

Assigned for all purposes to: Glendale Courthouse, Judicial Officer: Curtis Kin

1 Jon P. Jacobs (SBN 205245)  
Terry L. Baker (SBN 214365)  
2 LAW OFFICES OF JON JACOBS  
5701 Lonetree Blvd., Suite 202  
3 Rocklin, CA 95765  
Tel: (916) 663-6400  
4 Fax: (916) 663-6500  
terry@lemonbuyback.com

5 Attorneys for Plaintiffs  
6 SURENDRA and SUDHA SAHGAL

7  
8  
9

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

10

12 SURRENDRA SAHGAL; SUDHA  
SAHGAL

Case No.

13

Plaintiffs,

**COMPLAINT FOR:**

14

vs.

Violations of Song-Beverly Warranty Act;  
Violations of Magnuson-Moss Warranty  
Act; and Breach of Warranty

15

SUBARU OF AMERICA, INC., a  
corporation; and DOES ONE through  
TWENTY,

17

Defendants.

18

Plaintiffs allege that, at all times relevant:

19

**FACTS COMMON TO ALL COUNTS**

20

21 1. Defendant Subaru of America, Inc. (hereinafter "Subaru") is a duly authorized  
22 New Jersey corporation doing business in Los Angeles County, California.

23

24 2. Plaintiffs do not know the true names of the defendants sued herein as Does  
25 One through Twenty and sues said defendants pursuant to the provisions of Code of Civil  
Procedure § 474.

26

27 3. On or about December 19, 2015, plaintiff purchased a new 2016 Subaru XV  
Crosstrek ("vehicle") which was manufactured and/or distributed, and warranted by Subaru.

28

4. In connection with the transaction, Subaru issued to plaintiffs express

1 warranties within the meaning of Cal. Civil Code § 1791.2, which were also written  
2 warranties within the meaning of 15 U.S.C. § 2301(6). By the terms of the express written  
3 warranties, defendant promised that the vehicle's material and workmanship was defect free,  
4 undertook to preserve and maintain the utility and performance of the vehicle and to provide  
5 compensation if there is a failure in utility or performance, and agreed to refund, repair,  
6 replace, or take other remedial action with respect to the vehicle.

7       5.     Plaintiffs purchased the vehicle primarily for personal, family or household  
8 purposes.

9       6.     Subsequent to plaintiffs' purchase, the vehicle exhibited numerous defects and  
10 nonconformities covered by the warranties which substantially impair the use, value and  
11 safety of the motor vehicle to the plaintiffs.

12       7.     Plaintiffs delivered the nonconforming motor vehicle to Subaru's authorized  
13 repair facilities for repairs pursuant to the terms of the warranties. Defendant has failed to  
14 repair or replace the vehicle, or provide restitution.

15   **FIRST CAUSE OF ACTION**  
16   **Violations of the Song-Beverly Consumer Warranty Act**  
  **(By Plaintiffs and against Subaru)**

17       8.     Plaintiffs incorporates all preceding paragraphs.

18       9.     Plaintiffs are "buyers" as defined by Cal. Civ. Code § 1791(b).

19       10.    The vehicle is a "consumer good" as defined by Cal. Civ. Code § 1791(a).

20       11.    Subaru is a "warrantor" as contemplated by Cal. Civ. Code § 1795.

21       12.    Plaintiffs' purchase of the vehicle was a "sale" as defined by Cal. Civ. Code  
22 1791(n).

23       13.    Subaru violated the Song-Beverly Act by failing to conform the vehicle to the  
24 express written warranties within a reasonable number of repair attempts or within the  
25 warranty periods and failing to promptly replace the vehicle or make restitution to the  
26 plaintiffs.

27       14.    The above-described defects, malfunctions, and nonconformities substantially  
28 impair the use, value, and safety of the vehicle.

1           15. Plaintiffs have not made unreasonable or unintended use of the vehicle.

2           16. Pursuant to Civil Code § 1793.2(d), Subaru must refund the price of the  
3 vehicle to plaintiffs.

4           17. Pursuant to Civil Code § 1794(a), plaintiffs are entitled to restitution.

5           18. As a direct and proximate result of said violations of the Song-Beverly Act,  
6 plaintiffs have sustained, and continue to sustain, actual, incidental and consequential  
7 damages in the approximate amount of \$35,000 according to proof.

8           19. The failure of Subaru to comply with the Song-Beverly Act was willful in that  
9 Subaru had actual knowledge of the vehicle's defects and malfunctions, knew of its legal  
10 duties under the warranty and the law, but repeatedly refused to make necessary repairs  
11 and/or provide a refund.

12          20. Pursuant to Civil Code § 1794(c), plaintiffs are entitled to a civil penalty of  
13 two times the amount of their actual damages.

14          21. Pursuant to Civil Code § 1794(d), plaintiffs are entitled to reasonable attorney  
15 fees according to proof.

16                                   **SECOND CAUSE OF ACTION**  
17                   **Breach of Implied Warranty--Song-Beverly Consumer Warranty Act**  
  **(By Plaintiffs and against Subaru)**

18          22. Plaintiffs incorporate by reference all preceding paragraphs.

19          23. Pursuant to Cal. Civ. Code § 1792, the vehicle was accompanied by the retail  
20 seller's and the warrantor's implied warranty of merchantability.

21          24. Pursuant to Civil Code § 1793, and because of the existence of the express  
22 warranty, defendants may not disclaim, limit, or modify the implied warranties provided by  
23 the Song-Beverly Act.

24          25. Defendant breached the implied warranty of merchantability of Civil Code §§  
25 1791.1 and 1792 in that the above-described defects, malfunctions, and nonconformities  
26 render the vehicle unfit for the ordinary purposes for which it is used and it would not pass  
27 without objection in the trade.

28          26. Pursuant to Civil Code § 1794(a), plaintiffs are entitled to restitution.



1 expenses reasonably incurred in connection with this action.

2 **FOURTH CAUSE OF ACTION**  
3 **Breach of Implied Warranty--Magnuson-Moss Warranty Act**  
4 **(By Plaintiffs and against Subaru)**

4 **39.** Plaintiffs incorporate by reference all preceding paragraphs.

5 **40.** Pursuant to 15 U.S.C. § 2301(7), the breaches by defendants of the state-law  
6 implied warranty of merchantability as set forth above also constitute breaches of implied  
7 warranties pursuant to the Magnuson-Moss Act.

8 **41.** Pursuant to 15 U.S.C. § 2310(d)(1), and because of said breaches of implied  
9 warranties, plaintiffs are entitled to the equitable remedies of rescission and restitution and/or  
10 damages. Plaintiffs revoke acceptance, rescind the contract, and claim full restitution.

11 **42.** As a proximate result of the breaches of implied warranty, plaintiffs have  
12 sustained, and continue to sustain, damages, both economic and noneconomic, in the  
13 approximate amount of \$35,000.00.

14 **43.** Pursuant to 15 U.S.C. § 2310(d)(2), plaintiffs are entitled to attorney fees and  
15 expenses reasonably incurred in connection with this action.

16 **FIFTH CAUSE OF ACTION**  
17 **Breach of Express Warranty**  
18 **(By Plaintiffs and against Subaru)**

18 **44.** Plaintiffs refer to and incorporates by reference all preceding paragraphs.

19 **45.** At all times herein mentioned, on and prior to December 19, 2015, Subaru  
20 utilized media, professional publications and salespersons to urge the use and sale of the  
21 2016 Subaru Crosstrek, and expressly warranted to members of the general public, including  
22 the plaintiffs herein, that the vehicle and its component parts were free from latent defects or  
23 inherent risk of failure and were effective, proper and safe for their intended use.

24 **46.** Plaintiffs relied upon said express warranty representations of Subaru in the  
25 purchase of the vehicle.

26 **47.** Defendant breached its warranties by selling vehicles that did not conform to  
27 the promises contained in the warranties.

28 **48.** After plaintiffs sustained the damages complained of herein as a result of the

1 defective condition of the vehicle, notice was given by plaintiffs, who satisfied all terms of  
2 the contract and requirements, except as may be excused by misconduct of the defendant.  
3 This complaint shall serve as further notice of the breach described herein.

4  
5 **PRAYER FOR RELIEF**

6 WHEREFORE, plaintiffs pray for judgment as follows:

- 7 1.. That the contract be adjudged rescinded.
- 8 2. For restitution.
- 9 3. For incidental and consequential damages.
- 10 4. For actual and statutory damages.
- 11 5. For reasonable attorney fees according to proof.
- 12 6. For costs and expenses incurred herein.
- 13 7. For such other relief as the Court deems proper.
- 14 8. For a civil penalty of two times plaintiffs' damages.

15  
16 Dated: June 3, 2019 Respectfully submitted,

17  
18  
19   
20 TERRY L. BAKER  
Attorney for Plaintiffs