 2016

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JANET PARKS

Dated: March \_\_, 2016

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DUANE GOOCH

Dated: March \_\_, 2016

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REDMOND KELLEY

Dated: <sup>APRIL</sup> ~~March~~ 11, 2016



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GABOR VIGH

COUNSEL FOR PLAINTIFFS:

Dated: March \_\_, 2016

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Dated: March \_\_, 2016

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adam@gregcolemanlaw.com

Dated: March \_\_, 2016

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For FUJI HEAVY INDUSTRIES, INC.  
Neal Walters, Esquire  
Ballard Spahr LLP

Dated: March \_\_, 2016

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SUBARU OF AMERICA, INC.

COUNSEL FOR DEFENDANTS:

Dated: March \_\_, 2016

APPROVED AS TO FORM AND  
CONTENT FOR SUBARU OF  
AMERICA, INC. AND FUJI HEAVY  
INDUSTRIES LTD.

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