

OCT 16 2020

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF VENTURA – HALL OF JUSTICE

10 HENRY FLORES, an individual,

11  
12 Plaintiff,

13 v.

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15 SUBARU OF AMERICA, INC., A New  
16 Jersey Corporation; and DOES 1 through 20,  
17 inclusive,

18 Defendants.  
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Case No.

COMPLAINT FOR DAMAGES

Original

*Assigned for all purposes to the Hon.  
in Dept.*

- 21 1. Breach of Implied Warranty of Merchantability under the Song-Beverly Warranty Act.  
22 2. Breach of Express Warranty under the Song-Beverly Warranty Act.

23 JURY TRIAL DEMANDED.  
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1           **PLAINTIFF HENRY FLORES**, an individual, hereby allege and complains as follows:

2           **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

3           1.       Defendant, **SUBARU OF AMERICA, INC.** (hereinafter referred to as  
4 “Manufacturer”), is a corporation doing business in the County of Ventura, State of California, and,  
5 at all times relevant herein, was/is engaged in the manufacture, sale, distribution, and/or importing  
6 of Subaru motor vehicles and related equipment.

7           2.       The true names and capacities, whether individual, corporate, associate, or otherwise,  
8 of the Defendants, Does 1 through 20, inclusive, are unknown to Plaintiff who therefore sues these  
9 Defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint to set forth  
10 their true names and capacities when they have ascertained them. Further, Plaintiff is informed and  
11 believes, and thereon alleges, that each of the Defendants designated herein as a “Doe” is  
12 responsible in some manner for the events and happenings herein referred to and caused injury and  
13 damage to Plaintiff as herein alleged.

14          3.       Plaintiff is informed and believes, and thereon alleges, that at all times herein  
15 mentioned, Defendants, and each of them, were the agents, servants, and/or employees of each of  
16 their Co-Defendants. Plaintiff is informed and believes, and thereon alleges, that in doing the  
17 things hereinafter alleged Defendants, and each of them, were acting in the course and scope of  
18 their employment as such agents, servants, and/or employees, and with the permission, consent,  
19 knowledge, and/or ratification of their Co-Defendants, principals, and/or employers.

20          4.       On or about December 1, 2016, defendants Manufacturer and Does 1 through 20  
21 inclusive, manufactured and/or distributed into the stream of commerce a new 2016 Subaru  
22 Forester, VIN JF2SJABC6GH473739 (hereinafter referred to as the “Vehicle”) for its eventual  
23 sale/lease in the State of California.

24          5.       On or about May 4, 2018, Plaintiff leased, for personal, family, and/or household  
25 purposes, the new subject Vehicle from the Lessor. The lease agreement is in the possession of  
26 Defendants.

27          7.       The subject Vehicle was/is a “new motor vehicle” under the Song-Beverly Warranty  
28 Act.

1           7. Along with the purchase of the Vehicle, Plaintiff received written warranties and other  
2 express and implied warranties including, but not limited to, warranties from Manufacturer and  
3 Seller that the Vehicle and its components would be free from all defects in material and  
4 workmanship; that the Vehicle would pass without objection in the trade under the contract  
5 description; that the Vehicle would be fit for the ordinary purposes for which it was intended; that  
6 the Vehicle would conform to the promises and affirmations of fact made; that Defendants, and  
7 each of them, would perform any repairs, alignments, adjustments, and/or replacements of any  
8 parts necessary to ensure that the Vehicle was free from any defects in material and workmanship;  
9 that Defendants, and each of them, would maintain the utility of the Vehicle for Three (3) years or  
10 36,000 miles and would conform the Vehicle to the applicable express warranties. (A copy of the  
11 written warranty is in the possession of the Defendants).

12           8. Plaintiff has duly performed all the conditions on Plaintiff's part under the purchase  
13 agreement and under the express and implied warranties given to plaintiff, except insofar as the  
14 acts and/or omissions of the Defendants, and each of them, as alleged herein, prevented and/or  
15 excused such performance.

16           9. Plaintiff has delivered the Vehicle to the Manufacturer's authorized service and repair  
17 facilities, agents and/or dealers, including Seller, on at least Three (3) separate occasions resulting  
18 in the Vehicle being out of service by reason of repair of nonconformities. Repair Orders/Invoices  
19 are in the possession of Defendants.

20           10. By way of example, and not by way of limitation, the defects, malfunctions, mis  
21 adjustments, and/or nonconformities with Plaintiff's Vehicle include the following: Plaintiff has  
22 submitted the subject Vehicle for defects and malfunctions, specifically for issues with lightning  
23 malfunction, acceleration issues, and transmission issues.

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1           11.       Each time **Plaintiff** delivered the nonconforming Vehicle to a Manufacturer-  
2 authorized service and repair facility, Plaintiff notified Defendants, and each of them, of the  
3 defects, malfunctions, mis adjustments, and/or nonconformities existent with the Vehicle and  
4 demanded that Manufacturer or its representatives repair, adjust, and/or replace any necessary parts  
5 to conform the Vehicle to the applicable warranties.

6           12.       Each time **Plaintiff** delivered the nonconforming Vehicle to a Manufacturer-  
7 authorized service and repair facility, Defendants, and each of them, represented to Plaintiff that  
8 they could and would conform the Vehicle to the applicable warranties, that in fact they did  
9 conform the Vehicle to said warranties, and that all the defects, malfunctions, mis adjustments,  
10 and/or nonconformities have been repaired; however, Manufacturer or its representatives failed to  
11 conform the Vehicle to the applicable warranties because said defects, malfunctions, mis  
12 adjustments, and/or nonconformities continue to exist even after a reasonable number of attempts  
13 to repair was given.

14           13.       The amount in controversy exceeds **TWENTY-FIVE THOUSAND DOLLARS**  
15 **(\$25,000.00)**, exclusive of interest and costs, for which **Plaintiff** seeks judgment against  
16 **Defendants**, together with equitable relief. In addition, Plaintiff seeks damages from Defendants,  
17 and each of them, for incidental, consequential, exemplary, and actual damages including interest,  
18 costs, and actual attorneys' fees.

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**FIRST CAUSE OF ACTION**

**Breach of Implied Warranty of Merchantability under Song-Beverly Warranty Act**

**Against all Defendants**

14. Plaintiff realleges each and every paragraph (1-13) and incorporates them by this reference as though fully set forth herein.

15. The distribution and sale of the Vehicle was accompanied by the Manufacturer implied warranty that the Vehicle was merchantable.

16. Furthermore, Defendants, and each of them, impliedly warranted, inter alia, that the Vehicle would pass without objection in the trade under the contract description; that the Vehicle was fit for the ordinary purposes for which it was intended; that the Vehicle was adequately assembled; and/or that the Vehicle conformed to the promises or affirmations of fact made to Plaintiff.

17. As evidenced by the defects, malfunctions, mis adjustments, and/or nonconformities alleged herein, the Vehicle was not merchantable because it did not have the quality that a buyer would reasonably expect, because it could not pass without objection in the trade under the contract description; because it was not fit for the ordinary purposes for which it was intended; because it was not adequately assembled; and/or because it did not or could not be conformed to the promises or affirmations of fact made to Plaintiff.

18. Upon discovery of the Vehicle's nonconformities, Plaintiff took reasonable steps to notify Defendants, and each of them, within a reasonable time that the Vehicle did not have the quality that a buyer would reasonably expect and, further, justifiably revoked acceptance of the nonconforming Vehicle.

19. Plaintiff hereby gives written notice and justifiably revokes acceptance of the nonconforming Vehicle under the Commercial Code sections 2607 and 2608. Plaintiff further demands that the Manufacturer cancel the sale, take back the nonconforming Vehicle, refund all the money expended, pay the difference between the value of the Vehicle as accepted and the value the Vehicle would have had if it had been as warranted, and/or pay damages under the Commercial

1 Code sections 2711, 2714, and 2715. Defendants, and each of them, have, however, refused to  
2 comply.

3 20. Plaintiff hereby gives written notice and makes demand upon Manufacturer for  
4 replacement or restitution, pursuant to Song-Beverly. Defendants, and each of them, knew of their  
5 obligations under Song-Beverly; however, despite Plaintiff's demand, Defendants and each of  
6 them, have intentionally failed and refused to make restitution or replacement pursuant to Song-  
7 Beverly.

8 21. As a result of the acts and/or omissions of the Defendants, and each of them, Plaintiff  
9 has sustained damage in the amount actually paid or payable under the contract, plus prejudgment  
10 interest thereon at the legal rate. Plaintiff will seek leave to amend this Complaint to set forth the  
11 exact amount thereof when that amount is ascertained.

12 22. As a further result of the actions of Defendants, and each of them, Plaintiff has  
13 sustained incidental and consequential damages in an amount yet to be determined, plus interest  
14 thereon at the legal rate. Plaintiff will seek leave to amend this Complaint to set forth the exact  
15 amount of incidental damages when that amount is ascertained.

16 23. As a further result of the actions of Defendants, and each of them, Plaintiff has  
17 sustained damages equal to the difference between the value of the Vehicle as accepted and the  
18 value the Vehicle would have had if it had been as warranted.

19 24. As a direct result of the acts and/or omissions of Defendants, and each of them, and  
20 in pursuing Plaintiff's claim, it was necessary for Plaintiff to retain legal counsel. Pursuant to  
21 Song-Beverly, Plaintiff, in addition to his other remedies, is entitled to the recovery of his  
22 attorneys' fees based upon actual time expended and reasonably incurred, in connection with the  
23 commencement and prosecution of this action.

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1 **SECOND CAUSE OF ACTION**

2 **Breach of Express Warranty under Song-Beverly Warranty Act**

3 **Against all Defendants**

4 25. Plaintiff realleges each and every paragraph (1-24) and incorporates them by this  
5 reference as though fully set forth herein.

6 26. The Vehicle had defects, malfunctions, mis adjustments, and/or nonconformities  
7 covered by the warranty that substantially impaired its value, use, or safety to Plaintiff.

8 27. Plaintiff delivered the Vehicle to Manufacturer or its authorized repair facilities for  
9 repair.

10 28. Defendants, and each of them, failed to service or repair the Vehicle to match the  
11 written warranty after a reasonable number of opportunities to do so.

12 29. The acts and/or omissions of Defendants, and each of them, in failing to perform the  
13 proper repairs, part replacements, and/or adjustments, to conform the Vehicle to the applicable  
14 express warranties constitute a breach of the express warranties that the Manufacturer provided to  
15 Plaintiff, thereby breaching Defendants' obligations under Song-Beverly.

16 30. Defendants, and each of them, failed to perform the necessary repairs and/or service  
17 in good and workmanlike manner. The actions taken by Defendants, and each of them, were  
18 insufficient to make the Subject Vehicle conform to the express warranties and/or proper  
19 operational characteristics of like Vehicles, all in violation of Defendants' obligations under Song-  
20 Beverly.

21 31. Plaintiff hereby gives written notice and makes demand upon Manufacturer for  
22 replacement or restitution, pursuant to Song-Beverly. Defendants and each of them, knowing their  
23 obligations under Song-Beverly, and despite Plaintiff's demand, failed and refused to make  
24 restitution or replacement according to the mandates of Song-Beverly. The failure of Defendants,  
25 and each of them, to refund the price paid and payable or to replace the Vehicle was intentional and  
26 justifies an award of a Civil Penalty in an amount not to exceed two times Plaintiff's actual  
27 damages.

28 32. As a result of the acts and/or omissions of Defendants, and each of them, and

1 pursuant to the provisions of the Song-Beverly, Plaintiff is entitled to replacement of the Vehicle or  
2 restitution of the amount actually paid or payable under the contract, at Plaintiff's election, plus  
3 prejudgment interest thereon at the legal rate. Plaintiff will seek leave of Court to amend this  
4 Complaint to set forth the exact amount of restitution and interest, upon election, when that amount  
5 has been ascertained.

6 33. Additionally, as a result of the acts and/or omissions of Defendants, and each of  
7 them, and pursuant to Song-Beverly, Plaintiff has sustained and is entitled to consequential and  
8 incidental damages in amounts yet to be determined, plus interest thereon at the legal rate. Plaintiff  
9 will seek leave of the court to amend this complaint to set forth the exact amount of consequential  
10 and/or incidental damages, when those amounts have been ascertained.

11 34. As a direct result of the acts and/or omissions of Defendants, and each of them, and  
12 in pursuing Plaintiff's claim, it was necessary for Plaintiff to retain legal counsel. Pursuant to  
13 Song-Beverly, Plaintiff, in addition to other remedies, is entitled to the recovery of his attorneys'  
14 fees based upon actual time expended and reasonably incurred, in connection with the  
15 commencement and prosecution of this action.

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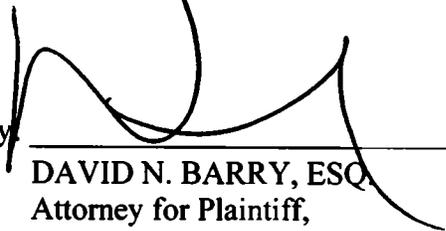
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against all Defendants, and each of them, as follows:

- A. For replacement or restitution, at Plaintiff's election, according to proof;
- B. For incidental damages, according to proof;
- C. For consequential damages, according to proof;
- D. For a civil penalty as provided in Song-Beverly, in an amount not to exceed two times the amount of Plaintiff's actual damages;
- E. For actual attorney's fees, reasonably incurred;
- F. For costs of suit and expenses, according to proof;
- G. For the difference between the value of the Vehicle as accepted and the value the Vehicle would have had if it had been as warranted;
- H. For remedies provided in Chapters 6 and 7 of Division 2 of the Commercial Code;
- I. For pre-judgment interest at the legal rate;
- J. Such other relief the Court deems appropriate.

Date: September 23, 2020

THE BARRY LAW FIRM

By   
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DAVID N. BARRY, ESQ.  
Attorney for Plaintiff,  
HENRY FLORES