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8 *Attorneys for Plaintiff the People of the State of California,*  
9 *by and through the California Air Resources Board*

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF MICHIGAN  
12

13 PEOPLE OF THE STATE OF  
14 CALIFORNIA,

CASE NO.

15  
16 Plaintiff,

17 v.

18 HINO MOTORS, LTD., HINO  
19 MOTORS MANUFACTURING,  
U.S.A., INC., HINO MOTORS SALES  
20 U.S.A., INC.,

21 Defendants.  
22

23  
24 **COMPLAINT FOR PERMANENT INJUNCTION, CIVIL PENALTIES,**  
25 **AND OTHER LEGAL AND EQUITABLE RELIEF**

26 Plaintiff the People of the State of California, acting by and through the  
27 California Air Resources Board (“CARB” or “Plaintiff”), represented by the Office  
28 of the California Attorney General, bring this civil law enforcement action against

1 Hino Motors, Ltd., Hino Motors Sales U.S.A., Inc., and Hino Motors  
2 Manufacturing, U.S.A., Inc. (“Defendants” or “Hino”). This action is brought  
3 under California laws and regulations relating to the control of harmful air  
4 pollutants, and under the Clean Air Act (“CAA”), 42 U.S.C. § 7604(a)(1), and the  
5 California State Implementation Plan approved by the United States Environmental  
6 Protection Agency (“EPA”) and codified at 40 C.F.R. part 52, subpart F–California,  
7 and 81 Fed. Reg. 39424-01. Plaintiff alleges the following on information and  
8 belief:

### 9 **INTRODUCTION**

10 1. Beginning in 2009, Defendants sold or caused to be sold certain  
11 model year 2010 through 2019 medium- and heavy-duty engines (“Subject  
12 Engines”) in California that failed to comply with California and federal laws and  
13 regulations governing engine emissions and certifications.<sup>1</sup> Approximately 15,590  
14 Subject Engines were sold and/or introduced into commerce in California.

15 2. To combat dangerous levels of air pollution, California has regulated  
16 pollutants for many years and was the first state to regulate automobile tailpipe  
17 emissions. California’s air-quality regulations preceded the federal CAA, and the  
18 CAA preserves California’s authority to set and enforce its own air quality  
19 standards. To legally import, offer for sale, or sell vehicles or engines in California,  
20 a manufacturer must submit a certification application and obtain an Executive  
21 Order from CARB certifying the vehicles or engines for sale. This regulatory  
22 scheme is designed to ensure that vehicles or engines sold in California comply  
23 with the state’s strict emissions standards, including standards limiting oxides of  
24 nitrogen (“NOx”) emissions. NOx is a key contributor to ambient ozone and fine  
25 particulate matter pollution in California, both of which have a detrimental effect on  
26 public health and the environment.

27  
28 <sup>1</sup> The Subject Engines are further identified in Paragraph 39.

1           3.       Defendants' certification applications for the Subject Engines were  
2 based on fabricated, altered and/or omitted data. The Subject Engines therefore do  
3 not match the configurations specified in the certification applications submitted to  
4 CARB by Defendants, meaning that the Subject Engines designed, imported,  
5 offered for sale, and/or sold by Hino were never approved and certified by CARB.  
6 Based on these inaccurate and incomplete disclosures, Defendants obtained  
7 Executive Orders allowing import, offer for sale, and/or sale of the non-compliant  
8 Subject Engines in California.

9           4.       Defendants' certification applications for the Subject Engines failed to  
10 disclose Auxiliary Emission Control Devices ("AECDs") that significantly affect  
11 the emissions control systems. The Subject Engines therefore do not match the  
12 configurations specified in the certification applications submitted to CARB by  
13 Defendants, meaning that the Subject Engines actually designed, imported, offered  
14 for sale, and/or sold by Hino were never approved and certified by CARB. Based  
15 on these inaccurate and incomplete disclosures, Defendants obtained Executive  
16 Orders allowing import, offer for sale, and/or sale of the non-compliant Subject  
17 Engines in California.

18           5.       These undisclosed AECDs in the Subject Engines, alone or in  
19 combination, cause the engines to emit NOx at dramatically elevated levels during  
20 certain real world driving conditions in comparison to their performance during  
21 regulated emissions tests.

22           6.       Defendants' actions violated various California laws concerning  
23 engine test procedures, certification and emissions.

24           7.       Defendants' actions also violated California's on-board diagnostic  
25 regulations. The on-board diagnostic system ensures an engine's emission control  
26 system operates properly for the life of the engine and helps repair technicians  
27 diagnose and fix problems with the system.

28

8. Through this action, Plaintiff seeks: (1) an order preliminarily and permanently enjoining Defendants from violating California emission control statutes and regulations; and (2) an order requiring Defendants to remedy its violations of California law; and (3) civil penalties along with other appropriate relief, including attorney fees.

## JURISDICTION

9. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiff asserts claims under 42 U.S.C. § 7604(a)(1). The Court has supplemental jurisdiction over all other claims under 28 U.S.C. § 1367 because the other claims arise from or form part of the same case or controversy under Article III of the United States Constitution.

10. The Court has personal jurisdiction over Defendants, which do business in the State of Michigan and in this judicial District. Defendants directly or indirectly interacted with CARB throughout the Executive Order application process for the Subject Engines and intentionally imported, offered for sale, sold (or caused to be sold), or leased (or caused to be leased) the Subject Engines in California and in this District. The Court's exercise of jurisdiction over Defendants is consistent with due process.

11. Plaintiff has complied with the notice requirements of the CAA, as required by 42 U.S.C. § 7604(b)(1)(A).

**VENUE**

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because Defendants are subject to the Court's personal jurisdiction in this District.

## PARTIES

## I. PLAINTIFF

13. Plaintiff is the People of the State of California, and brings this action by and through CARB.

1           14. CARB is a public agency of the State of California within the  
2 California Environmental Protection Agency. Among other duties and  
3 responsibilities, CARB is charged with controlling motor vehicle and engine  
4 emissions to systematically address the serious air pollution problems they cause.  
5 To that end, California Health and Safety Code § 43101 and § 43104, among other  
6 statutory provisions, direct CARB to adopt and implement emission standards for  
7 new motor vehicles and engines, and test procedures and any other procedures  
8 necessary to determine whether the vehicles or engines comply with those  
9 emissions standards. California Health and Safety Code § 43017 authorizes CARB  
10 to bring a civil action to enjoin any violation of Division 26, Part 5 (§§ 43000-  
11 44299.91, Vehicular Air Pollution Control) of the California Health and Safety  
12 Code or any CARB rule or regulation (and expressly exempts CARB from any  
13 requirement that it allege inadequate remedy at law, irreparable damage, or loss to  
14 obtain the requested injunction). California Health and Safety Code §§ 43016,  
15 43154, 43211, and 43212 subject any person who violates emissions standards, test  
16 procedures, and other CARB regulations to civil penalties.<sup>2</sup> California Health and  
17 Safety Code §§ 43150-43154 provide CARB with the authority to ensure that only  
18 motor vehicle and engines that meet CARB's emissions regulations, and that are  
19 certified by CARB, are imported, offered for sale, or sold and operated in  
20 California. CARB is empowered to obtain civil penalties and injunctive relief for  
21 violations of these provisions.<sup>3</sup>

22 \_\_\_\_\_  
23 <sup>2</sup> Sections 43016, 43154, 43211, and 43212 of the California Health and  
24 Safety Code were amended, effective January 1, 2017, primarily to modify the  
25 penalty amounts and structure. See 2016 Cal. Legis. Serv. Ch. 604 (A.B. 1685,  
"AIR POLLUTION—MOTOR VEHICLES—FINES AND PENALTIES"). The  
previous versions of the statutes apply to violations occurring before January 1,  
2017.

26 <sup>3</sup> Section 43154 of the California Health and Safety Code, which authorizes  
27 civil penalties for violations of these statutes, was amended, effective January 1,  
2017, primarily to modify the penalty amounts and structure. See 2016 Cal. Legis.  
28 Serv. Ch. 604 (A.B. 1685, "AIR POLLUTION—MOTOR VEHICLES—FINES  
AND PENALTIES"). The prior version of the statute applies to violations  
occurring before January 1, 2017.

1           15.     The State of California and its political subdivisions, including  
2     CARB, are “persons” under 42 U.S.C. § 7602(e) and § 7604(a) and are thus  
3     authorized and have standing to bring suit under the CAA. In addition, the general  
4     CAA prohibition against attempts by a state (or political subdivision) to adopt or  
5     enforce its own standards related to the control of emissions from new motor  
6     vehicles or engines does not apply to Plaintiff insofar as the State of California has  
7     obtained a waiver from the federal government to adopt and enforce its own  
8     emission standards that meet or exceed federal standards. 42 U.S.C. §§ 7507,  
9     7543(b).

10    **II.   DEFENDANTS**

11           16.     Defendant Hino Motors, Ltd. (“Hino”) is a Japanese corporation  
12     formed under the laws of Japan, headquartered in Tokyo, Japan. Hino designs,  
13     manufacturers, imports, distributes, markets, sells, and leases engines and engine  
14     components under various brands and wholly-owned subsidiaries, including  
15     Defendant Hino Motors Manufacturing U.S.A., Inc. Hino maintains facilities in  
16     California, including in Mira Loma. Hino, either directly or through its  
17     predecessors and agents, has transacted and continues to transact business in the  
18     State of California and throughout the United States, including in this judicial  
19     district. Hino, either directly or through its predecessors and agents, arranged for  
20     sale or delivery of its diesel engines to the United States for sale throughout  
21     California. Hino, either directly or through its predecessors and agents, designed the  
22     Subject Engines and performed emissions tests on the Subject Engines. Hino, either  
23     directly or through its predecessors and agents, has regularly submitted information  
24     to CARB, including applications for Executive Orders. Hino has also regularly  
25     participated in meetings with CARB, including in person, via telephone, or through  
26     videoconferencing technology, including in connection with applications for  
27     Executive Orders. Hino has also regularly corresponded or otherwise  
28

1 communicated with CARB, including in connection with applications for Executive  
2 Orders.

3 17. Defendant Hino Motors Manufacturing U.S.A., Inc. is a domestic  
4 corporation formed and existing under the laws of the State of Delaware. Defendant  
5 Hino Motors Manufacturing U.S.A., Inc. is a wholly-owned subsidiary of  
6 Defendant Hino Motors, Ltd. and it manufactures engines and engine components.  
7 Hino Motors Manufacturing U.S.A., Inc. maintains facilities in California,  
8 including in Mira Loma. Hino Motors Manufacturing U.S.A., Inc., either directly  
9 or through its predecessors and agents, has transacted and continues to transact  
10 business in the State of California and throughout the United States, including in  
11 this judicial district. Hino Motors Manufacturing U.S.A., Inc., either directly or  
12 through its predecessors and agents, arranged for sale or delivery of its diesel  
13 engines to the United States for sale throughout California. Hino Motors  
14 Manufacturing U.S.A., Inc., either directly or through its predecessors and agents,  
15 designed the Subject Engines and performed emissions tests on the Subject  
16 Engines. Hino Motors Manufacturing U.S.A., Inc., either directly or through its  
17 predecessors and agents, has regularly submitted information to CARB, including  
18 applications for Executive Orders.

19 18. Defendant Hino Motors Sales U.S.A., Inc., is a domestic corporation  
20 formed and existing under the laws of the State of Delaware. Defendant Hino  
21 Motors Sales U.S.A., Inc. is a wholly-owned subsidiary of Defendant Hino Motors,  
22 Ltd. and it sells engines and engine components. Defendant Hino Motor Sales  
23 U.S.A., Inc. maintains facilities in California, including in Mira Loma. Hino  
24 Motors Sales U.S.A., Inc., either directly or through its predecessors and agents,  
25 has transacted and continues to transact business in the State of California and  
26 throughout the United States, including in this judicial district. Hino Motors Sales  
27 U.S.A., Inc., either directly or through its predecessors and agents, arranged for sale  
28 or delivery of its diesel engines to the United States for sale throughout California.

1 Hino Motors Sales U.S.A., Inc., either directly or through its predecessors and  
2 agents, designed the Subject Engines and performed emissions tests on the Subject  
3 Engines. Hino Motors Sales U.S.A., Inc., either directly or through its predecessors  
4 and agents, has regularly submitted information to CARB, including applications  
5 for Executive Orders.

6 19. The violations of law alleged in this Complaint occurred throughout  
7 the state of California.

## 8 **BACKGROUND AND FACTUAL ALLEGATIONS**

### 9 **I. CALIFORNIA'S REGULATION OF VEHICLE AND ENGINE EMISSIONS**

10 20. CARB was formed in 1967 and is charged with setting and  
11 implementing vehicle emissions standards in California. California regulated  
12 vehicle emissions before the United States Congress passed the CAA in 1970, and  
13 that statute provides that California is the only state permitted to obtain a waiver  
14 from the federal government to adopt and enforce its own emission standards that  
15 meet or exceed federal standards. 42 U.S.C. § 7543(b). California obtained such a  
16 waiver and retained its authority to adopt and enforce its own emission standards,  
17 including those at issue in this action.

18 21. Under its unique, retained authority, CARB has continued to set strict  
19 emissions standards and test procedures for vehicles and engines imported, offered  
20 for sale, or sold in California. CARB has a special interest in assuring that only  
21 those new motor vehicles and engines that meet the state's stringent emission  
22 standards and test procedures are sold, used, or registered in the state.

23 22. California Health and Safety Code § 43102 specifies that no new  
24 motor vehicle or engine can be certified by CARB unless it meets the emission  
25 standards adopted by CARB under the test procedures adopted by CARB. Section  
26 43106 requires that each new motor vehicle or engine required to meet the emission  
27 standards shall be, in all material respects, substantially the same in construction as  
28 the test motor vehicle or engine, as the case may be, that has been certified by

1 CARB. Section 43150 declares that “only those new motor vehicles and new motor  
2 vehicle engines which meet this state’s stringent emission standards and test  
3 procedures, and which have been certified pursuant to this chapter, are used or  
4 registered in this state.” The on-road Subject Engines were certified to emission  
5 standard(s) set forth in Cal. Code Regs., tit. 13, § 1956.8, and test procedures  
6 incorporated by reference therein. The off-road Subject Engines were certified to  
7 emission standard(s) set forth in Cal. Code Regs., tit. 13, § 2423, and test  
8 procedures incorporate by reference in Cal. Code Regs., tit. 13, § 2421.

9 23. For the on-road Subject Engines, Cal. Code Regs., tit. 13, § 1956.8,  
10 subdivision (b), contains the certification requirements and incorporates by  
11 reference the following test procedures: “California Exhaust Emission Standards  
12 and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines  
13 and Vehicles.” For the off-road Subject Engines, Cal. Code Regs., tit. 13, § 2423  
14 contains the certification requirements and Cal. Code Regs., tit. 13, § 2421,  
15 subdivision (a)(4)(B) incorporates by reference the following test procedures:  
16 "California Exhaust Emission Standards and Test Procedures for New 2011 and  
17 Later Tier 4 Off-Road Compression Ignition Engines, Part 1-D." (together with the  
18 on-road test procedures “Test Procedures”). The Test Procedures require  
19 manufacturers to, among other things, list all AECDs installed on their engines,  
20 including a justification for each AECD, the parameters the AECDs sense and  
21 control, and a detailed justification of each AECD that results in a reduction in  
22 effectiveness of the emission control system. The Test Procedures, and the  
23 provisions of the Code of Federal Regulations incorporated in those Test  
24 Procedures, among other things, require manufacturers to disclose AECDs and  
25 submit running changes and field fixes, respectively. Running changes and field  
26 fixes are changes to the engines that occurs after certification.

27 24. California law requires that each make and model year of engine  
28 comply with California’s emissions standards and be certified by CARB before

1 being imported, delivered, purchased, acquired, introduced into commerce,  
2 received, offered, rented, leased, or sold for use, registration, or resale in California.

3 25. California Health and Safety Code § 43151 generally prohibits  
4 importing, delivering, selling, or leasing new motor vehicles or motor vehicle  
5 engines for use, registration, or resale in California, or attempting or assisting in  
6 any of the above such acts, unless such motor vehicles or engines have been  
7 certified by CARB and comply with California's emissions standards and other  
8 requirements.

9 26. CARB administers a certification program designed to prevent the  
10 introduction of new motor vehicles and motor vehicle engines into California that  
11 do not satisfy applicable emission standards. Under this program, CARB reviews  
12 applications submitted for new motor vehicles and engines and certifies them by  
13 issuing Executive Orders.

14 27. To obtain an Executive Order, a manufacturer must submit an  
15 application to CARB for each model year and for each engine family of engines  
16 that it intends to import, deliver, purchase, rent, lease, acquire, receive, or sell in  
17 California. Manufacturers are prohibited from taking any of these actions unless  
18 such engines have been certified through an Executive Order issued by CARB.

19 28. To be certified, an engine manufacturer must demonstrate that each  
20 engine's exhaust and evaporative emission control systems are durable and will  
21 comply with the applicable emission and evaporative emission standards for the  
22 engine's useful life. The manufacturer demonstrates this through durability and  
23 certification testing of sample engines. This certification process is  
24 comprehensive—CARB evaluates compliance with numerous requirements in  
25 addition to tail-pipe emissions, including regulations for on-board diagnostics, anti-  
26 tampering, labeling, and warranties.

27 29. CARB's certification requirements and test procedures require,  
28 among other things, that an engine manufacturer disclose in its certification

1 applications all AECDs present in the engine. As defined in 40 C.F.R. § 86.082-2  
2 and incorporated into California law, an AECD is “any element of design that  
3 senses temperature, engine speed, engine revolutions per minute (RPM),  
4 transmission gear, manifold vacuum, or any other parameter for the purpose of  
5 activating, modulating, delaying, or deactivating the operation of any part of the  
6 emission control system.” All AECDs must be disclosed so that CARB may  
7 properly evaluate them for, among other things, their effect on emissions, their  
8 purpose, and their effect on engine components and durability.

9 30. CARB’s certification requirements and test procedures require an on-  
10 board diagnostic system that meets regulatory requirements, is designed to test that  
11 the emissions control system is working properly, and, when a malfunction is  
12 detected, alerts owners via a “check engine” light of needed service and informs  
13 mechanics of the cause of the malfunction. In California, most newer cars and  
14 trucks (model year 2000 and newer) no longer require tailpipe testing during smog  
15 checks; these vehicles and engines are now simply connected to an on-board  
16 diagnostic scanner to detect malfunctions. Because of this reliance on on-board  
17 diagnostic scans to detect problems, if the on-board diagnostic system is not  
18 operating properly (or was not designed to operate properly), the engines may pass  
19 smog checks even if the emissions control system is malfunctioning.

20 31. The on-board diagnostic regulations permit CARB to certify engines  
21 even though the engines do not fully comply with one or more of the requirements  
22 set forth in the on-board diagnostic regulations, unless the deficiency would make  
23 the engine subject to an ordered recall. See Cal. Code Regs., tit. 13, § 1971.1. As  
24 set out in the regulations, among other things, CARB considers the extent to which  
25 the on-board diagnostic requirements are satisfied, and the manufacturer must  
26 demonstrate a good faith effort to meet the on-board diagnostic requirements in full  
27 and come into compliance as expeditiously as possible. The regulations require  
28

1 manufacturers to pay fines on a per deficiency, per engine basis for each deficiency  
2 in excess of two granted by CARB at the time of certification.

3 **II. DEFENDANTS INCORPORATED AECDs INTO THE SUBJECT ENGINES AND**  
4 **FAILED TO DISCLOSE THEM TO CARB**

5 **A. Design and Manufacture of the Subject Engines**

6 32. While diesel engines have the potential to offer certain benefits over  
7 comparably sized gasoline engines—for example, better fuel economy and  
8 increased power—the combustion process leads to greater production of NOx.  
9 Automobile manufacturers use various strategies to reduce NOx tailpipe emissions  
10 in diesel engine engines.

11 33. The Subject Engines incorporate two primary NOx reduction  
12 strategies:

13 a. **Exhaust Gas Recirculation (“EGR”).** Through this process, a  
14 portion of the exhaust gas (which has lower oxygen content) is fed back into the  
15 combustion chamber, lowering the combustion temperature inside the cylinder.  
16 This reduces the rate of NOx formation, but it can also increase the level of  
17 particulate matter produced by the combustion.

18 b. **Selective Catalytic Reduction (“SCR”).** SCR uses an aqueous urea  
19 solution, also known as diesel exhaust fluid (“DEF”), as a reducing agent. The  
20 fluid is stored in a separate tank in the engine that requires periodic refilling. The  
21 DEF reacts in the exhaust to produce ammonia and carbon dioxide. The NOx  
22 reacts with ammonia to yield nitrogen and water. SCR is an example of an after-  
23 treatment system, which treats exhaust gas after combustion but before release into  
24 the environment from the tailpipe.

25 34. Like most modern engines, the Subject Engines also contain an  
26 electronic engine control module (“ECM”). The ECM processes numerous data  
27 inputs and coordinates and controls the engine and emissions systems. ECMs are  
28 essentially computers, sometimes described as the “brains” of the engine. The

1 software that runs on the ECM includes numerous variables that can be set by the  
2 manufacturer through a process known as calibration. These calibrated variables  
3 include thresholds and enabling and disabling conditions, many of which alter the  
4 way that the engine, emissions control system, and on-board diagnostic system  
5 operate. The collection of all of the settings for each of the software variables is  
6 known as a calibration.

7 35. ECM software that senses inputs like ambient temperature, motive  
8 speed, engine revolutions per minute, transmission gear, or any other parameter for  
9 the purpose of activating, modulating, delaying, or deactivating the operation of any  
10 part of the emission control system is an AECD. The ECM software in the Subject  
11 Engines incorporates various AECDs. As described below, Defendants did not  
12 disclose some of these AECDs to CARB at all, and even when Defendants  
13 disclosed the existence of the AECDs or certain information about them,  
14 Defendants did not disclose them fully and accurately.

15 36. During regulated emission testing cycles, the ECM software and  
16 calibrations installed on the Subject Engines (including AECDs) operate the engine  
17 and emission control systems—including the EGR and SCR processes—in such a  
18 way that emissions appear to be compliant with CARB’s regulatory standards.

19 37. In conditions outside of the regulated emission testing cycles,  
20 however, the ECM software and calibrations installed on the Subject Engines  
21 (including AECDs) operate in such a way that the effectiveness of the emission  
22 control system is reduced—that is, the engine and after-treatment systems operate  
23 in a way that produces increased NOx emissions. The extent of the increase  
24 depends on various factors, including the particular Subject Engine and the driving  
25 conditions.

26 38. Defendants developed the ECMs and ECM software for the Subject  
27 Engines and manufactured the engines and exhaust systems.

28 39. The Subject Engines are identified in the table below:

On-Road

Model Year	Engine Code	Engine Model	Engine Family	E.O.
2010	J08E-VC	J08E-VC	AHMXH07.7JVC	A-031-0067
2010	J08E-VB	J08E-VB	AHMXH07.7JVB	A-031-0068
2011	J08E-VC	J08E-VC	BHMXH07.7JVC	A-031-0069-1
2011	J08E-VB	J08E-VB	BHMXH07.7JVB	A-031-0070
2012	265 267	J05E-TP J05E-TP	CHMXH05.1JTP	A-031-0071-2
2012	VCD1	J08E-VC	CHMXH07.7JVC	A-031-0072
2012	VBD1	J08E-VB	CHMXH07.7JVB	A-031-0073
2013	TPD1 UGH1	J05E-TP J05E-UG	DHMXH05.1JTP	A-031-0074
2013	VCD1	J08E-VC	DHMXH07.7JVC	A-031-0075
2013	VBD1	J08E-VB	DHMXH07.7JVB	A-031-0076
2014	TPD1 UGH1	J05E-TP J05E-UG	EHMXH05.1JTP	A-031-0077
2014	VCD1	J08E-VC	EHMXH07.7JVC	A-031-0078
2014	VBD1	J08E-VB	EHMXH07.7JVB	A-031-0079
2015	TPD1 UGH1	J05E-TP J05E-UG	FHMXH05.1JTP	A-031-0080-3
2015	VCD1	J08E-VC	FHMXH07.7JVC	A-031-0081
2015	VBD1	J08E-VB	FHMXH07.7JVB	A-031-0082-1
2016	TPD1 UGH1	J05E-TP J05E-UG	GHMXH05.1JTP	A-031-0083-2
2016	VBD1	J08E-VB	GHMXH07.7JVB	A-031-0084-1
2016	WUD1	J08E-WU	GHMXH07.7JWU	A-031-0085-1
2017	TPD1 UGH1	J05E-TP J05E-UG	HHMXH05.1JTP	A-031-0089-1
2017	VBD1	J08E-VB	HHMXH07.7JVB	A-031-0090-1
2017	WUD1	J08E-WU	HHMXH07.7JWU	A-031-0091-1
2018	TPD1 UGH1	J05E-TP J05E-UG	JHMXH05.1JTP	A-031-0095

2018	WUD1 VBD1	J08E-WU J08E-VB	JHMXH07.7JVB	A-031-0096-1
2019	TPD1 UGH1	J05E-TP J05E-UG	KHMXH05.1JTP	A-031-0104
2019	WUD1 VBD1	J08E-WU J08E-VB	KHMXH07.7JVB	A-031-0105
2019	VDD1 VED1 VFD1	A09C-VD A09C-VE A09C-VF	KHMXH08.9AVF	A-031-0100

### Off-Road

Model Year	Engine Code	Engine Model	Engine Family	E.O.
2011	AB-J08E-UM AA-J08E-UM	AB-J08E-UM AA-J08E-UM	BHMXL07.7JTM	u-r-020-0054
2011	AA-J05E-TK AA-J08E-UV	AA-J05E-TK AA-J08E-UV	BHMXL07.7JUV	u-r-020-0055
2011	AA-P11C-VC	AA-P11C-VC	BHMXL10.5PVC	u-r-020-0056
2011	AA-E13C-VV AB-E13C-VV AC-E13C-VV	AA-E13C-VV AB-E13C-VV AC-E13C-VV	BHMXL12.9EVV	u-r-020-0057
2012	05TJDA	AA-J05E-TJ	CHMXL05.1JTJ	u-r-020-0063
2012	08UVFA 08UVDA 08UVFB 05TKDA	AA-J08E-UV AA-J08E-UV AA-J08E-UV AA-J05E-TK	CHMXL07.7JUV	u-r-020-0059
2012	11VCFA 11VCDA	AA-P11C-VC AA-P11C-VC	CHMXL10.5PVC	u-r-020-0060
2012	13VVDA 13VVFA 13VVFB 13VVGA	AA-E13C-VV AB-E13C-VV AB-E13C-VV AC-E13C-VV	CHMXL12.9EVV	u-r-020-0061
2013	05TJDA	AA-J05E-TJ	DHMXL05.1JTJ	u-r-020-0064
2013	08UVFA 08UVDA 08UVFB 05TKDA	AA-J08E-UV AA-J08E-UV AA-J08E-UV AA-J05E-TK	DHMXL07.7JUV	u-r-020-0065

2013	11VCFA 11VCDA	AA-P11C-VC AA-P11C-VC	DHMXL10.5PVC	u-r-020-0066
2013	13VVDA 13VVFA 13VVFB 13VVGA	AA-E13C-VV AB-E13C-VV AB-E13C-VV AC-E13C-VV	DHMXL12.9EVV	u-r-020-0067
2014	05TJDA	AA-J05E-TJ	EHMXL05.1JTJ	u-r-020-0070
2014	05UMDA 05UNDA 08VVDA	AA-J05E-UM AA-J05E-UN AA-J08E-VV	EHMXL07.7JVV	u-r-020-0071
2015	11NFA1 11VNDA1	AA-P11C-VN AA-P11C-VN	FHMXL10.5PVN	u-r-020-0072
2015	05UMDA1 05UNDA1 08VVDA1 08VVDA2 08VVDA3 08VVFA1	AA-J05E-UM AA-J05E-UN AA-J08E-VV AA-J08E-VV AB-J08E-VV AA-J08E-VV	FHMXL07.7JVV	u-r-020-0073
2016	05UMDA1 05UMDA2 05UMDA3 05UNDA1 08VVFA1 08VVDA1 08VVDA2 08VVDA3 08VVDA4	AA-J05E-UM AA-J05E-UM AB-J05E-UM AA-J05E-UN AA-J08E-VV AA-J08E-VV AA-J08E-VV AB-J08E-VV AC-J08E-VV	GHMXL07.7JVV	u-r-020-0075
2016	11VNFA1 11VNDA1	AA-P11C-VN AA-P11C-VN	GHMXL10.5PVN	u-r-020-0076
2017	05UMDA1 05UMDA2 05UMDA3 05UMDA4 05UNDA1 08VVFA1 08VVDA1 08VVDA2 08VVDA4	AA-J05E-UM AA-J05E-UM AB-J05E-UM AA-J05E-UM AA-J05E-UN AA-J08E-VV AA-J08E-VV AA-J08E-VV AC-J08E-VV	HHMXL07.7JVV	u-r-020-0078
2017	11NFA1 11VNDA1	AA-P11C-VN AA-P11C-VN	HHMXL10.5PVN	u-r-020-0079

1		05UMDA1	AA-J05E-UM		
2		05UMDA2	AA-J05E-UM		
3		05UMDA3	AB-J05E-UM		
4		05UMDA4	AA-J05E-UM		
5		05UNDA1	AA-J05E-UN		
6	2018	08VVFA1	AA-J08E-VV	JHMXL07.7JVV	u-r-020-0080
7		08VVDA1	AA-J08E-VV		
8		08VVDA2	AA-J08E-VV		
9		08VVDA4	AC-J08E-VV		
10	2018	11VNFA1	AA-P11C-VN	JHMXL10.5PVN	u-r-020-0081
11		11VNDA1	AA-P11C-VN		
12	2019	13YMDA1	AA-E13C-YM	KHMXL12.9EYM	u-r-020-0082
13		05UMDA1	AA-J05E-UM		
14		05UMDA2	AA-J05E-UM		
15		05UMDA3	AB-J05E-UM		
16		05UMDA4	AA-J05E-UM		
17		05UNDA1	AA-J05E-UN		
18		08VVFA1	AA-J08E-VV		
19		08VVDA1	AA-J08E-VV		
20		08VVDA2	AA-J08E-VV		
21	2019	08VVDA4	AC-J08E-VV	KHMXL07.7JVV	u-r-020-0083
22		08YDFA1	AA-J08E-YD		
23		08YDDA1	AA-J08E-YD		
24		08YDDA2	AB-J08E-YD		
25		05VBDA1	AA-J05E-VB		
26		05VADA1	AA-J05E-VA		
27		05VADA2	AA-J05E-VA		
28		05VADA3	AA-J05E-VA		
	2019	05VADA4	AB-J05E-VA	KHMXL07.7JYD	u-r-020-0084
	2019	11VNFA1	AA-P11C-VN	KHMXL10.5PVN	u-r-020-0085
		11VNDA1	AA-P11C-VN		

**B. The Applications for Executive Orders Submitted to CARB Failed to Disclose or Failed to Adequately Disclose AECDs**

40. To apply for Executive Orders from CARB, Defendants submitted applications and supporting materials to CARB and communicated with CARB regarding the Subject Engines.

41. Defendants' employees or managers were involved with creating or approving the submissions to CARB.

1       42.       Among other things, the application materials submitted by  
2 Defendants identified certain AECDs and provided some information on those  
3 AECDs. Additional AECDs, however, were either not disclosed to CARB, or, if  
4 the AECDs or parts of the AECDs were disclosed, they were not disclosed fully  
5 and accurately.

6       43.       These undisclosed AECDs—operating alone or in combination with  
7 each other—detrimentally affect the emission control system of the Subject  
8 Engines.

9       44.       Each of the respective applications for certification submitted to  
10 CARB by Defendants for the Subject Engines contained material omissions related  
11 to these AECDs.

12       45.       Each of the respective applications for certification submitted to  
13 CARB by Defendants for the Subject Engines contained material omissions related  
14 to the engines' on-board diagnostic systems.

15       46.       The emissions compliance data and on-board diagnostic durability  
16 demonstration data submitted to CARB by Defendants in connection with each  
17 application for certification contained material omissions, and the emissions testing  
18 was not completed according to CARB requirements, because, among other  
19 reasons, the data were generated using undisclosed AECDs and were not  
20 representative of the Subject Engines' performance under normal operating  
21 conditions.

22       47.       Part of the CARB certification process involves signing a “statement  
23 of compliance” with applicable standards for each certification application.  
24 Defendants knew, or should have known, that its statements of compliance in each  
25 of their applications for certification were inadequate regarding their compliance  
26 with California and federal emissions laws and regulations, because, among other  
27 reasons, each statement of compliance related to a certification application that  
28

1 failed to disclose AECDs, on-board diagnostic system non-conformities, and  
2 emissions standard failures.

3 48. Defendants' material omissions in its submissions to CARB allowed  
4 the Subject Engines to be certified for sale and lease in California despite their non-  
5 compliance with California law.

6 49. CARB relied on the accuracy of Defendants' statements and the  
7 information presented in connection with their applications for certification of the  
8 Subject Engines when CARB issued Executive Orders certifying the Subject  
9 Engines for import, offer for sale, sale, and lease in California.

10 50. The Subject Engines manufactured and sold or leased in California  
11 did not conform in all material respects with the engine descriptions in Defendants'  
12 applications for certification.

### 13 **III. EXCESS POLLUTION FROM THE SUBJECT ENGINES HARMS THE** 14 **ENVIRONMENT AND PUBLIC HEALTH**

15 51. The Subject Engines have emitted and continue to emit NOx  
16 emissions several times the CARB-compliant levels, depending on engine type,  
17 engine loads, and driving conditions (e.g., city or highway).

18 52. The excess NOx emissions from the Subject Engines equipped with  
19 undisclosed AECDs have caused and are causing significant damage to the State of  
20 California, including to the health of its residents and its natural resources.

21 53. NOx is a highly reactive gas that is a major contributor to two other  
22 air pollutants, particulate matter and ozone. NOx emissions, and the particulate  
23 matter and ozone pollution to which NOx contributes, are among the most regulated  
24 air pollutants in the United States and California due to the large effect these  
25 pollutants have on public health and the environment.

26 54. Diesel particulate matter has scientifically demonstrated negative  
27 effects on public health and welfare and has been identified as a toxic air  
28 contaminant. A strong and broad body of evidence links inhalation of particulate

1 matter pollution, of which diesel particulate matter is part, with premature death,  
2 respiratory illnesses, and heart disease.

3 55. In the short term, NO<sub>x</sub> and particulate matter have been found by  
4 scientific studies in California and elsewhere to reduce lung function and  
5 exacerbate the symptoms of asthmatics. Long term, chronic conditions such as  
6 reduced lung function, asthma, and chronic obstructive pulmonary disease are  
7 among the many adverse effects of these air pollutants. Particulate matter can also  
8 impair visibility and damage vegetation.

9 56. Ozone is the prime precursor to smog. EPA analyses have found that  
10 short term exposure to ozone “induced (or [was] associated with) statistically  
11 significant declines in lung function.” Such short-term exposure results in increases  
12 in asthma medication use in children, emergency room visits, and hospital  
13 admissions for respiratory conditions, and is a likely cause of a range of other  
14 health and mortality issues.

15 57. An EPA analysis of ozone in 2013 found that “strong evidence” exists  
16 that ozone concentrations impair many native plants and trees by injuring foliage,  
17 decreasing growth and biomass accumulation in annual, perennial, and woody  
18 plants (including agronomic crops, annuals, shrubs, grasses, and trees), and  
19 decreasing the yield and/or nutritive quality in a large number of agronomic and  
20 forage crops.

21 **FIRST CAUSE OF ACTION**  
22 **(Clean Air Act of 1970, 42 U.S.C. § 7604)**  
23 **[By CARB on Behalf of the People of the State of California]**

24 58. Plaintiff incorporates and realleges paragraphs 1 through 57,  
25 inclusive, as if set forth here in full.

26 59. Under the CAA, California is uniquely authorized to seek a waiver of  
27 preemption to enforce its own air pollution standards. 42 U.S.C. § 7543(b).  
28

1           60. Pursuant to the CAA, California adopted Cal. Code Regs., tit. 13, §  
2 1956.8 and requested and obtained waivers of preemption from EPA to enforce that  
3 section, which establishes exhaust emission standards and test procedures for  
4 certain 2007 and subsequent on-road engines. 70 Fed. Reg. 50322 (August 26,  
5 2005).

6           61. Additionally, effective May 12, 2010, EPA approved Cal. Code  
7 Regs., tit. 13, § 1956.8 as part of a revision to the California State Implementation  
8 Plan (“SIP”). 40 C.F.R. § 52.220a; 81 Fed. Reg. 39424 (June 16, 2016).

9           62. Pursuant to the CAA, California adopted Cal. Code Regs., tit. 13, §§  
10 2423, 2421 and requested and obtained waivers of preemption from EPA to enforce  
11 those sections, which establishes exhaust emission standards and test procedures for  
12 certain 2011 and subsequent model year off-road engines. 75 Fed. Reg. 8056  
13 (February 23, 2010).

14           63. Additionally, effective May 12, 2010, EPA approved Cal. Code  
15 Regs., tit. 13, §§ 2423, 2421 as part of a revision to the SIP. 40 C.F.R. § 52.220a;  
16 75 Fed. Reg. 8056 (February 23, 2010).

17           64. The Subject Engines identified in Paragraph 39 above are subject to  
18 certain emissions standards, as reflected in the applications for certification  
19 submitted by Defendants and the corresponding Executive Orders issued by CARB.

20           65. The CAA’s citizen suit provision, 42 U.S.C. § 7604(a), provides that  
21 “any person may commence a civil action on his own behalf (1) against any  
22 person . . . who is alleged to have violated . . . or to be in violation of (A) an  
23 emission standard or limitation . . . or (B) an order issued by the Administrator or a  
24 State with respect to such a standard or limitation.” Plaintiff is considered a  
25 “person” for purposes of the citizen suit provision. 42 U.S.C. § 7602(e).

26           66. Defendants sold, attempted to sell, or caused to be offered for sale in  
27 California Subject Engines that failed to comply with the applicable emissions  
28 standards set forth in Cal. Code Regs., tit. 13, § 1956.8 and Cal. Code Regs., tit. 13,

1 § 2423, when sold, and those engines remain out of compliance with those  
2 standards. Because the emissions standards have been approved as part of  
3 California’s SIP, Defendants’ actions constitute multiple violations of an “emission  
4 standard or limitation” within the meaning of 42 U.S.C. § 7604(a)(1).

5 67. Plaintiff complied with the notice requirement required under the  
6 CAA and in accordance with 42 U.S.C. § 7604(b) and 40 C.F.R. § 54.3(b).

7 **SECOND CAUSE OF ACTION**  
8 **(Cal. Health & Safety Code § 43151)**  
9 **[By CARB on Behalf of the People of the State of California]**

10 68. Plaintiff incorporates and realleges paragraphs 1 through 67,  
11 inclusive, as if set forth here in full.

12 69. Before January 1, 2017, California Health and Safety Code  
13 § 43151(a) was a strict liability statute, stating: “No person who is a resident of, or  
14 who operates an established place of business within, this state shall import,  
15 deliver, purchase, rent, lease, acquire, or receive a new motor vehicle, new motor  
16 vehicle engine, or motor vehicle with a new motor vehicle engine for use,  
17 registration, or resale in this state unless such motor vehicle engine or motor vehicle  
18 has been certified pursuant to this chapter. No person shall attempt or assist in any  
19 such action.”<sup>4</sup>

20 70. At all relevant times, Defendants operated several established places  
21 of business in California.

22 71. Before January 1, 2017, Defendants imported, delivered, purchased,  
23 rented, leased, acquired, and/or received Subject Engines identified in Paragraph 39  
24 for intended use, registration, or resale in California, and/or attempted or assisted in  
25 such actions. The Subject Engines, as manufactured, are not certified in

26 \_\_\_\_\_  
27 <sup>4</sup> As reflected in this Cause of Action, the text of California Health and  
28 Safety Code § 43151 was amended with an effective date of January 1, 2017. See  
2016 Cal. Legis. Serv. Ch. 604 (A.B. 1685, “AIR POLLUTION—MOTOR  
VEHICLES—FINES AND PENALTIES”).

1 compliance with California law because they do not conform in all material  
2 respects to the design specifications described in the applications for certification  
3 that purportedly cover them, including that they (a) contain AECDs that were not  
4 disclosed or inadequately disclosed in the applications; and/or (b) the Subject  
5 Engines contain undisclosed or unapproved on-board diagnostic non-compliances,  
6 or on-board diagnostic non-compliances for which CARB granted deficiencies at  
7 the time of certification based on inaccurate or incomplete information submitted  
8 by Defendants.

9 72. Defendants' actions before January 1, 2017, constitute multiple  
10 violations of California Health and Safety Code § 43151.

11 73. As of January 1, 2017, California Health and Safety Code § 43151(a)  
12 is a strict liability statute that states: "A person shall not offer for sale, introduce  
13 into commerce, import, deliver, purchase, rent, lease, acquire, or receive a new  
14 motor vehicle, new motor vehicle engine, or motor vehicle with a new motor  
15 vehicle engine for use, registration, or resale in this state unless the motor vehicle  
16 engine or motor vehicle has been certified pursuant to this chapter. A person shall  
17 not attempt or assist in any such action."

18 74. On or after January 1, 2017, Defendants offered for sale, introduced  
19 into commerce, imported, delivered, purchased, rented, leased, acquired, and/or  
20 received new engines subsequently installed in the Subject Engines identified in  
21 Paragraph 39 for intended use, registration, or resale in California, and/or attempted  
22 or assisted in such actions. The Subject Engines, as manufactured, are not certified  
23 in compliance with California law because they do not conform in all material  
24 respects to the design specifications described in the applications for certification  
25 that purportedly cover them, including that they (a) contain AECDs that were not  
26 disclosed or inadequately disclosed in the applications; and/or (b) the Subject  
27 Engines contain undisclosed or unapproved on-board diagnostic non-compliances,  
28 or on-board diagnostic non-compliances for which CARB granted deficiencies at

1 the time of certification based on inaccurate or incomplete information submitted  
2 by Defendants.

3 75. Defendants' actions on or after January 1, 2017, constitute multiple  
4 violations of California Health and Safety Code § 43151.

5 **THIRD CAUSE OF ACTION**  
6 **(Cal. Health & Safety Code § 43008.6; Cal. Veh. Code § 27156)**  
7 **[By CARB on Behalf of the People of the State of California]**

8 76. Plaintiff incorporates and realleges paragraphs 1 through 75,  
9 inclusive, as if set forth here in full.

10 77. California Vehicle Code § 27156 states, in relevant part, that no  
11 person shall "install, sell, offer for sale, or advertise any device, apparatus, or  
12 mechanism intended for use with, or as a part of, a required motor vehicle pollution  
13 control device or system that alters or modifies the original design or performance  
14 of the motor vehicle pollution control device or system."

15 78. Section 27156 also states that if the Court finds that a person has  
16 willfully violated this section, it "shall impose the maximum fine that may be  
17 imposed in the case, and no part of the fine may be suspended."

18 79. "Willfully" "implies simply a purpose or willingness to commit the  
19 act, or make the omission referred to." Cal. Veh. Code § 27156.

20 80. California Health and Safety Code § 43008.6 is a strict liability statute  
21 which states that any person that violates California Vehicle Code § 27156 shall be  
22 subject to a civil penalty for each violation.

23 81. The Subject Engines contain undisclosed or unapproved running  
24 changes or field fixes that alter or modify the original design or performance of the  
25 motor vehicle pollution control device or system.

26 82. Defendants' actions constitute multiple willful violations of California  
27 Vehicle Code § 27156.

**FOURTH CAUSE OF ACTION**  
**(Cal. Health & Safety Code § 43016, 43211; Cal. Code Regs., tit. 13, §§ 1956.8, 2423 [Sale of Motor Vehicle Engines that Fail to Meet Applicable Emission Standards])**

**[By CARB on Behalf of the People of the State of California]**

83. Plaintiff incorporates and realleges paragraphs 1 through 82, inclusive, as if set forth here in full.

84. California Health and Safety Code § 43211 is a strict liability statute which states that any manufacturer who sells, attempts to sell, or causes to be offered for sale in California a new motor vehicle that fails to meet the applicable emission standards shall be subject to a civil penalty for each such action.<sup>5</sup>

85. Cal. Code Regs., tit. 13, sections 1956.8 and 2423 set forth specific exhaust emission standards for certain model year medium and heavy-duty engines. The Subject Engines identified in Paragraph 39 above are subject to the emissions standards set forth in section 1956.8 and 2423 respectively.

86. California Health and Safety Code § 43016 is a strict liability statute which provides that any person who violates any provision of Division 26, Part 5 (Cal. Health & Safety Code §§ 43000-44299.91, Vehicular Air Pollution Control), or any order, rule, or regulation of CARB adopted pursuant to Part 5, and for which violation there is not provided in Part 5 any other specific civil penalty or fine, shall be subject to a civil penalty.

87. Defendants has caused to be offered for sale and/or introduced into commerce in California approximately 15,590 Subject Engines that fail to meet the applicable emission standards.

88. Defendants' actions constitute multiple violations of California Health and Safety Code § 43211.

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<sup>5</sup> Section 43211 was amended, effective January 1, 2017, to increase the penalty from \$5,000 for each such action to up to \$37,500 for each such action. See 2016 Cal. Legis. Serv. Ch. 604 (A.B. 1685, "AIR POLLUTION—MOTOR VEHICLES—FINES AND PENALTIES").

**FIFTH CAUSE OF ACTION**  
**(Cal. Health & Safety Code §§ 43016, 43212; Cal. Code Regs., tit. 13, § 1956.8,**  
**tit. 13, § 2421 [Failure to Comply with Applicable Test Procedures])**  
**[By CARB on Behalf of the People of the State of California]**

89. Plaintiff incorporates and realleges paragraphs 1 through 88, inclusive, as if set forth here in full.

90. California Health and Safety Code § 43212 is a strict liability statute which states, in relevant part, that a manufacturer or distributor who does not comply with the test procedures adopted by CARB shall be subject to a civil penalty for each engine that does not comply with the test procedures and which is first sold in California.<sup>6</sup>

91. Cal. Code Regs., tit. 13, § 1956.8 and Cal. Code Regs., tit. 13, § 2421 sets forth the test procedures for determining compliance with emission standards for the Subject Engines.

92. California Health and Safety Code § 43016 is a strict liability statute which provides that any person who violates any provision of Division 26, Part 5 (Cal. Health & Safety Code §§ 43000-44299.91, Vehicular Air Pollution Control), or any order, rule, or regulation of CARB adopted pursuant to Part 5, and for which violation there is not provided in Part 5 any other specific civil penalty or fine, shall be subject to a civil penalty.

93. Defendants' actions failed to comply with CARB's test procedure regulations and constitute multiple violations of California Health and Safety Code § 43212.

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<sup>6</sup> Section 43212 was amended, effective January 1, 2017, to increase the penalty from \$50 per vehicle to up to \$37,500 per vehicle. See 2016 Cal. Legis. Serv. Ch. 604 (A.B. 1685, "AIR POLLUTION—MOTOR VEHICLES—FINES AND PENALTIES").

**SIXTH CAUSE OF ACTION**  
**(Cal. Health & Safety Code § 43016; Cal. Code Regs., tit. 13, § 1971.1**  
**[Violation of Malfunction and Diagnostic System Requirements])**  
**[By CARB on Behalf of the People of the State of California]**

94. Plaintiff incorporates and realleges paragraphs 1 through 93, inclusive, as if set forth here in full.

95. California law specifies on-board diagnostic system requirements for on-road engines certified for sale in California. Specifically, Cal. Code Regs., tit. 13, § 1971.1 (Malfunction and Diagnostic System Requirements) requires that model year 2010 and subsequent model year heavy-duty trucks and engines certified for sale in California be equipped with on-board diagnostic systems, and states that the on-board diagnostic systems shall monitor emissions systems in-use for the actual life of the engine, and shall be capable of detecting malfunctions of those emissions systems and illuminating a malfunction indicator light to notify the engine operator if and when emissions exceed certain designated levels.

96. Defendants violated Cal. Code Regs., tit. 13, § 1971.1 with regard to the Subject Engines identified in Paragraph 39 above because the on-board diagnostic systems installed in those engines did not effectively monitor the emissions systems. Due to the operation of the undisclosed AECDs, the on-board diagnostic systems in those engines were not capable of detecting and notifying the vehicle operators if and when emissions exceeded the designated levels as demonstrated on the emission test cycles Defendants submitted in its on-board diagnostic certification applications. Additionally, the Subject Engines contain undisclosed or unapproved on-board diagnostic non-compliances, or on-board diagnostic non-compliances for which CARB granted deficiencies at the time of certification based on inaccurate or incomplete information submitted by Defendants.

97. California Health and Safety Code § 43016 is a strict liability statute which provides that any person who violates any provision of Division 26, Part 5

(Cal. Health & Safety Code §§ 43000-44299.91, Vehicular Air Pollution Control), or any order, rule, or regulation of CARB adopted pursuant to Part 5, and for which violation there is not provided in Part 5 any other specific civil penalty or fine, shall be subject to a civil penalty.<sup>7</sup> California Health and Safety Code § 43016 applies to any violation of Division 26, Part 5 (Cal. Health & Safety Code §§ 43000-44299.91, Vehicular Air Pollution Control), and any violation of any order, rule, or regulation of CARB adopted pursuant to Part 5.

98. Defendants' actions violated Cal. Code Regs., tit. 13, § 1971.1 and constitute multiple violations of California Health and Safety Code § 43016.

**SEVENTH CAUSE OF ACTION**  
**(Cal. Health & Safety Code §§ 43016, 43106; Cal. Code Regs., tit. 13 § 1956.8 and tit. 13, § 2421) [Failure to Report Running Changes and Field Fixes]**  
**[By CARB on Behalf of the People of the State of California]**

99. Plaintiff incorporates and realleges paragraphs 1 through 98, inclusive, as if set forth here in full.

100. California Health & Safety Code § 43106 generally requires that each new motor vehicle or motor vehicle engine required to meet emission standards adopted by CARB pursuant to California Health & Safety Code § 43101 shall be, in all material respects, substantially the same in construction as the test motor vehicle or motor vehicle engine which was certified by CARB, and provides that a manufacturer may make changes with respect to previously-certified motor vehicles or motor vehicle engines only if such changes do not increase emissions above the applicable standards and are "made in accordance with procedures specified by [CARB]."

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<sup>7</sup> California Health and Safety Code § 43016 was amended, effective January 1, 2017, to increase the penalty from a maximum of \$500 per vehicle to a maximum of \$37,500 for each such action. See 2016 Cal. Legis. Serv. Ch. 604 (A.B. 1685, "AIR POLLUTION—MOTOR VEHICLES—FINES AND PENALTIES"). Under Health and Safety Code § 43016(a)(2), the maximum amount is adjusted annually for inflation based on the California Consumer Price Index. As of the date of filing, the maximum penalty is \$45,563 for each such action.

101. The Test Procedures, as defined above and incorporated into Cal. Code Regs., tit. 13, § 1956.8 and Cal. Code Regs., tit. 13, § 2421 set forth the procedures specified by CARB for changes with respect to previously certified on and off-road engines.

102. Specifically, the Test Procedures incorporate by reference 40 C.F.R. §§86.079-32, 86.079-33, 1039.225, which requires that a manufacturer notify the Administrator, defined as the Executive Officer of CARB for purposes of the Test Procedures, of any change in production engines or addition in production engines which creates a new engine configuration covered in a certified engine family, giving a full description of the change.

103. Defendants made running changes and field fixes to certain Subject Engines, which were not reported to CARB concurrently with or in advance of those changes.

104. Defendants' actions in implementing running changes and field fixes with respect to previously certified engines without notifying CARB of those changes violated the applicable test procedures as incorporated in Cal. Code Regs., tit. 13, § 1956.8 and Cal. Code Regs., tit. 13, § 2421 and constitute multiple violations of California Health and Safety Code § 43106 and § 43016.

**EIGHTH CAUSE OF ACTION**  
**(Cal. Health & Safety Code §§ 43016; Cal. Code Regs., tit. 13 Chapter 2, Article 2.4 [Violating Procedures for Reporting Failures of Emission-Related Components])**  
**[By CARB on Behalf of the People of the State of California]**

105. Plaintiff incorporates and realleges paragraphs 1 through 104, inclusive, as if set forth here in full.

106. California law requires that manufacturers report failures of emission-related components pursuant to Cal. Code Regs., tit. 13 Chapter 2, Article 2.4.

107. Defendants failed to submit Emissions Warranty Information Reports (EWIR), Field Information Reports (FIR) and Emission Information Reports (EIR)

1 in a timely manner for failures of certain emission-related components on the  
2 Subject Engines.

3 108. California Health and Safety Code § 43016 is a strict liability statute  
4 which provides that any person who violates any provision of Division 26, Part 5  
5 (Cal. Health & Safety Code §§ 43000-44299.91, Vehicular Air Pollution Control),  
6 or any order, rule, or regulation of CARB adopted pursuant to Part 5, and for which  
7 violation there is not provided in Part 5 any other specific civil penalty or fine, shall  
8 be subject to a civil penalty.

9 109. Defendants did not submit warranty reports in a timely manner  
10 violating Cal. Code Regs., tit. 13 Chapter 2, Article 2.4 and constitute multiple  
11 violations of California Health and Safety Code § 43016.

#### 12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff requests that the Court enter a judgment against  
14 Defendants as follows:

15 110. Pursuant to the CAA, that Defendants be enjoined from violations of  
16 the California State Implementation Plan as alleged in this Complaint related to the  
17 applicable emissions standards set forth in Cal. Code Regs., tit. 13, § 1956.8 and §  
18 2423.

19 111. Pursuant to the CAA, that Defendants take appropriate steps to  
20 remedy and prevent violations of the California State Implementation Plan as  
21 alleged in this Complaint, including, but not limited to, mitigation of excess NOx  
22 emissions from the Subject Engines.

23 112. Pursuant to California Health and Safety Code § 43017, that  
24 Defendants be enjoined from further violations of the California Health and Safety  
25 Code and CARB regulations relating to vehicular air pollution control as alleged in  
26 this Complaint, in particular from further importing or delivering new motor  
27 vehicle engines for sale, offer for sale, lease, or rental in California which were not  
28 validly certified by CARB, and further selling or offering to sell, offering for sale,

1 leasing or offering to lease, or renting or offering to rent in California, new motor  
2 vehicle engines which have not been validly certified by CARB.

3 113. Pursuant to California Health and Safety Code § 43017, that  
4 Defendant take appropriate steps to remedy and prevent violations of the California  
5 Health and Safety Code and CARB regulations relating to vehicular air pollution  
6 control as alleged in this Complaint, including, but not limited to, mitigation of  
7 excess NOx emissions from the Subject Engines.

8 114. Pursuant to California Health and Safety Code § 43154, for violations  
9 occurring before January 1, 2017, that the Court assess civil penalties against  
10 Defendants of up to \$5,000 for each violation of California Health and Safety Code  
11 § 43151.<sup>8</sup>

12 115. Pursuant to California Health and Safety Code § 43154, for violations  
13 occurring on or after January 1, 2017, that the Court assess civil penalties against  
14 Defendants of up to \$47,363 for each violation of California Health and Safety  
15 Code § 43151. Under California Health and Safety Code § 43154(a)(3), the  
16 maximum penalty amount of \$37,500 is adjusted annually for inflation based on the  
17 California Consumer Price Index. As of the date of filing, the maximum penalty is  
18 \$47,363 for each violation.

19 116. Pursuant to California Health and Safety Code § 43008.6, that the  
20 Court assess civil penalties of up to \$1,500 per engine or vehicle for each violation  
21 of California Vehicle Code § 27156.

22 117. Pursuant to California Health and Safety Code § 43211, for violations  
23 occurring before January 1, 2017, that the Court assess the mandatory civil penalty  
24 of \$5,000 against Defendants for each sale of, offer to sell, action which caused an  
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26 <sup>8</sup> Section 43154, which authorizes civil penalties for violations of these  
27 statutes, was amended, effective January 1, 2017, to increase the penalty from up to  
28 \$5,000 per vehicle to up to \$37,500 per action. See 2016 Cal. Legis. Serv. Ch. 604  
(A.B. 1685, “AIR POLLUTION—MOTOR VEHICLES—FINES AND  
PENALTIES”).

1 offer to sell, or attempt to sell a Subject Engine that does not comply with the  
2 applicable emissions standards in Cal. Code Regs., tit. 13, § 1956.8 and § 2423.

3 118. Pursuant to California Health and Safety Code § 43211, for violations  
4 occurring on or after January 1, 2017, that the Court assess a civil penalty of up to  
5 \$47,363 against Defendants for each sale of, offer to sell, action which caused an  
6 offer to sell, or attempt to sell a Subject Engine that does not comply with the  
7 applicable emissions standards in Cal. Code Regs., tit. 13, § 1956.8. Under  
8 California Health and Safety Code § 43211(c), the maximum penalty amount of  
9 \$37,500 is adjusted annually for inflation based on the California Consumer Price  
10 Index. As of the date of filing, the maximum penalty is \$47,363 for each violation.

11 119. Pursuant to California Health and Safety Code § 43212, for violations  
12 occurring before January 1, 2017, that the Court assess civil penalties of \$50 against  
13 Defendants for each Subject Engine for each failure to comply with the applicable  
14 test procedures, including those test procedures incorporated by reference, in Cal.  
15 Code Regs., tit. 13, § 1956.8 and § 2421.

16 120. Pursuant to California Health and Safety Code § 43212, for violations  
17 occurring on or after January 1, 2017, that the Court assess civil penalties against  
18 Defendants of up to \$47,363 for each failure to comply with the applicable test  
19 procedures as to each Subject Engine, including those test procedures incorporated  
20 by reference, in Cal. Code Regs., tit. 13, § 1956.8 and 2421. Under California  
21 Health and Safety Code § 43212(a)(2), the maximum penalty amount of \$37,500 is  
22 adjusted annually for inflation based on the California Consumer Price Index. As  
23 of the date of filing, the maximum penalty is \$47,363 for each violation.

24 121. Pursuant to California Health and Safety Code § 43016, for violations  
25 before January 1, 2017, that the Court assess a civil penalty against Defendants of  
26 up to \$500 for each violation of Cal. Code Regs., tit. 13, § 1971.1 regarding the on-  
27 board diagnostic system in each Subject Engine.

28

1           122. Pursuant to California Health and Safety Code § 43016, for violations  
2 on or after January 1, 2017, that the Court assess a civil penalty against Defendants  
3 of up to \$47,363 for each violation of Cal. Code Regs., tit. 13, § 1971.1 regarding  
4 the on-board diagnostic system in each Subject Engine. Under California Health  
5 and Safety Code § 43016(a)(2), the maximum penalty amount of \$37,500 is  
6 adjusted annually for inflation based on the California Consumer Price Index. As  
7 of the date of filing, the maximum penalty is \$47,363 for each violation.

8           123. Pursuant to California Health and Safety Code § 43016, for violations  
9 occurring before January 1, 2017, that the Court assess a civil penalty against  
10 Defendants of up to \$500 for each unreported running change and field fix  
11 implemented in each Subject Engine in violation of California Health and Safety  
12 Code § 43106.

13           124. Pursuant to California Health and Safety Code § 43016, for violations  
14 occurring on or after January 1, 2017, that the Court assess a civil penalty against  
15 Defendants of up to \$47,363 for each unreported running change and field fix  
16 implemented in each Subject Engine in violation of California Health and Safety  
17 Code § 43106. Under California Health and Safety Code § 43016(a)(2), the  
18 maximum penalty amount of \$37,500 is adjusted annually for inflation based on the  
19 California Consumer Price Index. As of the date of filing, the maximum penalty is  
20 \$47,363 for each violation.

21           125. Pursuant to California Health and Safety Code § 43016, for violations  
22 occurring on or after January 1, 2017, that the Court assess a civil penalty against  
23 Defendants of up to \$47,363 for each failure by Defendants to submit timely  
24 Emissions Warranty Information Reports (EWIR), Field Information Reports (FIR)  
25 and/or Emission Information Reports (EIR) for failures of certain emission-related  
26 components on the Subject Engines, in violation of California Health and Safety  
27 Code § 43106. Under California Health and Safety Code § 43016(a)(2), the  
28 maximum penalty amount of \$37,500 is adjusted annually for inflation based on the

1 California Consumer Price Index. As of the date of filing, the maximum penalty is  
2 \$47,363 for each violation.

3 126. Pursuant to 42 U.S.C. § 7604(d), that the Court award Plaintiff its  
4 costs of litigation, including reasonable attorney and expert witness fees.

5 127. That Plaintiff recover its costs of suit, including costs of investigation.

6 128. For such other and further relief as the Court deems just and proper.  
7

8 Dated: January 15, 2025

/s/ Ryan Hoffman

Ryan Hoffman (CA Bar No. 283297)

Deputy Attorney General

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