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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

17 BROADMOOR LUMBER & PLYWOOD
 18 CO., MARDERS, and FERRARO FOODS,

19 Plaintiffs,

20 v.

21 TOYOTA INDUSTRIES CORPORATION,
 22 TOYOTA MATERIAL HANDLING N.A.,
 TOYOTA MATERIAL HANDLING, INC.,
 and TOYOTA MOTOR CORPORATION

23 Defendants.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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1 **I. INTRODUCTION**

2 Plaintiffs Broadmoor Lumber & Plywood Co., Marders, and Ferraro Foods, individually
3 and on behalf of all others similarly situated (the “Classes”), allege the following against Toyota
4 Material Handling N.A., Toyota Material Handling, Inc., Toyota Industries Corporation
5 (“TICO”), and Toyota Motor Corporation (“TMC”) (collectively, “Defendants” or “Toyota”),
6 based, where applicable, on personal knowledge, information and belief, public corporate
7 admissions, and the pre-filing investigation of counsel.

8 **II. NATURE OF THE ACTION**

9 1. Something is rotten at Toyota. In recent years alone, no fewer than five separate
10 cheating scandals have surfaced, together implicating millions of vehicles produced within the
11 Toyota corporate family over twenty years.

12 2. In 2021, for example, Toyota paid a \$180 million civil penalty and entered a
13 consent decree admitting to systematically violating Clean Air Act (“CAA”) reporting
14 requirements from 2005 to at least 2015.¹ Then, in 2022, Toyota subsidiary Hino Motors admitted
15 to “misconduct in relation to its applications for certification concerning the emissions and the
16 fuel economy performance of its engines” in commercial diesel trucks dating back to 2010.² In
17 2023, yet another Toyota subsidiary, Daihatsu, admitted to falsifying certification data and other
18 misconduct in a wide range of vehicles.³ And then earlier this year, news broke of Toyota’s
19 admission to yet another massive cheating scandal, this time in certification tests for seven
20 vehicle models that required a stop sale for all three of the models still in production.⁴ Together,

21 _____
22 ¹ Department of Justice Press Release, *Toyota Motor Company to Pay \$180 Million in Settlement*
23 *for Decade-Long Noncompliance with Clean Air Act Reporting Requirements* (Jan. 14, 2021),
24 available at: <https://www.justice.gov/opa/pr/toyota-motor-company-pay-180-million-settlement-decade-long-noncompliance-clean-air-act#:~:text=Along%20with%20the%20civil%20complaint,the%20imposition%20of%20injunctive%20relief>.

25 ² Hino Press Release, *Misconduct concerning Engine Certification* (March 4, 2022), available at:
<https://www.hino-global.com/corp/news/assets/1f350e73535af44c2a8c90c2f916eae2.pdf>.

26 ³ Daihatsu Investigation Report (Executive Summary) (December 20, 2023), available at:
https://www.daihatsu.com/news/2023/report_1_E.pdf.

27 ⁴ See Yuri Kageyama, *Toyota apologizes for cheating on vehicle testing and halts production of*
28 *three models*, Associated Press (June 3, 2024), available at: <https://apnews.com/article/toyota-certification-cheating-japan-automakers-scandal-26585a96df2a32f7d67a4011a0a98772>.

1 these scandals depict a company-wide culture of deception and noncompliance. Even Toyota
2 Motor Corporation—the Japanese automaker and affiliate of TICO—has been forced to
3 acknowledge the link between these many scandals within the Toyota family, stating after the
4 most recent public revelation: “[w]e take it seriously that the problem was discovered at Toyota
5 following the recent discovery of certification issues at Hino Motors, Ltd., and Daihatsu Motor
6 Co., Ltd. and Toyota Industries Corporation [TICO].”⁵ The last scandal in this long list, involving
7 TICO and its U.S. subsidiaries, is the subject of this Complaint.

8 3. In March 2023, TICO announced a “[s]uspension of domestic shipment in Japan
9 due to potential violation of regulations related to certification of engines for forklifts.”⁶ An
10 example of one of the forklifts at issue is depicted below.⁷



22 ⁵ See Toyota Motor Corporation News Release, *Results of Investigation Regarding Model*
23 *Certification Applications* (June 3, 2024), available at:
<https://global.toyota/en/newsroom/corporate/40920588.html>.

24 ⁶ Toyota Industries Corporation News Release, *Suspension of Domestic Shipment in Japan Due to*
25 *Potential Violation of Regulations Related to Certification of Engines for Forklifts* (March 17,
2023), (hereinafter “TICO 03/23 Press Release”) available at: [https://www.toyota-](https://www.toyota-industries.com/news/2023/03/17/005490)
26 [industries.com/news/2023/03/17/005490](https://www.toyota-industries.com/news/2023/03/17/005490). A PDF copy of the TICO 03/23 Press Release
downloaded from TICO’s website is also available at the following permalink:
<https://www.lieffcabraser.com/pdf/TICO03-2023Release.pdf>.

27 ⁷ Toyota Industries Report 2014 “Special Feature,” *Development of New Lift Trucks Fitted with*
28 *Engines Having Significantly Greater Environmental Performance*, available at:
<https://www.toyota-industries.com/investors/items/p16e-p19e.pdf>.

1 4. In the 2023 announcement, TICO conceded that the affected engines—two diesel
2 models (certification model year 2014 1ZS & 1KD) and one gasoline model (certification model
3 year 2009 4Y)—exceed “the domestic (Japanese) emissions regulation values due to aging
4 degradation” and admitted to a “potential violation of regulations related to Japanese certification
5 for emissions.” *See* TICO 03/23 Press Release.⁸ As in prior cheating scandals, Toyota then
6 convened a “Special Investigation Committee [(“SIC”)] made up of outside experts [to] conduct[]
7 an independent investigation.” *See* Results of the Investigation Regarding Domestic Certification
8 for Engines, (January 29, 2024) (hereinafter “SIC Release”) at 1.⁹

9 5. The results of the SIC investigation, released January 29, 2024, revealed that the
10 cheating was even more widespread than Toyota previously disclosed. *Id.* In addition to the three
11 forklift engines already implicated, the SIC investigation identified many more: one more current
12 forklift engine (certification model year 2014 1FS), three formerly used forklift engines
13 (certification model year 2007 1DZ, 4Y, and 1FZ), and a current and former engine used in
14 construction machinery like excavators (certification model years 2016 and 2020 Construction
15 1KD). The engines, collectively the “Class Engines,” are organized in the chart below, which also
16 includes a summary from the SIC of the identified misconduct for each engine. The vehicles
17 equipped with those engines and sold in the United States are referred to herein as the “Class
18 Vehicles.” *Id.*¹⁰

24 ⁸ As explained further below, this same cheating applied to certification in the U.S. market as
25 well.

26 ⁹ A PDF copy of the SIC Release downloaded from TICO’s website (https://www.toyota-industries.com/news/item/20240129_release_e.pdf), is available at the following permalink:
27 <https://www.lieffcabraser.com/pdf/SICRelease.pdf>.

28 ¹⁰ The Class Vehicles include at a minimum the Core IC Diesel Pneumatic (1ZS); the Mid and
Large IC Diesel Pneumatics (IKD); the Core IC Cushion and Core IC Pneumatic (4Y); and the
Large IC Cushion; Box Car Special; Paper Roll Special; Mid IC Pneumatic; Large IC Pneumatic
(1FS).

	Use (Engine type)	Type	Domestic certification acquisition timing	Key details of improper conduct			
				Used values different from measured values	Modified ECU Software	Replaced parts etc. during testing	Used different engines for the test
Current models	Forklift (diesel)	1KD	2014	●	●		
		1ZS	2014		●		
	Forklift (gasoline, LPG)	2009 4Y	2009	●	●	●	●
		1FS	2014	●	●	●	
	Construction machinery (diesel)	2020 1KD for Construction Machinery	2020		●		
Past models	Forklift (diesel)	2007 1DZ	2007	●			
	Forklift (gasoline, LPG)	2007 4Y	2007	●	●	●	●
		1FZ	2007				●
	Construction machinery (diesel)	2016 1KD for Construction Machinery	2016	●	●	●	

6. The minutiae of the scheme are detailed in the SIC reports, incorporated herein.¹¹

At a high level, the scheme had the intent and effect of misrepresenting the vehicles' true emissions levels as well as their "output" (e.g., torque and power). As outlined in the preceding chart, at a high level, the elements of the emissions scheme included:

- a. using "values different from measured values"—i.e., fabricating important emissions numbers for certification testing;
- b. modifying the engine control unit ("ECU") software in the test engines so that they performed differently in certification tests than they would in real-world use;
- c. replacing parts during emissions testing, again with the intention and effect of generating incorrect emissions values inconsistent with real-world use; and

¹¹ The SIC reports were issued in versions of various lengths—defined elsewhere herein as the SIC Published Report, the SIC Summary Report, and the SIC Release. Permalinks to each are available at: <https://www.lieffcabraser.com/pdf/SICRelease.pdf>; <https://www.lieffcabraser.com/pdf/SICSummaryReport.pdf>; and <https://www.lieffcabraser.com/pdf/SICPublishedReport.pdf>.

1 d. using different engines for the tests than were equipped in production-
2 model vehicles.

3 7. The net effect of this deceptive scheme is that the Class Vehicles emitted more
4 pollutants than represented, allowed by law, or reasonably expected. This rendered the Class
5 Engines and/or Vehicles illegal to import or sell. It also undermined Toyota's many
6 representations to the Class that the Class Engines were "the cleanest engine[s] in the industry,"¹²
7 "good for the environment,"¹³ "Attain[ed] the Industry's Top-Level Environmental
8 Performance,"¹⁴ and "Emissions Compliant."¹⁵

9 8. Unfortunately, the fraud did not stop there. Toyota also cheated on "output tests"
10 designed to measure torque, horsepower, and other important performance metrics. *See, e.g.,*
11 Toyota Industries Corporation Investigation Report (Published Version) (January 29, 2024)
12 (hereinafter "SIC Published Rep.")¹⁶ at 169-72; Toyota Industries Corporation Investigation
13 Report (Summary Version) (January 29, 2024) (hereinafter "SIC Summary Rep.")¹⁷ at 48.¹⁸

14 ¹² Toyota Forklifts Blog, *An Inside Look At The Toyota Internal Combustion Forklift Engine*
15 (March 30, 2023) (hereinafter "Toyota Forklifts Blog"), formerly available at:
16 [https://www.toyotaforklift.com/resource-library/blog/toyota-products/an-inside-look-at-the-](https://www.toyotaforklift.com/resource-library/blog/toyota-products/an-inside-look-at-the-toyota-internal-combustion-forklift-engine)
17 [toyota-internal-combustion-forklift-engine](https://www.toyotaforklift.com/resource-library/blog/toyota-products/an-inside-look-at-the-toyota-internal-combustion-forklift-engine) (now available at:
18 [https://web.archive.org/web/20230608112243/https://www.toyotaforklift.com/resource-](https://web.archive.org/web/20230608112243/https://www.toyotaforklift.com/resource-library/blog/toyota-products/an-inside-look-at-the-toyota-internal-combustion-forklift-engine)
19 [library/blog/toyota-products/an-inside-look-at-the-toyota-internal-combustion-forklift-engine](https://www.dillontoyotalift.com/about/blog/?Search=4Y&SearchType=tag); and
20 <https://www.dillontoyotalift.com/about/blog/?Search=4Y&SearchType=tag>); a PDF copy of the
21 Toyota Forklifts Blog downloaded from the web archive is available at the following permalink:
22 <https://www.lieffcabraser.com/pdf/ToyotaForkliftsBlog.pdf>.

23 ¹³ Toyota Material Handling, Parts & Services: Forklift 4Y Engine, formerly available at:
24 <https://www.toyotaforklift.com/resource-library/video-library/toyota-forklift-4y-engine> (now
25 available at: <https://www.facebook.com/watch/?v=667545237085000>).

26 ¹⁴ Toyota Industries Report 2014 "Special Feature," *Development of New Lift Trucks Fitted with*
27 *Engines Having Significantly Greater Environmental Performance*, available at:
28 <https://www.toyota-industries.com/investors/items/p16e-p19e.pdf>.

¹⁵ *See* Toyota Forklifts Blog; *see also* Toyota Material Handling Northern California, TMHNC,
Product Review: Toyota Diesel Forklift, available at: [https://www.tmhnc.com/blog/toyota-diesel-](https://www.tmhnc.com/blog/toyota-diesel-forklifts-product-review)
[forklifts-product-review](https://www.tmhnc.com/blog/toyota-diesel-forklifts-product-review) (touting 1ZS "Tier IV Final Emissions Compliant").

¹⁶ A PDF copy of the SIC Published Report downloaded from TICO's website
(https://www.toyota-industries.com/news/item/reference_full_e.pdf) is available at the following
permalink: <https://www.lieffcabraser.com/pdf/SICPublishedReport.pdf>.

¹⁷ A PDF copy of the SIC Summary Report downloaded from TICO's website
(https://www.toyota-industries.com/news/item/reference_summary_e.pdf) is available at the
following permalink: <https://www.lieffcabraser.com/pdf/SICSummaryReport.pdf>.

¹⁸ *See also, e.g.,* Toyota Motor Corporation News Release, *Certification Irregularities at Toyota*
Industries (Jan. 29, 2024), available at:
https://global.toyota/en/newsroom/corporate/40376368.html?utm_source=miragenews&utm_med

1 Specifically, engineers “modified the fuel injection amounts” by modifying the ECU software
2 Control Parameter values—or, in other words, employees engaged in intentional misconduct
3 designed to misrepresent the engines’ “torque curve,” among other things. SIC Summary Rep. at
4 48. These performance characteristics matter. Toyota’s misconduct directly undercut its public-
5 facing representations and violated reasonable expectations in the purchase and lease of the Class
6 Vehicles.

7 9. Recognizing the severity of the misconduct, Toyota Motor and TICO have
8 “deeply”¹⁹ and “sincerely apologize[d] for a great deal of inconvenience to our customers,
9 dealers, suppliers, and many other stakeholders.” See TICO 03/23 Press Release. But, at the same
10 time, Toyota has tried to limit the damage to Japan. After the initial revelations, Toyota claimed
11 that the scandal and resulting “stop sale . . . only applies to the Japanese market,” and “[t]here is
12 no impact on the current inventory or product offering in the US.”²⁰

13 10. The facts on the ground demonstrate otherwise. These facts include, among others,
14 that the investigations leading to Toyota’s admissions of misconduct in Japan *originated in the*
15 *United States*; that Toyota was forced to stop selling the affected forklifts in the United States;
16 that the relevant Japanese and U.S. emissions regulations are similar; and that the pervasive
17 culture of fraud and deceit infected the divisions responsible for the development and certification
18 of all the relevant engines, including the Class Engines sold in the United States.

19 11. To be clear, the misconduct first surfaced in the United States, not Japan, based on
20 U.S. regulators’ investigations into misconduct that affected vehicles sold in the U.S. market. SIC

25 [ium=miragenews&utm_campaign=news](#) (“The investigation found that irregularities occurred
26 during the horsepower output testing for the certification of three diesel engine models for
automobiles that Toyota had commissioned to TICO.”).

27 ¹⁹ *Id.*

28 ²⁰ Forklift Action, *Toyota suspends diesel, petrol models* (April 20, 2023), available at:
<https://www.forkliftaction.com/news/toyota-suspends-diesel-petrol-models.aspx?n=26871>.

1 Published Rep. at 5. The U.S. investigation is still underway several years later, and soon after it
2 began, Toyota was forced to issue two different forklift stop sales in U.S.^{21,22}

3 12. This is not particularly surprising given the similarities between the U.S. and
4 Japanese regulatory regimes. The bulk of the relevant Japanese emissions regulations are largely
5 identical to the U.S. standards—meaning that any cheating uncovered there would very likely
6 apply to the engines certified here.

7 13. The SIC reports confirm as much, explaining that the Japanese certification
8 process for at least the 1KD, 1ZS, 4Y, and 1FS engines relied on prior testing and results
9 undertaken to certify those engines for the U.S. market first. *See* SIC Summary Rep. at 22-23
10 (“The 1KD Engine first obtained U.S. certification, and then obtained domestic certification as of
11 June 17, 2014 *using the data used for U.S. certification.*”) (emphasis added); *id.* at 27 (explaining
12 that the 1ZS obtained Japanese certification using the “correction values calculated based on the
13 results of the 1KD Engine deterioration durability testing”—which, again, were generated during
14 the certification testing for the U.S. market); *Id.* at 30 (“[T]he 2007 4Y Engine first applied for
15 U.S. certification,” and “the deterioration durability testing for the 2009 4Y Engine adhered
16 fundamentally to the deterioration durability testing method for the 2007 4Y Engine[.]”); *id.*
17 (“After obtaining U.S. certification, the 1FS Engine applied for domestic certification using the
18 deterioration correction values calculated on the basis of the deterioration factors used for U.S.
19 certification and obtained domestic certification as of June 17, 2014.”).

20 In this context, the direct link between the admitted fraud and the U.S. Class Vehicles is clear.

21 14. To top it all off, the SIC reports describe a toxic culture of fraud, negligence, and
22 noncompliance that—like other recent scandals within the Toyota corporate family—pervaded
23 the TICO departments responsible for engine certifications for all markets, including the United
24 States. To cite just a few examples, at TICO and its subsidiaries:

25
26
27 ²¹ Toyota Motor Corporation News Release, *Suspension of Production of Certain Forklift Models in North America* (May 21, 2021), available at: <https://www.toyota-industries.com/news/2021/05/21/005055/>.

28 ²² Forklift Action, *Toyota halts certain diesel models* (Dec. 9, 2021), available at: <https://www.forkliftaction.com/news/toyota-halts-certain-diesel-models.aspx?n=25571>.

1 a. “[t]here was no department dedicated to regulation certification” (SIC
2 Release at 4), nor any “training on the “implementation of deterioration durability testing” or the
3 “tightening of emissions regulations” (SIC Summary Rep. at 13), leading to “an organization-
4 wide deficit of understanding about regulations” (*id.* at 53);

5 b. dysfunctional managers imposed “[u]nreasonable development schedules”
6 that pressured engineers to cheat and cut corners (*id.* at 54-55); and

7 c. “basic awareness of respecting data accuracy was weak” (SIC Release at
8 4)—a serious problem that “is not only a violation of the fundamental ethics of engineering, but
9 also improper conduct that disguises the true capabilities of the engine” (SIC Summary Rep. at
10 57).²³

11 15. Again, something is truly rotten at Toyota, and that rot has affected the U.S.
12 market every bit as much as the Japanese. Plaintiffs and the proposed Classes—the ultimate and
13 intended targets of Toyota’s deception—seek to enjoy the Defendants’ misconduct and to
14 recover the economic damages they suffered from it.

15 **III. PARTIES**

16 **A. Plaintiffs**

17 16. Plaintiff **Broadmoor Lumber & Plywood Co.** (for purpose of this paragraph,
18 “Plaintiff”) is a family-owned landscaping supply business operating in South San Francisco and
19 the neighboring communities. Plaintiff is a California corporation with its principal place of
20 business in South San Francisco, California. Plaintiff owns eight Class Vehicles: five of model
21 8FGU25 (serial numbers 38696, 38530, 83351, 75075, 69169) and three of model 8FGU30 (serial
22 numbers 61639, 73786, 76798). Plaintiff purchased the Class Vehicles new from an authorized
23 Toyota forklift dealer. Plaintiff decided to purchase the Class Vehicles based in part on Toyota’s
24 representations that they were clean-burning, low-emissions, high-performance, and sustainable.
25 Plaintiff also purchased the Class Vehicles under the assumption—and based on Toyota’s
26

27 ²³ Notably, the SIC reports in the investigation of Toyota subsidiary Hino described a similarly
28 toxic culture of noncompliance. *See, e.g.*, Special Investigation Committee, Hino Motors, Ltd.
(Aug. 1, 2022), *Investigation Report (Summary)* at 31-42, available at: [https://www.hino-
global.com/corp/news/20220812_Investigation%20Report%20%28Summary%29.pdf](https://www.hino-global.com/corp/news/20220812_Investigation%20Report%20%28Summary%29.pdf).

1 representations—that they met or exceeded all regulatory emissions standards. At the time of
2 purchase, Plaintiff did not know that the Class Vehicles operated with worse emissions and
3 engine output performance than reasonably expected based on Defendants’ advertising and
4 omitted information. Plaintiff would not have purchased the Class Vehicles, or would have paid
5 less for them, had it known that they emitted more pollutants than reasonably expected; that they
6 did not comply with emission standards; and that their real-world output performance was worse
7 than advertised. Plaintiff has suffered a concrete injury as a direct and proximate result of
8 Defendants’ misconduct, including but not limited to overpaying for the Class Vehicles at the
9 point of sale.

10 17. Plaintiff **Marders** (for purpose of this paragraph, “Plaintiff”) is a family-owned
11 plant nursery, landscaping, and tree moving business. Plaintiff is a New York corporation with its
12 principal place of business located in Bridgehampton, New York. Plaintiff owns the following
13 Class Vehicle: 50-8FGU25 (serial number 10517). Plaintiff purchased the Class Vehicle new
14 from an authorized Toyota forklift dealer. Plaintiff decided to purchase the Class Vehicle based in
15 part on Toyota’s representations that it was clean-burning, low-emissions, high-performance, and
16 sustainable. Plaintiff also purchased the Class Vehicle under the assumption—and based on
17 Toyota’s representations—that it met or exceeded all regulatory emissions standards. At the time
18 of purchase, Plaintiff did not know that the Class Vehicle operated with worse emissions and
19 engine output performance than reasonably expected based on Defendants’ advertising and
20 omitted information. Plaintiff would not have purchased the Class Vehicle, or would have paid
21 less for it, had it known that it emitted more pollutants than reasonably expected; that it did not
22 comply with emission standards; and that its real-world output performance was worse than
23 advertised. Plaintiff has suffered a concrete injury as a direct and proximate result of Defendants’
24 misconduct, including but not limited to overpaying for the Class Vehicle at the point of sale.

25 18. Plaintiff **Ferraro Foods** (for purpose of this paragraph, “Plaintiff”) is a specialty
26 Italian food distributor that services restaurants in Eastern U.S., with facilities in New Jersey,
27 New York, Connecticut, Maryland, Indiana, North Carolina, and Florida. Plaintiff is a New Jersey
28 corporation with its principal place of business in Piscataway, New Jersey. Plaintiff owns the

1 following Class Vehicle: 8FGCU25 (serial number 23143). Plaintiff purchased the Class Vehicle
2 through its acquisition of Napoli Foods in 2019, through which Ferraro acquired all of Napoli
3 Foods' assets and claims arising therefrom. Napoli Foods, as a reasonable consumer, would not
4 have purchased the Class Vehicle, or would have paid less for it, had it known that it emitted
5 more than reasonably expected; that it did not comply with emission standards; and that its real-
6 world output performance was worse than advertised. Similarly, Plaintiff would not have
7 purchased the Class Vehicle from Napoli Foods at all, had it known that the Class Vehicle
8 emitted more pollutants than reasonably expected; that it did not comply with emission standards;
9 and that its real-world output performance was worse than advertised.

10 **B. Defendants**

11 19. **Toyota Industries Corporation** (“TICO” or “Toyota Industries”) is a Japanese
12 corporation with its principal place of business located in Kariya, Aichi, Japan. TICO designs,
13 develops, manufactures, and sells materials handling equipment, textile machinery, automobiles,
14 and automobile parts and engines, including Toyota-branded forklifts and forklift engines. TICO
15 is an affiliate of Toyota Motor Corporation (TMC). TICO performed diesel engine development,
16 design, and testing work in its close relationship with its corporate affiliate, TMC, in what it
17 publicly describes as a “family effort.”²⁴

18 20. On information and belief, TICO engineered, designed, developed, manufactured,
19 and tested the Class Engines and Class Forklifts. TICO exported many of these engines (and
20 potentially certain complete forklifts) through regular shipments from Japan directed to ports in
21 California and elsewhere in the United States, with the knowledge and understanding that they
22 would be sold throughout the United States, including in California. Data compiled from bills of
23 lading from the website Import Yeti show regular shipments of containers of “component Toyota
24 forklift trucks” and “Forklift trucks,” from TICO in Nagoya Ko, Japan to Los Angeles and Long
25 Beach, California, and Seattle and Tacoma, Washington, ultimately directed to TICO's subsidiary
26

27 ²⁴ See Toyota Material Handling, *Toyota Industries Corporation Makes Forklifts, And So Much*
28 *More* (March 28, 2023), available at: <https://www.toyotaforklift.com/resource-library/blog/toyota-culture/toyota-industries-corporation-makes-forklifts-and-so-much-more>.

1 TMH USA. TICO sent eleven such shipments of engines and/or forklifts into the United States
2 within just the month of May 2024 alone, with a total of more than 1,500 shipments sent from
3 TICO in Japan to Los Angeles, California from January 2015 to May 2024.²⁵ On information and
4 belief, TICO also reviewed and approved the marketing, and advertising campaigns designed to
5 sell the Toyota forklifts in California and throughout the United States.

6 21. TICO also performed the required U.S. and state regulatory emissions and
7 performance tests for the Class Engines to be sold in the United States, including California. On
8 information and belief, TICO performed the testing at its facilities in Kariya, Aichi, Japan, and
9 then sent the results to the EPA and California's regulatory authority, CARB.²⁶ Following initial
10 regulatory certification, TICO also engaged directly with these emissions regulators in their (still
11 open) investigation of the emissions issues described herein. As TICO itself has explained, it was
12 in the second half of 2020 when TICO was making its "yearly application for certification for
13 2021 for forklift gasoline engines for the North American market" that it first "became concerned
14 about data used for past applications in the U.S." and it was TICO that then "handled data
15 confirmation and information requests from the U.S. environmental authorities." See TICO 03/23
16 Press Release. Then, in the wake of the U.S. production pause in 2022, TICO announced that "the
17 Company" (i.e., TICO) later "obtained engine certification for its main models of small liquefied
18 petroleum gas (LPG) lift trucks and resumed shipments" and that TICO itself was "working to
19 obtain certification and resume production for the remaining models" in the United States.²⁷

20 22. **Toyota Material Handling N.A.** ("TMHNA") is an Indiana corporation with its
21 principal place of business located in Columbus, IN. TMHNA is a wholly-owned U.S. subsidiary
22 of TICO, and it engages in business including manufacturing, parts distribution, and sales and
23

24 ²⁵ See www.importyeti.com/supplier/toyota-industries.

25 ²⁶ TICO's laboratory is listed as the "Test Lab Name" in the annual certification data submitted to
26 the EPA from 2011-present for Toyota's large non-road spark ignition engines (including
27 forklifts), See EPA, *Compliance and Fuel Economy Data, Annual Certification Data for Vehicles,
Engines, and Equipment*, available at: [https://www.epa.gov/compliance-and-fuel-economy-
data/annual-certification-data-vehicles-engines-and-equipment](https://www.epa.gov/compliance-and-fuel-economy-data/annual-certification-data-vehicles-engines-and-equipment).

28 ²⁷ See TICO Annual Financial Report 2023 at 86, available at: [https://www.toyota-
industries.com/investors/item/2023_annual_financial_report_E.pdf](https://www.toyota-industries.com/investors/item/2023_annual_financial_report_E.pdf).

1 marketing through dealerships throughout the United States,²⁸ including the dealership Toyota
2 Material Handling of Northern California, located in Livermore, CA (now operating as Total
3 Industries). TMHNA shares leadership and key decision makers with its parent company, TICO
4 (as well as with its subsidiary, Toyota Material Handling, Inc.). For example, Brett Wood is the
5 President & CEO of TMHNA, a member of the board of Toyota Material Handling, Inc., and also
6 a Senior Executive Officer on the board of TICO.²⁹

7 23. **Toyota Material Handling, Inc.** (“TMH USA”) is a California corporation with
8 its principal place of business located in Columbus, Indiana. TMH USA is a wholly-owned U.S.
9 subsidiary of Toyota Material Handling N.A., a subsidiary of TICO. TMH USA engages in
10 business—including manufacturing, research and development, sales, and parts distribution—in
11 all 50 states. TMH USA manufactured many of the complete Class Vehicles in the United States
12 with engines shipped from TICO in Japan. TMH USA was formed after the integration of two
13 former arms of Toyota’s U.S. material handling business, Toyota Material Handling U.S.A. Inc.
14 and Toyota Industrial Equipment Manufacturing, into one new entity: TMH USA. Prior to the
15 integration, Toyota Material Handling U.S.A. Inc. was headquartered in Irvine, California from
16 2002 into 2014. At some point in 2014, after many Class Vehicles were already designed, made,
17 and sold, Toyota Material Handling U.S.A. Inc. moved its headquarters from Irvine, California, to
18 Indiana and continued the integration with the Indiana business into 2019.³⁰ TMH USA remains
19 incorporated under California law.

20 24. TMH USA regularly submits applications to the EPA and to CARB in California
21 obtain the certification necessary for the sale of Toyota forklifts in the United States and
22 California. TICO knew and approved of TMH USA’s submissions, which were necessary for
23 TICO to export its products for sale in the United States and California, and which list TICO as

24 _____
25 ²⁸ See Toyota Material Handling N.A., available at: <https://www.tmhna.com/>.

26 ²⁹ See Toyota Material Handling, Management Team, available at:
<https://www.toyotaforklift.com/about-toyota/team/brett-wood>.

27 ³⁰ See Modern Materials Handling, *Toyota Material Handling completes North American*
28 *Integration process* (January 16, 2020), available at:
[https://www.mmh.com/article/toyota_material_handling_completes_north_american_integration_](https://www.mmh.com/article/toyota_material_handling_completes_north_american_integration_process)
[process](https://www.mmh.com/article/toyota_material_handling_completes_north_american_integration_process).

1 the entity responsible for the testing laboratory for the certification tests. TMH USA also shares
2 leadership and decision makers with its parent company, TICO. For example, Brett Wood, the
3 President & CEO of TMHNA, is on the board for both TMH USA and TICO.³¹ Similarly, Mitch
4 Shibagaki is the Executive Vice President and Treasurer of TMH USA, the Executive
5 Coordinator for TMHNA, and the recent Financial Planning & Analysis (FP&A) Group Manager
6 for TICO.³²

7 **25. Toyota Motor Corporation** (“TMC” or “Toyota Motor”) is a Japanese
8 corporation with its principal place of business in Toyota City, Aichi, Japan. Toyota is one of the
9 largest vehicle manufacturers in the world and is in the business of designing, developing,
10 manufacturing, and selling automobiles and component parts. TMC is an affiliate corporation of
11 TICO and owns approximately 25% of TICO’s voting shares.³³

12 **26.** Historically, Toyota and TICO have worked closely together to design and
13 develop engines. In November 2014, the companies announced that they would consolidate their
14 shared diesel engine development functions under TICO, with TICO to then be responsible for
15 production of new diesel engines for both companies in a “more efficient” joint business
16 structure. Under this structure, TMC takes charge of developing “base technologies” common to
17 both diesel and gasoline engines, and TICO takes on the diesel engine development and
18 production from there.³⁴ TMC also uses TICO to conduct testing for emissions certification
19 purposes, including for certain diesel engines.³⁵

20 **27.** There has been substantial cross-pollination among the leadership from TMC with
21 its affiliate, TICO. For example, Takue Sasaki, TICO’s Executive Vice President during the time

22 _____
23 ³¹ See Toyota Material Handling, Management Team, available at:
<https://www.toyotaforklift.com/about-toyota/team/brett-wood>.

24 ³² See Toyota Material Handling, Management Team, available at:
<https://www.toyotaforklift.com/about-toyota/team/mitch-shibagaki>.

25 ³³ Toyota Annual Financial Report (March 31, 2023) at 8, available at: https://www.toyota-industries.com/investors/item/2023_annual_financial_report_E.pdf.

26 ³⁴ See Toyota Motor Corporation and Toyota Industries Corporation News Release, *Toyota*
27 *Industries Corp. and Toyota Motor Corp. to Consolidate Diesel Engine Development and*
Production (November 28, 2014), available at: <https://www.toyota-industries.com/news/2014/11/28/004920/index.html>.

28 ³⁵ See Toyota Motor Corporation News Release, *supra* n.18.

1 period that many of the Class Vehicles were in production and development, was also a former
2 managing officer at TMC. Similarly, Mitsuhsa Kato, a member of TICO's board of directors,
3 served as a Senior Advisor to TMC at the same time. So too with Takahiko Ijichi, who was both
4 an Audit & Supervisory Board Member for TICO and a Senior Advisor to TMC. Another
5 example, Shigeki Terashi, was, for much of the relevant time period, Chief Officer of TMC's
6 North America Operations Group, President & COO of Toyota Motor North America, Inc., and
7 the Chairman of the Board at TICO.³⁶

8 **IV. JURISDICTION AND VENUE**

9 28. Jurisdiction is proper pursuant to the Class Action Fairness Act, 28 U.S.C.
10 § 1332(d), because at least one member of the proposed Class is of diverse citizenship from one
11 Defendant, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest
12 and costs.

13 29. This Court has general personal jurisdiction over TMH USA because it is a
14 California corporation formed in 2002 according to its latest filings with the California and
15 Indiana secretaries of state.

16 30. This Court also has specific personal jurisdiction over Defendants pursuant to
17 California Code of Civil Procedure § 410.10. Defendants conduct substantial business in this
18 District; some of the conduct giving rise to the Complaint took place in this District; and some of
19 Plaintiffs' claims arise out of Defendants operating, conducting, engaging in, or carrying on
20 business in this state or having an office or agency in this state, and causing injury to property in
21 this state arising out of Defendants' acts and omissions outside this state.

22 31. As explained below, each of the Defendants purposefully directed their activities
23 toward California and availed themselves of the privilege of conducting activities in this
24 jurisdiction. Although TMC and TICO are based in Japan, they are subject to the Court's specific
25 personal jurisdiction because they have pervasive contacts with the United States and California,
26

27 ³⁶ See, e.g., Toyota Industries Corporation, Leadership, available at: [https://www.toyota-](https://www.toyota-industries.com/company/data/index.html)
28 [industries.com/company/data/index.html](https://www.toyota-industries.com/company/data/index.html); Global Executive Pages, Toyota, Shigeki Terashi (June
16, 2015), available at:
https://global.toyota/pages/executives/2016/pdf/en/08_TERASHI_Shigeki.pdf.

1 purposefully directed their activities to the United States and California, and exert substantial
2 control over their domestic affiliates and subsidiaries, TMH USA and TMHNA.

3 32. The Defendants' contacts with California are substantial. To begin, many of the
4 misrepresentations and omissions at issue in this case were directed not only at Toyota customers,
5 but also to both federal and state regulators. As explained in the SIC's Investigation Report
6 (Published Version), "[i]n order to sell engines across the United States including California, an
7 application must be made to CARB as well as the EPA." SIC Published Rep. at 105 n.214. For
8 each of the engines in the Class Vehicles, Toyota targeted California and CARB to obtain the
9 permission to sell the vehicles. *See, e.g., id.* at 105-07, 127-29.

10 33. The communications between Toyota and CARB in California regarding the
11 engines in the Class Vehicles were extensive and, as documented herein, included many of the
12 misrepresentations and omissions underlying this case. Toyota's efforts targeted at the U.S. and
13 California are further reflected in the significant engine certification data submitted to both the
14 EPA³⁷ and CARB.³⁸ Moreover, and as typical with foreign manufacturers (and as the SIC's
15 Investigative Report confirms), these critical interactions with the federal and California
16 regulators involved the Japanese Toyota entities in addition to their U.S. subsidiaries.

17 34. After the regulatory certifications necessary to sell the Class Engines and Class
18 Vehicles in the U.S. were obtained, TICO then physically entered California through its routine
19 and voluminous shipments of Toyota Forklifts and component engines and parts from Japan into
20 the United States, through ports in Los Angeles and Long Beach, California, over the course of
21 many years.

22
23
24 ³⁷ EPA, *Annual Certification Data for Vehicles, Engines, and Equipment*, available at:
25 [https://www.epa.gov/compliance-and-fuel-economy-data/annual-certification-data-vehicles-](https://www.epa.gov/compliance-and-fuel-economy-data/annual-certification-data-vehicles-engines-and-equipment)
26 [engines-and-equipment](https://www.epa.gov/compliance-and-fuel-economy-data/annual-certification-data-vehicles-engines-and-equipment). The available data lists Toyota Material Handling, Inc. as the
"manufacturer" of several of the engines in the Class Vehicles and TICO as the entity conducting
the relevant laboratory testing (MFR Test Lab Name).

27 ³⁸ CARB, *Off-Road Compression-Ignition Certification Program: Off-Road Compression-*
28 *Ignition Certification Checklist*, available at: [https://ww2.arb.ca.gov/resources/documents/road-](https://ww2.arb.ca.gov/resources/documents/road-compression-ignition-certification-program-road-compression-ignition)
[compression-ignition-certification-program-road-compression-ignition](https://ww2.arb.ca.gov/resources/documents/road-compression-ignition-certification-program-road-compression-ignition) and CARB, *Large Spark-*
Ignition Engine - Regulatory and Certification Documents, available at:
<https://ww2.arb.ca.gov/large-spark-ignition-engine-regulatory-and-certification-documents>.

1 35. Finally, TMH USA was based in Irvine, California into 2014, a time period that
2 includes the development and manufacture of many of the Class Vehicle models at issue in this
3 Complaint.

4 36. The Defendants also targeted Class members in each of the fifty states, including
5 California, with advertising for the Class Vehicles; purposefully directed their activities to the
6 fifty states, including California; and controlled the design, distribution, and sale of the Class
7 Vehicles themselves. California is a significant market for Toyota forklifts. There are at least
8 twelve authorized dealerships within the TMHNA and TMH USA dealership network in
9 California that sell and lease Toyota forklifts, including two in this District alone (in Livermore
10 and Salinas, CA).³⁹

11 37. These contacts with the United States and California establish personal jurisdiction
12 over each of the Defendants. In addition, and to the extent necessary, this Court also has pendent
13 personal jurisdiction over the claims of non-California Plaintiffs.

14 38. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial
15 part of the events and/or omissions giving rise to the claims occurred in this District, and because
16 Defendants have caused harm to Class members residing in this District, including Plaintiff
17 Broadmoor. Defendants have marketed, advertised, sold, and leased the Class Vehicles from
18 authorized dealers located in this District, including Toyota Material Handling of Northern
19 California located in Livermore, CA.

20 **V. DIVISIONAL ASSIGNMENT**

21 39. This action is properly assigned to the San Francisco Division of this District
22 pursuant to N.D. Cal. L.R. 3-2, because a substantial part of the events or omissions giving rise to
23 Plaintiffs' claims arose in the counties served by the San Francisco Division. Defendants conduct
24 substantial business in the counties served by this Division, have marketed, advertised, sold, and
25 leased the Class Vehicles in those counties, and have caused harm to Class members residing in
26 those counties, including Plaintiff Broadmoor, which has its principal place of business in San
27 Mateo County.

28 ³⁹ See Toyota Forklift Dealer Search Tool, available at: <https://toyotaforklift.com/dealers>.

1 **VI. FACTS COMMON TO ALL COUNTS**

2 40. For almost a decade, the automotive industry has been plagued by a series of
3 emissions and fuel economy cheating scandals. Cases like Volkswagen “Clean Diesel,”⁴⁰ FCA
4 “EcoDiesel,”⁴¹ Mercedes-Benz BlueTEC,⁴² Audi CO₂,⁴³ Porsche MPG,⁴⁴ Cummins Diesel,⁴⁵ and
5 others have taught us that automakers can and frequently do illegally manipulate emissions, fuel
6 economy, and other performance-related test results, and then sell those vehicles to customers on
7 false premises and with deceptive representations.

8 41. Toyota and its subsidiaries are no exception. As described above, a number of
9 emissions and certification misconduct scandals have recently surfaced across the corporate
10 family. This includes a 2021 admission that Toyota had been systematically violating CAA
11 reporting requirements from 2002 to at least 2015—conduct for which Toyota agreed to a \$180
12 million fine.⁴⁶ And in 2023, Toyota subsidiary Daihatsu revealed significant misconduct and
13 manipulation in test data submitted to regulators.⁴⁷ In June 2024, Toyota publicly apologized for
14 yet another scandal, this time implicating certification tests for seven vehicle models.

15
16 ⁴⁰ Department of Justice Press Release, *Volkswagen to Spend Up to \$14.7 Billion to Settle*
17 *Allegations of Cheating Emissions Tests and Deceiving Customers on 2.0 Liter Diesel Vehicles*
(June 28, 2016), available at: <https://www.justice.gov/opa/pr/volkswagen-spend-147-billion-settle-allegations-cheating-emissions-tests-and-deceiving>.

18 ⁴¹ Department of Justice Press Release, *In Civil Settlements with the United States and California,*
19 *Fiat Chrysler will Resolve Allegations of Cheating on Federal and State Vehicle Emission Tests*
(Jan. 10, 2019), available at: <https://www.justice.gov/opa/pr/civil-settlements-united-states-and-california-fiat-chrysler-will-resolve-allegations>.

20 ⁴² Department of Justice Press Release, *The U.S. Reaches \$1.5 Billion Settlement with Daimler*
21 *AG Over Emissions Cheating in Mercedes-Benz Diesel Vehicles* (Sep. 14, 2020), available at:
22 <https://www.justice.gov/opa/pr/us-reaches-15-billion-settlement-daimler-ag-over-emissions-cheating-mercedes-benz-diesel>.

23 ⁴³ Settlement website available at: <https://vwmpgsettlement.com/>.

24 ⁴⁴ Settlement website available at: <https://www.porschegasolinesettlementusa.com/>.

25 ⁴⁵ Department of Justice Press Release, *United States and California Announce Diesel Engine*
26 *Manufacturer Cummins Inc. Agrees to Pay a Record \$1.675 Billion Civil Penalty in Vehicle Test*
Cheating Settlement (Jan. 10, 2024), available at: <https://www.justice.gov/opa/pr/united-states-and-california-announce-diesel-engine-manufacturer-cummins-inc-agrees-pay#:~:text=Beyond%20agreeing%20to%20pay%20a,emissions%20testing%20and%20certificati on%20requirements>.

27 ⁴⁶ Department of Justice Press Release, *supra* n.1.

28 ⁴⁷ Daihatsu Investigation Report (Executive Summary) (Dec. 20, 2023), available at:
https://www.daihatsu.com/news/2023/report_1_E.pdf.

1 42. Of particular note, in 2022, Toyota subsidiary Hino Motors admitted that it had
 2 engaged in “misconduct in relation to its applications for certification concerning the emissions
 3 and the fuel economy performance of its engines for the Japanese market.”⁴⁸ Critically, that
 4 conduct in Japan was predicated on and precipitated by investigations into conduct in the U.S.,
 5 led to a class settlement with private plaintiffs worth hundreds of millions of dollars, and remains
 6 the subject of ongoing enforcement actions by the Department of Justice and California Attorney
 7 General. *See, e.g., Express Freight In'l v. Hino Motors, Ltd.*, No. 1:22-cv-22483, Dkt. 146 (S.D.
 8 Fla.).

9 43. The misconduct underlying this case follows a strikingly similar pattern and
 10 sequence: (1) regulators in the United States began investigating potential fraud into Toyota’s
 11 data submissions; (2) the Toyota company issued a series of stop sales on some affected vehicles
 12 in U.S. but did not own up to the scale of the problem; (3) Toyota’s internal investigation (led by
 13 outside counsel) expanded to conduct ostensibly affecting the Japanese market; (4) the
 14 investigation revealed widespread misconduct, and Toyota convened a Special Investigation
 15 Committee; (5) the SIC reports identified even more misconduct and uncovered a corporate
 16 culture of deceit and noncompliance. And, of course, as in the Hino litigation, (6) the misconduct
 17 rendered Toyota’s customer-facing representations false, misleading, and deceptive in ways
 18 material to Plaintiffs and the Classes.

19 A. **The U.S. regulators began investigating Toyota’s forklift-related misconduct**
 20 **by at least 2020.**

21 44. This case begins and ends with vehicles sold in the United States. As noted above,
 22 TICO admits that the misconduct surfaced no later than the “second half of 2020,” when TICO
 23 was “compl[ying] with an inquiry from the *United States* Environmental Protection Agency
 24 (“EPA”) for the deterioration durability data submitted in the past, and found some questions
 25 about the appropriateness of the deterioration durability testing.” SIC Summary Rep. at 4
 26 (emphasis added). In other words, at about the same time that the U.S. regulators began
 27

28 ⁴⁸ Hino Press Release, *Misconduct concerning Engine Certification* (March 4, 2022), available at:
<https://www.hino-global.com/corp/news/assets/1f350e73535af44c2a8c90c2f916eae2.pdf>.

1 investigating Toyota subsidiary Hino’s data irregularities, they became suspicious of, and started
2 probing, TICO’s data too.

3 45. In responding to the EPA’s investigations, and before there was any inquiry into
4 the effect on the Japanese market, TICO “found some questions about the appropriateness of the
5 deterioration durability testing,” SIC Summary Rep. at 4—a critical factor in emissions testing
6 designed to assess the performance of emission control systems over time. The “questions about
7 the appropriateness” were serious, and TICO “engaged outside attorneys to investigate” them. *Id.*
8 at 4.

9 46. Shortly thereafter, in April 2021, TICO quietly announced a “suspension of
10 production of certain [gasoline and LPG] forklift models in North America” due to “delays in
11 obtaining U.S. engine emissions certification.”⁴⁹ Then, in December 2021, TICO’s U.S.
12 subsidiary, Toyota Material Handling (TMH), announced it was “voluntarily suspending
13 production and sales” of certain diesel forklift models “out of a proactive abundance of caution as
14 TMH continues to confirm the compliance of these products within EPA standards.”⁵⁰ With the
15 regulators now looking over their shoulders, Toyota could not get its engines certified in the
16 United States.

17 47. As it turns out, Toyota’s misconduct affected not just vehicles designed for the
18 U.S. market but also those sold in Japan. This became clear early in the outside counsel
19 investigation. SIC Summary Rep. at 4. And while the U.S. regulatory investigation is ongoing,
20 the results of the Japanese investigation illuminate the nature and scope of the misconduct in both
21 countries.

22 **B. Toyota’s investigation revealed rampant fraud.**

23 48. TICO’s fraud came to light in successive public releases, starting in March 2023.
24 In that initial release, TICO “confirmed the excess over the domestic (Japanese) emissions

25
26 ⁴⁹ Toyota Industries Corporation News Release, *Suspension of Production of Certain Forklift
Models in North America* (May 21, 2021), available at: [https://www.toyota-
industries.com/news/2021/05/21/005055/](https://www.toyota-industries.com/news/2021/05/21/005055/).

27 ⁵⁰ Forklift Action, *Toyota halts certain diesel models* (Dec. 9, 2021), available at:
28 <https://www.forkliftaction.com/news/toyota-halts-certain-diesel-models.aspx?n=25571>.

1 regulation values due to aging degradation” and imposed a stop sale on three engines (the 1ZS,
2 1KD, and 4Y). *See* TICO 03/23 Press Release. At the time, however, the full scope of the fraud
3 had not been revealed, and Toyota claimed that the misconduct “only applie[d] to the Japanese
4 market” and had no “impact on . . . the US.”⁵¹

5 49. To further “clarify the details of the case,” Toyota convened an ostensibly neutral
6 Special Investigation Committee, as it had done previously in both the Hino and Daihatsu
7 scandals. The extent of the SIC’s neutrality is not without question,⁵² but for this purpose it is
8 worth noting that the committee had access to extensive information, including materials
9 collected by outside counsel, interviews of 72 employees, and additional data. Their investigation
10 lasted approximately ten months and culminated in reports that elucidated the connection to the
11 U.S. market and certification process, expanded the scope of the fraud, and significantly increased
12 the number of affected engines and vehicles.

13 50. In brief, the reports outlined emissions fraud, output performance fraud, and a
14 pervasive culture of cheating and non-compliance—all of which implicate the Class Vehicles sold
15 in the United States.

16 **1. Toyota fabricated and manipulated the emissions test results of the**
17 **Class Engines.**

18 51. With minor potential exceptions noted herein, the full scope of the emissions fraud
19 (as it is currently understood) is outlined in the SIC reports, which Plaintiffs again incorporate by
20 reference.

21 52. To recap, much of the misconduct related to deterioration durability testing—a
22 process used to determine how the emissions control systems perform over time. The
23 deterioration correction value (also known as the deterioration factor) that results from this testing
24 informs the threshold emissions performance levels required of the engine. Take, for example, a
25 hypothetical pollutant that cannot exceed a limit of 12 units under relevant regulations. If

26 _____
27 ⁵¹ Forklift Action, *Toyota suspends diesel, petrol models* (April 20, 2023), available at:
<https://www.forkliftaction.com/news/toyota-suspends-diesel-petrol-models.aspx?n=26871>.

28 ⁵² Notably, one of the three committee members (Makoto Shimamoto) is a repeat player who was
also a member of the Hino SIC and works for Yamaha—a company in which Toyota has a
minority ownership stake and with which it has a close relationship.

1 deterioration durability testing shows a deterioration correction value (degradation) of, say, 20%
 2 over the time period set in the regulation, then, at the time of the certification test, the engine must
 3 not emit more than 10 units of that pollutant ($10 * 1.2 = 12$). The deterioration factor is therefore
 4 a critical component of compliant and accurate emissions measures.

5 53. In the process of conducting the deterioration tests (and other emissions tests),
 6 however, Toyota engaged in a wide range of cheating strategies, grouped into four categories in
 7 the “key details of improper conduct” columns in the chart below. They include: (1) using values
 8 different from measured values, (2) modifying ECU software, (3) replacing parts etc. during
 9 testing, and (4) using different engines for the test.

	Use (Engine type)	Type	Domestic certification acquisition timing	Key details of improper conduct			
				Used values different from measured values	Modified ECU Software	Replaced parts etc. during testing	Used different engines for the test
Current models	Forklift (diesel)	1KD	2014	●	●		
		1ZS	2014		●		
	Forklift (gasoline, LPG)	2009 4Y	2009	●	●	●	●
		1FS	2014	●	●	●	
	Construction machinery (diesel)	2020 1KD for Construction Machinery	2020		●		
Past models	Forklift (diesel)	2007 1DZ	2007	●			
	Forklift (gasoline, LPG)	2007 4Y	2007	●	●	●	●
		1FZ	2007				●
	Construction machinery (diesel)	2016 1KD for Construction Machinery	2016	●	●	●	

23 54. The SIC reports collectively dedicate dozens of pages to describing the details of
 24 these strategies as applied to each of the relevant engines. As one example, Toyota engineers
 25 “rewr[ote] [unfavorable] test results” for both NOx and particulate matter values “in order to
 26 obtain certification and otherwise knowingly violat[ed] domestic laws and regulations and
 27 intentionally disguise[d] facts,” among other “intentional improper” tactics to falsify test data.
 28 SIC Release at 7.

1 55. As additional illustrative examples, Toyota: swapped out parts during testing
2 processes, or even tested the wrong engine, which heavily skewed the results; used different ECU
3 software for testing than was used in mass production vehicles; and simply threw out test results
4 they did not like. *See, e.g., id.* at 7-8; SIC Summary Rep. at 37.

5 56. The basic takeaway for all facets of the fraud is that Toyota routinely cut corners
6 and subverted regulatory testing processes with the express intent of falsely representing that their
7 engines could perform in ways they simply could not.

8 57. According to the SIC, the so-called “root causes” underlying all of this fraud
9 included, among others:

10 a. a “[c]ontractor’s mentality”—meaning that TICO, and certain groups
11 within it, often considered themselves mere contractors to other groups or companies (e.g., TMC)
12 and did not take ownership over their projects;

13 b. “Trivializing engines for industrial vehicles”; and

14 c. “Low risk sensitivity among executives at the Engine Division”—e.g., lack
15 of commitment and education regarding deterioration durability testing. SIC Release at 8-9.

16 58. As further evidence of Toyota’s culture of cheating, TICO lacked “a department
17 dedicated to regulation certification” (SIC Release at 4), and decided against any meaningful
18 training on the “implementation of deterioration durability testing” or the “tightening of
19 emissions regulations” (SIC Summary Rep. at 13). The result was an “organization-wide deficit
20 of understanding about regulations” (*Id.* at 53) and a “weak” record on “respecting data accuracy”
21 (SIC Release at 4). As the SIC makes clear, this culture—and the cheating that emerged from it—
22 led to “violation[s] of the fundamental ethics of engineering” that “disguise[d] the true
23 capabilities of the engine[s]” in question. SIC Summary Rep. at 57.

24 59. Whatever the reasons, the fraud was rampant and persisted for nearly two decades.
25 And, to be clear, it was highly illegal. Under both Japanese and U.S. regulations, engines that do
26 not meet specified emissions values cannot be certified and are not legal to sell. Moreover, in
27 both markets:

28 The engine used for deterioration durability testing must have “the

1 same structure, equipment, and performance” as the vehicle engine
2 and emission reduction equipment of the motor vehicle for which
3 the device type designation is being applied for, that is, the same
4 specifications as the engine to be mass produced after obtaining the
5 device type designation.

6 For the duration of deterioration durability testing, parts relating to
7 emissions performance shall not be replaced, except for parts that
8 are to be replaced periodically. Therefore, in principle, deterioration
9 durability testing is expected to be performed on the same engine
10 with the same parts.

11 SIC Published Rep. at 58; *accord* SIC Summary Rep. at 15. Put simply, manufacturers are not
12 allowed to monkey with their certification test engines or vehicles or, obviously, to lie about the
13 test results. Toyota did both.

14 60. It is worth noting, however, that according to the SIC reports some but not all of
15 the affected engines exceeded regulatory limits during the in-house retesting for the investigation.
16 Specifically, as reflected in the chart below, the current diesel engines (2014 1KD, 2020 1KD for
17 construction, and the 1ZS) all “had NOx (nitrous oxide) values that exceeded the domestic
18 regulation values.” SIC Release at 2 n.2. The current gasoline models (2009 4Y and 2014 1FS), in
19 contrast, reportedly did not exceed regulatory limits.⁵³

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⁵³ The results for the “old type” models have yet to be confirmed.

Use	Engine Model			Year Certified	Reported on March 17		Results of this Investigation		No. of Domestic Sales		
					Violations	Regulations Values Exceeded	Violations	Whether Regulation Values Exceeded or not (Note 1*)	FY2022 Sales	Total Sales	
Forklift	Current type	Diesel	1KD	2014	•	•	•	Same as Reported on March 17	2,000 units	11,000 units	163,000 units
			1ZS						8,000 units	61,000 units	
		Gasoline	4Y	2009		Confirmed no excess			6,000 units	89,000 units	
			1FS	2014		—			•	Confirmed no excess	
	Old type	Diesel	Former 1DZ	2007	—	•	To be confirmed	—	26,000 units	67,000 units	
			3Z						20,000 units		
		15Z	2010	4,000 units							
		Gasoline	Former 4Y	2007					16,000 units		
1FZ	1,000 units										
Construction Machinery	Current type	Diesel	1KD	2020	•	—	•	•	2,000 units	2,000 units	2,000 units
	Old type	Diesel	Former 1KD	2016	—	—	•	To be confirmed	—	1,000 units	1,000 units

61. There are many reasons to be skeptical of the “no-excess” findings, including the fact that testing was done in-house, without any witnesses or regulatory oversight. They are also belied by common sense: if Toyota did not need to cheat, why would it do so? Furthermore, roughly a month after the SIC reports were issued, Japan’s Ministry of Land, Infrastructure, Transport and Tourism (MLIT) revoked Toyota’s approval to sell three engines, including two (4Y and 1FS) that the SIC reported had no excess emissions.⁵⁴

62. Plaintiffs thus allege on information and belief that (a) all the of the Class Engines were fraudulently certified and illegal to sell and/or import and that (b) all the Class Vehicles’ emitted pollutants in excess of the regulatory limits and beyond what Plaintiffs and the Class reasonably expected.

⁵⁴ TICO News Release, *Administrative Sanction on Domestic Industrial Engine Certification by the Ministry of Land, Infrastructure, Transport and Tourism (MLIT)* (Feb. 22, 2024), available at: <https://www.toyota-industries.com/news/2024/02/22/008589/index.html>.

1 2. **Toyota also cheated on “output tests” relating to performance metrics**
2 **such as horsepower and torque.**

3 63. As noted above, in addition to the emission-related misconduct, Toyota also
4 cheated on “output tests” designed to measure torque, horsepower, and other important
5 performance metrics. *See, e.g.*, SIC Published Rep. at 169-72; SIC Summary Rep. at 48.⁵⁵

6 64. In short, TICO engineers “modified the fuel injection amounts” by altering the
7 ECU software Control Parameter values. SIC Summary Rep. at 48. This resulted in a falsified
8 “engine performance curve” designed to (falsely) “ensure that the output values were above the
9 specification values (development target values).” SIC Published Rep. at 197. Put differently,
10 TICO engaged in intentional misconduct designed to misrepresent critical performance metrics—
11 conduct they knew was “deemed improper.” SIC Summary Rep. at 48-49.

12 65. Thus far, the SIC’s output test findings are limited to engines designed for
13 automobiles (not forklifts or construction equipment). However, TICO employees close to the
14 issue admitted the fraudulent tactics “had been widely practiced in [TICO’s] Engine Calibration
15 Group”—which was also responsible for the Class Engines—“for some time.” SIC Summary
16 Rep. at 48; *see also id.* at 57 (“Such improper conduct trivializing data accuracy is found to have
17 been spread over a long period of time and to a considerable extent”)

18 66. Plaintiffs therefore allege upon information and belief that the output fraud also
19 affected the Class Engines.

20 C. **The misconduct detailed in the SIC Reports also affected the Class Engines**
21 **and Class Vehicles sold in the U.S., rendering them illegal to sell or import.**

22 67. The investigation conducted by the SIC was, according to Toyota, “limited to
23 improper conduct relating to emissions certification in Japan.” SIC Summary Rep. at 4-5. But, as
24 noted above, that is highly implausible given the U.S. origins of the (still ongoing) regulatory
25 investigation.

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28 ⁵⁵ *See also, e.g.*, Toyota Motor Corporation News Release, *supra* n.18 (“The investigation found that irregularities occurred during the horsepower output testing for the certification of three diesel engine models for automobiles that Toyota had commissioned to TICO.”).

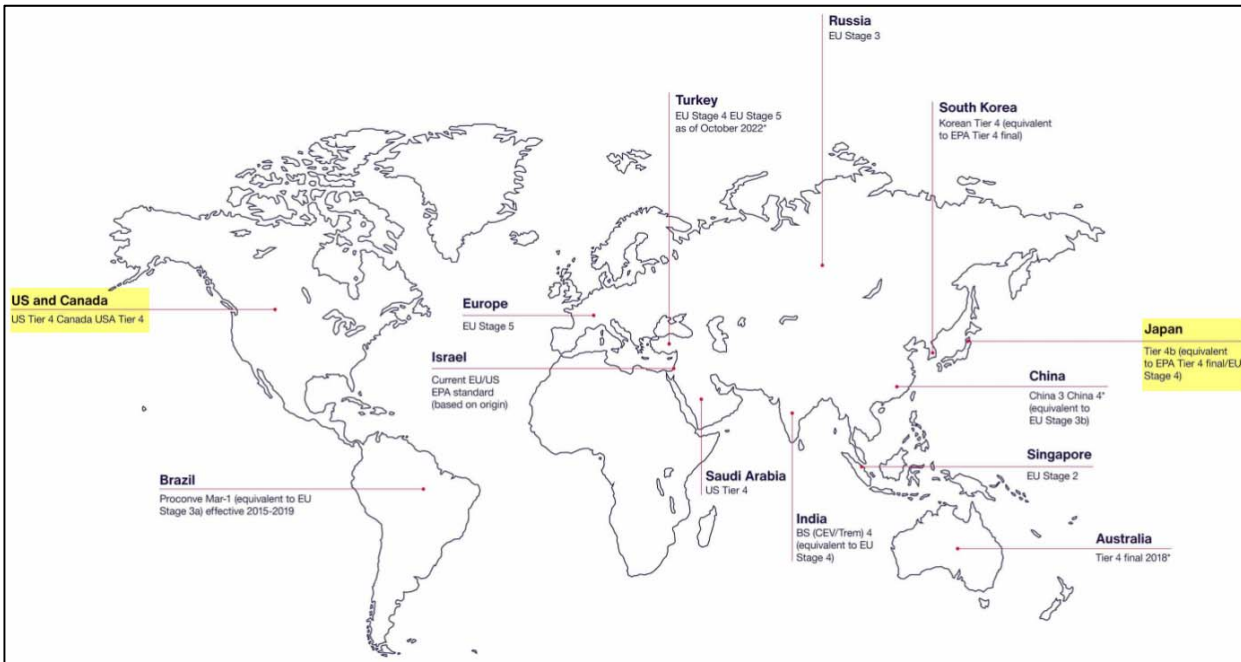
1 68. Importantly, and as the SIC recognized, many of the certifications in Japan were
2 “obtained on the premise of U.S. and EU emissions certification,” making the Japanese conduct
3 inextricably intertwined with the engines sold in the U.S. *Id.* at 5 n.1; *see also* SIC Summary Rep.
4 at 15 (“It should be noted that if a carbon monoxide, etc. emissions control device has already
5 been certified in the U.S. or Europe prior to domestic certification, the deterioration factor
6 calculated at the time of U.S. or European certification can be used in the application for domestic
7 certification, and there is no need to redo deterioration durability testing in accordance with
8 domestic laws and regulations.”); SIC Published Rep. at 58 (similar).

9 69. In fact, the Japanese certification process for most of the engines at issue—at least
10 the 1KD, 1ZS, 4Y, and 1FS engine—relied on prior testing done to certify those engines for the
11 U.S. market first. *See, e.g.*, SIC Summary Rep. at 22-23 (“The 1KD Engine first obtained U.S.
12 certification, and then obtained domestic certification as of June 17, 2014 using the data used for
13 U.S. certification.”); SIC Summary Rep. at 27 (explaining that the 1ZS obtained Japanese
14 certification using the “correction values calculated based on the results of the 1KD Engine
15 deterioration durability testing”—which, again, were generated during the certification testing for
16 the U.S. market); SIC Summary Rep. at 30 (“[T]he 2007 4Y Engine first applied for U.S.
17 certification,” and “the deterioration durability testing for the 2009 4Y Engine adhered
18 fundamentally to the deterioration durability testing method for the 2007 4Y Engine.”); SIC
19 Summary Rep. at 30 (“After obtaining U.S. certification, the 1FS Engine applied for domestic
20 certification using the deterioration correction values calculated on the basis of the deterioration
21 factors used for U.S. certification and obtained domestic certification as of June 17, 2014.”).

22 70. This is made possible by the very significant overlap—at points nearly identical—
23 between the Japanese and U.S. emissions regulations. As exemplified in the chart below, the off-
24 highway diesel emissions standards in Japan and the U.S. (Tier 4 or Tier IV standards) are
25 functionally “equivalent.” SIC Published Rep. at 74 (chart showing the regulations applicable to
26 the Class Engines over time).⁵⁶

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28 ⁵⁶ *See also* Veethree Group, *Off-Highway Diesel Emissions Standards* (July 26, 2022), available
at: <https://www.veethree.com/group/veethree-group-news/off-highway-diesel-emissions/>; *see*

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71. The point is that, notwithstanding Toyota’s contrary disclaimers, the fraud exposed in the SIC reports was clearly directed at Japanese *and* U.S. customers. The two markets are governed by overlapping regulatory regimes, and TICO regularly used the exact same fraudulent tests and test results for both of them.

D. Defendants’ marketing featured false promises of environmental friendliness and misrepresentations of high engine performance and emissions compliance—all of which omitted material information about Toyota’s fraud.

72. To many businesses and other customers, including Plaintiffs, engine performance, emissions compliance, and environmental friendliness are important factors in their decision to purchase or lease a forklift. Toyota understood this and capitalized on it.

73. As one example, in a forklift-related post, Toyota acknowledged “[s]ustainability of the environment is an important consideration for professionals in any industry. That’s why Toyota has set out to meet that need with top-of-the-line, environmentally friendly products.”⁵⁷

also, e.g., Dieselnets, Japan: Nonroad Engines, available at: <https://dieselnets.com/standards/jp/nonroad.php> (detailing regulatory scheme and comparisons to U.S. regime);

⁵⁷ Liftow Ltd. and Toyota Material Handling Blog Post, *Toyota Forklifts: What Make Them Industry Leaders* (March 6, 2019), available at: <https://liftow.com/blogs/news/toyota-forklifts-what-make-them-industry-leaders>.

1 74. A relevant trade association publication reinforces the message: “Demand for
2 lower vehicle emissions and higher fuel efficiency in the automotive industry has drifted over to
3 vehicles in other motive industries. Industrial lift trucks are no exception. Like the automotive
4 industry, some of the drivers for emissions reductions are more stringent regulatory emissions
5 standards. But much of the demand comes from industry itself.”⁵⁸

6 75. Defendants targeted these preferences in their misleading advertising and other
7 representations and omissions about the Class Engines and Class Vehicles.

8 76. For starters, both TMH⁵⁹ and TICO⁶⁰ dedicate entire sections of their websites to
9 their environmental and sustainability initiatives. Their eco-branding is clearly an important part
10 of their marketing strategies.

11 77. But more importantly, over the last decade and half, Toyota has made repeated
12 false and misleading statements about the specific Class Engines and Class Vehicles. Below are
13 some illustrative examples, generally grouped by engine and fuel type.

14 78. **Gasoline engines—4Y, 1FS, and 1FZ:**

15 a. “The 4Y Engine is unique in that it is the cleanest engine in the industry,
16 and its emission standards rival the emission standards of any competitive internal combustion
17 engine.”⁶¹

18 b. “4Y: Low emission, High power, Low fuel consumption.”⁶²

19 c. In addition to its performance and durability, the 4Y is “emissions
20 compliant.”⁶³

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22 ⁵⁸ Fabricators and Manufacturers Association, *No, Low-emissions Lift Trucks Clear the Air*
(March 27, 2013), available at: <https://www.fmamfg.org/blog/low-emissions-lift-trucks-clear-air>.

23 ⁵⁹ Toyota Material Handling, *Toyota Sustainability and ESG*, available at:
<https://www.toyotaforklift.com/about-toyota/sustainability>.

24 ⁶⁰ Toyota Industries Corporation, *Environmental Initiatives*, available at: [https://www.toyota-](https://www.toyota-industries.com/sustainability/environment/)
25 [industries.com/sustainability/environment/](https://www.toyota-industries.com/sustainability/environment/); *see also* Toyota Industries Corporation, *Corporate*
Profile 2024, available at: [https://www.toyota-](https://www.toyota-industries.com/company/item/Corporate_Profile_2024_E_view.pdf)
26 [industries.com/company/item/Corporate_Profile_2024_E_view.pdf](https://www.toyota-industries.com/company/item/Corporate_Profile_2024_E_view.pdf).

27 ⁶¹ *See* Toyota Forklifts Blog.

28 ⁶² Toyota Industries Corporation, *Gasoline Engines Y series*, available at: [https://key-](https://key-components.toyota-industries.com/products/engine/gasoline/4y/)
[components.toyota-industries.com/products/engine/gasoline/4y/](https://key-components.toyota-industries.com/products/engine/gasoline/4y/).

⁶³ *See* Toyota Forklifts Blog.

1 d. The 4Y was “engineered with sustainability in mind. The 4Y engine’s
2 emissions system filters carbon monoxide, hydrocarbon, and nitrogen oxide gases, allowing it to
3 surpass federal EPA emission standards.”⁶⁴

4 e. “But durability isn’t the only thing the 4Y has going for it. It’s just as good
5 for the environment as it is for your business, whether you run LPG or gasoline.”⁶⁵

6 f. The 4Y is “EPA and CARB compliant for emissions.”⁶⁶

7 g. In addition to general “high performance” (torque, horsepower, etc.), the
8 4Y and 1FS engines have “environmental performance” benefits and “clean exhaust.”⁶⁷

9 **79. Diesel engines—1ZS, 1KD, and 1DZ:**

10 a. “Toyota’s environmentally-friendly 8-Series lift trucks”—powered by the
11 1ZS—“are recognized as the world’s cleanest internal combustion forklifts available.”⁶⁸

12 b. The 1ZS engine is “Tier IV Final Emissions Compliant.” It is “ideal for the
13 agricultural industry because it meets Tier IV final emissions standards.”⁶⁹

14 c. The 1ZS “meet[s] the federal EPA Tier 4 Final regulations.”⁷⁰

15 d. The 1ZS engine provides “less displacement than the previous model for
16 lower emissions and fuel costs.”⁷¹

17 e. “The newest forklifts expand Toyota’s comprehensive diesel pneumatic
18 line, which now provides 3,000 to 17,500 lb. capacity models that meet the federal EPA Tier 4
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21 ⁶⁴ Toyota Blog Post, *The History of Toyota’s 4Y Engine* (March 8, 2019), previously available at:
22 https://www.dillontoyotalift.com/about/blog/e_358/News---Events/2019/3/The-History-of-Toyota-s-4Y-Engine (also previously available on TMH website).

23 ⁶⁵ Toyota Forklifts Blog.

24 ⁶⁶ *Id.* (“deeper dive” into 4Y engine video starting at 1:25).

25 ⁶⁷ TICO Product Information, *Gasoline Engines*, available at: <https://key-components.toyota-industries.com/products/engine/gasoline/>.

26 ⁶⁸ Toyota Forklifts YouTube Channel, Toyota Forklift Commercial 1
27 <https://www.youtube.com/watch?v=S5WSezyZqQM>.

28 ⁶⁹ Toyota Material Handling Northern California, TMHNC, *Product Review: Toyota Diesel Forklift*, available at: <https://www.tmhnc.com/blog/toyota-diesel-forklifts-product-review>.

⁷⁰ Summit Toyota Lifts, *Toyota’s New 1ZS Diesel Engine* (Jan. 15, 2015), available at: <https://www.summithandling.com/news/toyotas-1zs-diesel-engine/>.

⁷¹ See Toyota Forklifts Blog.

1 Final regulations. The 1ZS engine maintains the horsepower and increases the torque while
2 achieving greater fuel savings.”⁷²

3 f. “Small Capacity Lift Trucks Offer Significant Advancements in Fuel
4 Efficiency, while Meeting Stringent Federal EPA Tier 4-Final Diesel Engine Standards.” The
5 “diesel series [is] powered by a clean-burning Toyota engine” that “offer[s] significant
6 advancements in durability, ergonomics, productivity and fuel efficiency, while meeting stringent
7 federal EPA Tier 4 Final diesel engine standards.” The 1ZS engine also “minimiz[es] emissions
8 and particulate matter.”⁷³

9 g. The 8-Series lift truck is “the world’s cleanest internal combustion lift
10 truck and the first and only lift truck to surpass 2007 Federal EPA emissions standards and meet
11 California’s stringent 2010 emission standards.”⁷⁴

12 h. The “recently unveiled [] new 8-Series lift truck . . . produces 70 percent
13 less smog-forming emissions than the 2007 standard. In developing the 8-Series, TMHU also
14 took a global leadership role by exceeding both state and federal emissions regulations and by
15 integrating elements of sustainable design such as increasing the amount of recyclable parts used
16 in the manufacturing process.”⁷⁵

17 i. “The 1FS is built with special electronics that all lead to better fuel
18 efficiency and low emissions.”⁷⁶

19 j. The 1KD engine “helps decrease fuel consumption and emissions.”⁷⁷

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22 ⁷² Summit Toyota Lifts, *Toyota’s New 1ZS Diesel Engine* (Jan. 15, 2015), *supra* n.70.

23 ⁷³ Vesco Toyota Lift (publishing Toyota Press Release), *Toyota Expands 8-Series Small Capacity*
24 *Diesel Lift Truck Line with New Clean-Burning 1ZS Engine* (Dec. 19, 2013), available at:
<http://www.vescoforklifts.com/news/136.php>; <https://www.fmforklift.com/news/136.php>.

25 ⁷⁴ Toyota Material Handling / National Arbor Day Foundation Joint Press Release, *Toyota*
26 *Material Handling Teams With Arbor Day Foundation To Plant A Tree For Each 8-Series Lift*
Truck Delivered In 2007 (Nov. 20, 2006), available at:
<https://www.arborday.org/media/pressreleases/pressreleasetxt.cfm?id=119>.

27 ⁷⁵ *Id.*

28 ⁷⁶ Toyota Forklifts Blog.

⁷⁷ *Id.*

1 80. **Additional, broadly applicable misrepresentations and omissions:**

2 a. From Shankar Basu, then-President and CEO of TMH: “Toyota is
3 committed to environmental responsibility, and it’s a role we take very seriously”—“one of
4 Toyota’s goals is to support environmentally appropriate and socially beneficial initiatives
5 contributing to a cleaner environment.”⁷⁸

6 b. Toyota’s “New Lift Trucks [Are] Fitted with Engines Having Significantly
7 Greater Environmental Performance” and were developed under the key concept of “Attain the
8 Industry’s Top-Level Environmental Performance.”⁷⁹

9 c. “In 2013, [Toyota] successively developed three industrial engine models.
10 Leveraging our years of experience and combined strengths of our diverse businesses, these
11 engines have attained significantly higher environmental performance.”⁸⁰

12 d. Toyota is “pushing forward environmentally friendly technologies and
13 manufacturing processes: Toyota remains the first and only manufacturer to offer UL-listed, EPA
14 and CARB-certified Compressed Natural Gas (CNG) powered lift trucks.”⁸¹

15 81. In addition to this steady stream of false and misleading statements about
16 emissions and sustainability, Toyota’s representations about other performance features like
17 torque and horsepower were—as one would expect—ubiquitous.⁸²

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21 ⁷⁸ Toyota Material Handling / National Arbor Day Foundation Joint Press Release (Nov. 20,
2006), *supra* n.74.

22 ⁷⁹ Toyota Industries Report 2014 “Special Feature,” *Development of New Lift Trucks Fitted with*
23 *Engines Having Significantly Greater Environmental Performance*, available at:
<https://www.toyota-industries.com/investors/items/p16e-p19e.pdf>.

24 ⁸⁰ *Id.*

25 ⁸¹ Vesco ToyotaLift, *Toyota Ranked Number One Lift Tuck Supplier for Tenth Consecutive Year*
(Oct. 24, 2012), available at: <http://www.vescoforklifts.com/news/50.php>.

26 ⁸² *See, e.g.*, Diesel 1ZS ([https://key-components.toyota-](https://key-components.toyota-industries.com/products/engine/diesel/1zs/)
27 [industries.com/products/engine/diesel/1zs/](https://key-components.toyota-industries.com/products/engine/diesel/1zs/)); Diesel 1DZ ([https://key-components.toyota-](https://key-components.toyota-industries.com/products/engine/diesel/1dz/)
28 [industries.com/products/engine/diesel/1dz/](https://key-components.toyota-industries.com/products/engine/diesel/1dz/)); Gas 4Y ([https://key-components.toyota-](https://key-components.toyota-industries.com/products/engine/gasoline/4y/)
[industries.com/products/engine/gasoline/4y/](https://key-components.toyota-industries.com/products/engine/gasoline/4y/)); Gas 1FS ([https://key-components.toyota-](https://key-components.toyota-industries.com/products/engine/gasoline/1fs/)
[industries.com/products/engine/gasoline/1fs/](https://key-components.toyota-industries.com/products/engine/gasoline/1fs/)); *see also* Toyota Industries Report, *Development of*
New Lift Trucks Fitted with Engines Having Significantly Greater Environmental Performance,
available at: <https://www.toyota-industries.com/investors/items/p16e-p19e.pdf>.

1 82. As described throughout this Complaint, these statements about the Class Engines
2 and Class Vehicles were material and misleading. Put simply, Toyota cheated on its tests and then
3 lied about it both to the regulators and consumers.

4 **E. Toyota Motor Corporation fostered a culture of noncompliance and fraud at**
5 **its many subsidiaries and affiliates, and bears responsibility for their failures.**

6 83. As described above, TMC is at the center of a constellation of scandals (CAA
7 reporting for TMC vehicles, certification test reporting for TMC vehicles, Hino, Daihatsu, TICO),
8 including this one. The thread tying them all together is the culture of fraud, regulatory
9 noncompliance, and deception emanating from TMC. Indeed, Akio Toyoda, the Chairman and
10 (for much of the relevant time period) President and CEO of TMC, “took full responsibility” for
11 the TICO forklifts scandal and apologized to Toyota’s “customers and stakeholders for the
12 inconvenience and concern caused by the successive irregularities at Hino Motors, Daihatsu and
13 Toyota Industries.”⁸³

14 84. As noted in a prominent Japanese newspaper, the series of scandals “invi[e]
15 doubts about the carmarker group’s governance,” and the “situation should be taken as a problem
16 with the whole group,” including TMC. As the hub of the wheel on which all of these scandals
17 turn, “it is unacceptable for Toyota [Motor Company] to merely pass the buck to its
18 subsidiaries.”⁸⁴ Plaintiffs agree.

19 85. Further evidence of TMC’s strong nexus to the facts of this Complaint is found in
20 the significant corporate overlap between TMC and TICO. As of March 2023, TMC owned
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23 ⁸³ Chris Pandolfo, FOXBusiness, *Toyota chairman issues apology for subsidiary safety scandal,*
24 *brand remains world's top-seller* (Jan. 30, 2024), available at: [https://www.foxbusiness.com/fox-](https://www.foxbusiness.com/fox-news-auto/toyota-chairman-issues-apology-subsiary-safety-scandal-brand-remains-worlds-top-seller)
25 *news-auto/toyota-chairman-issues-apology-subsiary-safety-scandal-brand-remains-worlds-top-*
26 *seller*; Reuters, *Toyota remains world’s top-selling automaker; chairman apologizes over*
27 *scandals* (Jan. 30, 2024), available at: [https://www.cnbc.com/2024/01/30/toyota-remains-top-](https://www.cnbc.com/2024/01/30/toyota-remains-top-selling-automaker-chair-apologizes-over-scandals.html)
28 *selling-automaker-chair-apologizes-over-scandals.html*; Financial times, *Toyota chair apologises*
for faulty data scandals and promises action, available at: [https://www.ft.com/content/8eff37e4-](https://www.ft.com/content/8eff37e4-433c-4ab8-85e3-5be70a165588)
433c-4ab8-85e3-5be70a165588.

⁸⁴ The Mainichi, *Editorial: Toyota group must seek and destroy roots of rampant fraud, poor oversight* (Feb. 3, 2024), available at: <https://mainichi.jp/english/articles/20240203/p2a/00m/0op/017000c>.

1 24.7% of TICO's voting rights and was the "primary" purchaser of TICO's automobile and
2 engine products. TICO, in turn, owns some 8% of TMC's shares.⁸⁵

3 86. In addition to their reciprocal ownership stakes and further cementing the blurred
4 lines between them, the companies also closely collaborate in their work for engine design,
5 development, and testing. In 2014, the companies moved to officially consolidate their "joint
6 diesel engine development and production" under TICO. This delegation structure meant that
7 TMC could then focus on "the development of cutting-edge base technologies" that would be
8 used in TICO's engine development work.⁸⁶ By its nature, this complementary structure means
9 the companies worked closely together to reciprocally design and build the final engine product
10 from the ground up.

11 87. Prior to this reorganization for diesel engine work in 2014, TMC previously
12 conducted some of its own diesel engine development and design work, which on information
13 and belief situates the design and development work for earlier model year compression ignition
14 (diesel) Class Vehicles directly under TMC during that time period.

15 88. All of this points to one conclusion: TMC was not a distant and innocent corporate
16 affiliate, but rather very much involved in creating the culture and directing the policies
17 responsible for the fraud underlying this Complaint. Throughout numerous similar testing
18 scandals within the Toyota corporate family, TMC remains the common denominator. Discovery
19 will further reveal the nature and extent of TMC's role in this latest scandal, including in
20 developing the Class Vehicles and their engines and relevant components (both before and after
21 the 2014 reorganization). This could include for example TMC personnel involved in the design
22 and development work for the Class Engines or their components, in monitoring TICO in its
23 engine development and testing work delegated by TMC, or in sharing policies, resources, or
24 testing facilities that enabled the misconduct described herein.

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26 ⁸⁵ Toyota Industries Corporation, Annual Financial Report (For the Year Ended March 31, 2023),
27 available at: [https://www.toyota-](https://www.toyota-industries.com/investors/item/2023_annual_financial_report_E.pdf)
[industries.com/investors/item/2023_annual_financial_report_E.pdf](https://www.toyota-industries.com/investors/item/2023_annual_financial_report_E.pdf).

28 ⁸⁶ See Toyota Industries Corporation, News Release, *Toyota Industries Corp. and Toyota Motor Corp. to Consolidate Diesel Engine Development and Production* (Nov. 28, 2014), available at: <https://www.toyota-industries.com/news/2014/11/28/004920/index.html>.

1 * * *

2 89. Defendants' deceptive actions harmed Plaintiffs and the Classes. As a result of
3 Defendants' unfair, deceptive, and/or fraudulent business practices, and failure to disclose that the
4 Class Vehicles were designed to mislead consumers and businesses about their true emissions
5 levels and performance, owners and lessees of the Class Vehicles have suffered losses in money
6 and/or property. Plaintiffs did not receive the vehicles they paid for and reasonably expected to
7 receive and, as a result, have suffered damages.

8 **VII. CLASS ACTION ALLEGATIONS**

9 90. Plaintiffs bring this lawsuit as a class action pursuant to Federal Rules of Civil
10 Procedure 23(a), (b)(1), (b)(2), (b)(3), and/or (c)(4), on behalf of themselves and all others
11 similarly situated as members of the following Nationwide Class and State Classes (collectively,
12 the "Classes"). The Class Vehicles implicated by this Complaint include all of those equipped
13 with one of the following Class Engines (listed by certification year): 2014 1KD, 2014 1ZS, 2014
14 1FS, 2009 4Y, 2007 4Y, 2007 1DZ, 2007 1FZ, 2020 1KD for construction machinery, and 2016
15 1KD for construction machinery.

16 91. The proposed Nationwide Class includes all persons and entities that purchased or
17 leased a Class Vehicle in the United States, including its territories.

18 92. Plaintiffs also propose separate State Classes for the states listed in the claims
19 below, each of which includes all persons and entities that purchased or leased a Class Vehicle in
20 that state.

21 93. Excluded from the Classes are:

22 a. Defendants' officers, directors and employees; Defendants' affiliates and
23 affiliates' officers, directors and employees; Defendants' distributors and distributors' officers,
24 directors and employees; and

25 b. Judicial officers and their immediate family members and associated court
26 staff assigned to this case.

1 94. Plaintiffs reserve the right to amend the Class definitions if discovery and further
2 investigation reveal that any Class should be expanded, reduced, divided into additional
3 subclasses or State classes under Rule 23(c)(5), or modified in any other way.

4 95. Certification of Plaintiffs' claims for class-wide treatment is appropriate because
5 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as
6 would be used in individual actions alleging the same claims. This action may also, in the Court's
7 discretion, be maintained as a class action with respect to particular common issues.

8 96. This action has been brought and may be properly maintained on behalf of each of
9 the Classes proposed herein under Federal Rule of Civil Procedure 23 and satisfies the
10 numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of its
11 provisions.

12 **A. Numerosity: Federal Rule of Civil Procedure 23(a)(1)**

13 97. The members of the Class are so numerous and geographically dispersed that
14 individual joinder of all Class members is impracticable. Plaintiffs are informed and believe that
15 there are hundreds of thousands of members of the Class, and multiple hundreds or thousands of
16 members in each State Class. The precise number and identities of Nationwide Class and State
17 Class members may be ascertained from Defendants' records. Class members may be notified of
18 the pendency of this action by recognized, Court-approved notice dissemination methods, which
19 may include U.S. mail, electronic mail, internet postings, and/or published notice.

20 **B. Commonality and Predominance: Federal Rule of Civil Procedure 23(a)(2)**
21 **and 23(b)(3)**

22 98. This action involves common questions of law and fact, which predominate over
23 any questions affecting individual Class members, including, without limitation:

- 24 a. Whether Defendants engaged in the conduct alleged herein;
- 25 b. Whether Defendants designed, advertised, marketed, distributed, leased,
26 sold, or otherwise placed Class Vehicles into the stream of commerce in the United States and
27 California;
- 28

1 c. Whether Defendants owed a duty to disclose accurate emissions and output
2 performance of the Class Vehicles;

3 d. Whether Defendants misrepresented the Class Vehicles' emissions and
4 output performance;

5 e. Whether Defendants' conduct violates consumer protection statutes,
6 warranty laws, and other laws as asserted herein;

7 f. Whether Plaintiffs and the other Class members are entitled to equitable
8 relief, including, but not limited to, restitution or injunctive relief; and

9 g. Whether Plaintiffs and the other Class members are entitled to damages
10 and other monetary relief and, if so, in what amount.

11 **C. Typicality: Federal Rule of Civil Procedure 23(a)(3)**

12 99. Plaintiffs' claims are typical of the claims of the Class members whom they seek
13 to represent under Fed. R. Civ. P. 23(a)(3) because Plaintiffs and each Class member purchased
14 or leased a Class Vehicle and were comparably injured through Defendants' wrongful conduct as
15 described above. Plaintiffs and the other Class members suffered damages as a direct proximate
16 result of the same wrongful practices by Defendants. Plaintiffs' claims arise from the same
17 practices and courses of conduct that give rise to the claims of the other Class members.
18 Plaintiffs' claims are based upon the same legal theories as the claims of the other Class
19 members.

20 **D. Adequacy: Federal Rule of Civil Procedure 23(a)(4)**

21 100. Plaintiffs will fairly and adequately represent and protect the interests of the Class
22 members as required by Fed. R. Civ. P. 23(a)(4). Plaintiffs' interests do not conflict with the
23 interests of the Class members. Plaintiffs have retained counsel competent and experienced in
24 complex class action litigation, including vehicle emissions litigation and other complex class
25 action proceedings. Plaintiffs intend to prosecute this action vigorously. Neither Plaintiffs nor
26 their counsel have interests that conflict with the interests of the other Class members. Therefore,
27 the interests of the Class members will be fairly and adequately protected.
28

1 **E. Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2)**

2 101. Defendants have acted or refused to act on grounds generally applicable to
3 Plaintiffs and the other members of the Class, thereby making appropriate final injunctive relief
4 and declaratory relief, as described below, with respect to the Class as a whole.

5 **F. Superiority: Federal Rule of Civil Procedure 23(b)(3)**

6 102. A class action is superior to any other available means for the fair and efficient
7 adjudication of this controversy, and no unusual difficulties are likely to be encountered in its
8 management. The damages or other financial detriment suffered by Plaintiffs and the other Class
9 members are relatively small compared to the burden and expense that would be required to
10 individually litigate their claims against Defendants such that it would be impracticable for
11 members of the Class to individually seek redress for Defendants' wrongful conduct.

12 103. Even if Class members could afford individual litigation, the court system could
13 not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and
14 increases the delay and expense to all parties and the court system. By contrast, the class action
15 device presents far fewer management difficulties and provides the benefits of single
16 adjudication, economy of scale, and comprehensive supervision by a single court.

17 **VIII. ANY APPLICABLE STATUTES OF LIMITATION ARE TOLLED**

18 **A. Discovery Rule Tolling**

19 104. For the following reasons, any otherwise-applicable statutes of limitation have
20 been tolled by the discovery rule with respect to all claims.

21 105. Through the exercise of reasonable diligence, and within any applicable statutes of
22 limitation, Plaintiffs and members of the proposed Class could not have discovered that
23 Defendants were concealing and misrepresenting the Class Vehicles' emissions and performance
24 levels, including but not limited to their practice of secretly manipulating and fabricating test
25 results.

26 106. Plaintiffs and the other Class members could not have reasonably discovered, and
27 did not know of facts that would have caused a reasonable person to suspect, that Defendants
28 intentionally failed to report information within their knowledge to federal and state authorities,

1 dealerships, businesses, or consumers until—at the earliest—January 29, 2024, when Defendants
2 released the Special Investigation Committee report that first disclosed the scope of the emissions
3 and performance frauds and their relationship to the Class Vehicles in the U.S.

4 107. Likewise, a reasonable and diligent investigation could not have disclosed that
5 Defendants had information in their possession about the existence of its sophisticated emissions
6 and performance deceptions and that they concealed that information, which Plaintiffs only
7 discovered shortly before this action was filed.

8 **B. Tolling Due to Fraudulent Concealment**

9 108. Throughout the relevant time period, all applicable statutes of limitation have been
10 tolled by Defendants' knowing and active fraudulent concealment of the facts alleged in this
11 Complaint.

12 109. Upon information and belief, prior to the date of this Complaint, and at least as
13 early as 2020—when U.S. authorities began their investigation—Defendants knew of the
14 emissions and performance defects in certain Class Vehicles, but continued to allow Plaintiffs and
15 Class members to purchase and operate their Class Vehicles. In so doing, Defendants concealed
16 and/or failed to notify Plaintiffs and Class members about the true nature of the Class Vehicles.

17 110. Instead of disclosing their deception, Defendants falsely represented the Class
18 Vehicles' emissions and performance.

19 111. Any otherwise-applicable statutes of limitation have therefore been tolled by
20 Defendants' exclusive knowledge and active concealment of the facts alleged herein.

21 **C. Estoppel**

22 112. Defendants were and are under a continuous duty to disclose to Plaintiffs and
23 Class members the true character, quality, and nature of the Class Vehicles, including their output
24 performance, emissions systems, and their compliance with applicable federal and state law.

25 113. Although Defendants had the duty throughout the relevant period to disclose to
26 Plaintiffs and Class members that they had engaged in the deception described in this Complaint,
27 Defendants did not disclose accurate output performance and emissions statistics and did not
28 correct their misleading disclosures with respect to the Class Vehicles. Defendants actively

1 concealed the true character, quality, and nature of the emission and engine output defects in the
2 Class Vehicles, and made misrepresentations about the quality, reliability, characteristics, and/or
3 performance of the Class Vehicles. Plaintiffs and Class members reasonably relied upon
4 Defendants' knowing and active concealment of these facts.

5 114. Based on the foregoing, Defendants are estopped from relying on any statutes of
6 limitations in defense of this action.

7 **IX. CAUSES OF ACTION**

8 **A. Claims Asserted on Behalf of the Nationwide Class**

9 **NATIONWIDE COUNT I:**
10 **Fraud By Concealment**
11 **(Common Law)**

12 115. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
13 forth herein.

14 116. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class or, in
15 the alternative, on behalf of the State Classes, against all Defendants.

16 117. Defendants are liable for both fraudulent concealment and nondisclosure. *See, e.g.*,
17 Restatement (Second) of Torts §§ 550-51 (1977).

18 118. Specifically, Defendants committed fraud by manipulating and falsifying their
19 engine tests and test data for emissions and output testing, misrepresenting the Class Vehicles'
20 true output and emissions performance, concealing the true nature of the Class Vehicles'
21 emissions and performance from Plaintiffs and the Classes, and attesting that the Class Vehicles
22 complied with applicable emissions laws.

23 119. A reasonable customer would not have expected that their Class Vehicles did not
24 offer the represented and reasonably expected emissions or output performance.

25 120. Defendants knew that these facts about the Class Vehicles would be important to
26 customers deciding to purchase or lease them. Defendants ensured that Plaintiffs and the Classes
27 did not discover this information through actively concealing it. Defendants intended for
28 Plaintiffs and the Classes to rely on their misrepresentations and omissions—which they did by
paying for the Class Vehicles.

1 121. Defendants had a duty to disclose the emissions and performance defects. These
2 important facts were known and/or accessible only to the Defendants, including due to their
3 involvement in the design, installment, and testing of engines in the Class Vehicles. Defendants
4 also knew that these technical facts were not known to or reasonably discoverable by Plaintiffs
5 and the Classes.

6 122. Defendants also had a duty to disclose the true nature of the Class Vehicles in light
7 of their affirmative statements about the Class Vehicles with respect to emissions performance
8 and performance. In uniform advertising and marketing materials provided with the Class
9 Engines and Class Vehicles, Defendants intentionally concealed, suppressed, and failed to
10 disclose to Plaintiffs and the Classes the emissions and performance defects.

11 123. Defendants knew these statements were misleading, deceptive, and incomplete
12 without the disclosure of the additional facts set forth above regarding the existence of the
13 emissions and performance test manipulation. Because they volunteered to provide information
14 about the Class Vehicles that they offered for sale to Plaintiffs and the Classes, Defendants had
15 the duty to disclose the whole truth. They did not.

16 124. Defendants' deceptive actions harmed Plaintiffs and the Classes. Because
17 Defendants fraudulently concealed the truth about the Class Vehicles, customers who paid for the
18 Class Vehicles suffered economic losses. Plaintiffs suffered damages including but not limited to
19 overpaying for vehicles that did not perform as represented and reasonably expected.
20 Accordingly, Defendants are liable to Plaintiffs and the Classes for damages in an amount to be
21 proven at trial.

22 125. Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with
23 intent to defraud; in reckless disregard of the rights of Plaintiffs and the Classes; and to enrich
24 themselves. Their misconduct warrants an assessment of punitive damages in an amount
25 sufficient to deter such conduct in the future, which amount shall be determined according to
26 proof at trial.

**NATIONWIDE COUNT II:
Unjust Enrichment**

1
2
3 126. Plaintiffs incorporate by reference paragraphs 1-114 above as though fully set
4 forth herein.

5 127. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class or, in
6 the alternative, on behalf of the State Classes, against all Defendants.

7 128. By reason of their conduct, Defendants caused damages to Plaintiffs and the
8 Classes. Plaintiff and the Classes conferred a benefit on Defendants by overpaying for Class
9 Vehicles at prices that were artificially inflated by Defendants' misrepresentations, concealment,
10 and omissions alleged above regarding the true nature and output of the Class Vehicles'
11 emissions and performance.

12 129. As a result of Defendants' fraud and deception, Plaintiffs and members of the
13 Classes were not aware of the true facts concerning the Class Vehicles.

14 130. Plaintiffs and members of the Classes did not benefit from the Defendants'
15 misconduct.

16 131. Defendants knowingly benefitted from their unjust conduct. They sold and leased
17 the Class Vehicles for more than what the vehicles were worth, and/or accepted the inflated
18 benefits from the sale and lease of the Class Vehicles, at the expense of Plaintiffs and the Classes.

19 132. Plaintiffs and the Classes conferred tangible and material economic benefits upon
20 Defendants when they purchased or leased the Class Vehicles. Defendants profit from sales and
21 leases of Class Vehicles, including through Toyota's authorized dealership network.

22 133. Defendants readily accepted and retained these benefits from Plaintiffs and the
23 Classes. Plaintiffs and the Classes would not have purchased or leased the Class Vehicles, or
24 would have paid less for them, had they known of the truth about these vehicles at the time of
25 purchase or lease. Therefore, Defendants profited from the sale and lease of the Class Vehicles to
26 the detriment and expense of Plaintiffs and the Classes.

27 134. It is inequitable and unconscionable for Defendants to retain these benefits because
28 they intentionally manipulated and falsified the Class Vehicles' engine tests and test data for

1 emissions and output testing, misrepresented the Class Vehicles' true output and emissions
 2 performance, concealed the true nature of the Class Vehicles' emissions and performance from
 3 Plaintiffs and the Classes, and attested that the Class Vehicles complied with applicable emissions
 4 laws. Plaintiffs and members of the Classes would not have purchased or leased the Class
 5 Vehicles or would have paid less for them, had Defendants not engaged in these
 6 misrepresentations, concealment, and omissions.

7 135. Plaintiffs and the Classes do not have an adequate remedy at law.

8 136. Equity cannot in good conscience permit Defendants to retain the benefits that
 9 they derived from Plaintiffs and the Classes through unjust and unlawful acts, and therefore
 10 restitution or disgorgement of the amount of Defendants' unjust enrichment is necessary.

11 137. Plaintiffs plead this claim separately as well as in the alternative to their claims for
 12 damages under Fed. R. Civ. P. 8(a)(3).

13 **B. Claims Asserted on Behalf of the State-Specific Classes**

14 **1. California**

15 **CALIFORNIA COUNT I:**
 16 **Violations of the California Unfair Competition Law**
 17 **Cal. Bus. & Prof. Code § 17200 *et seq.***
(By Plaintiff Broadmoor on Behalf of the California State Class)

18 138. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
 19 forth herein.

20 139. Plaintiff Broadmoor (for the purposes of this count, "Plaintiff") brings this claim
 21 on behalf of itself and the California State Class against all Defendants.

22 140. California Business and Professions Code § 17200 prohibits any "unlawful, unfair,
 23 or fraudulent business act or practices." Defendants have engaged in unlawful, fraudulent, and
 24 unfair business acts and practices in violation of the Unfair Competition Law ("UCL").

25 141. Defendants' knowing and intentional conduct, as described herein, constitutes
 26 unlawful, fraudulent, and unfair business acts and practices in violation of the UCL. Defendants
 27 violated the UCL in at least the following ways:
 28

1 A. by knowingly and intentionally failing to disclose to Plaintiff and
2 California State Class members material information about the Class Vehicles' true
3 emissions and output performance while obtaining money from the California State Class
4 members;

5 B. by misrepresenting the Class Vehicles as possessing functional and defect-
6 free, EPA-compliant engine systems; and

7 C. by knowingly designing and manufacturing the Class Vehicles in a manner
8 that they emit more pollution and achieve worse output performance on the road than
9 what was disclosed to regulators and represented to individual and entities who purchased
10 or leased them, and failing to fix the defects free of charge;

11 D. by violating the other California laws alleged herein, including the False
12 Advertising Law, California Commercial Code, and Song-Beverly Consumer Warranty
13 Act.

14 142. Defendants' misrepresentations and omissions alleged herein caused Plaintiff and
15 the California State Class members to make their purchases or leases of their Class Vehicles.
16 Absent those misrepresentations and omissions, Plaintiff and California State Class members
17 would not have purchased or leased these Class Vehicles, would not have purchased or leased
18 these Class Vehicles at the prices they paid, and/or would have purchased or leased less
19 expensive alternative vehicles that did not have inflated performance values or issues with
20 exhaust emissions.

21 143. Accordingly, Plaintiff and California State Class members have suffered
22 ascertainable loss and actual damages as a direct and proximate result of Defendants'
23 misrepresentations and their concealment of and failure to disclose material information.

24 144. Defendants' violations present a continuing risk to Plaintiffs and California State
25 Class members, as well as to the general public. Defendants' unlawful acts and practices
26 complained of herein affect the public interest.

27 145. Plaintiffs plead this claim separately as well as in the alternative to their claims for
28 damages under Fed. R. Civ. P. 8(a)(3). Additionally, Plaintiffs have no adequate remedy at law,

1 including for the future unlawful acts, methods, or practices as set forth above absent an
2 injunction. Moreover, Defendants' alleged misconduct is ongoing and therefore damages are not
3 certain or prompt and thus are an inadequate remedy to address the conduct that injunctions are
4 designed to prevent.

5 146. Plaintiff requests that this Court enter such orders or judgments as may be
6 necessary to enjoin Defendants from continuing its unfair, unlawful, and/or deceptive practices
7 and to restore to members of the California State Class any money it acquired by unfair
8 competition, including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. &
9 Prof. Code § 17203 and Cal. Bus. & Prof. Code § 3345; and for such other relief set forth below.

10 147. Plaintiffs, on behalf of themselves and the California State Class, further seek an
11 award of attorneys' fees and costs under California Code of Civil Procedure § 1021.5.

12 **CALIFORNIA COUNT II:**
13 **Violations of the California False Advertising Law**
14 **Cal. Civ. Code § 17500 *et seq.***
(By Plaintiff Broadmoor on Behalf of the California State Class)

15 148. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
16 forth herein.

17 149. Plaintiff Broadmoor (for the purposes of this count, "Plaintiff") brings this claim
18 on behalf of itself and the California State Class against all Defendants.

19 150. California Bus. & Prof. Code § 17500 states: "It is unlawful for any . . .
20 corporation . . . with intent directly or indirectly to dispose of real or personal property . . . to
21 induce the public to enter into any obligation relating thereto, to make or disseminate or cause
22 to be made or disseminated . . . from this state before the public in any state, in any newspaper
23 or other publication, or any advertising device, . . . or in any other manner or means whatever,
24 including over the Internet, any statement . . . which is untrue or misleading, and which is known,
25 or which by the exercise of reasonable care should be known, to be untrue or misleading."

26 151. Defendants caused to be made or disseminated through California and the United
27 States, through advertising, marketing and other publications, statements that were untrue or
28 misleading, and which were known, or which by the exercise of reasonable care should have been

1 known to Defendants, to be untrue and misleading to consumers, including California State Class
2 members.

3 152. Defendants have violated Section 17500 because the misrepresentations and
4 omissions regarding the reliability and functionality of Class Vehicles as set forth in this
5 Complaint were material and likely to deceive a reasonable consumer.

6 153. Plaintiff and the other California State Class members have suffered an injury in
7 fact, including the loss of money or property, as a result of Defendants' unfair, unlawful, and/or
8 deceptive practices. In purchasing or leasing their Class Vehicles, the California State Class relied
9 on the misrepresentations and/or omissions of Defendants with respect to the performance and
10 reliability of the Class Vehicles. Defendants' representations turned out not to be true because the
11 Class Vehicles are distributed with faulty and defective systems, rendering certain performance
12 and emissions functions unreliable.

13 154. All of the wrongful conduct alleged herein occurred in the conduct of Defendants'
14 business. Defendants' wrongful conduct is part of a pattern or generalized course of conduct that
15 was perpetuated, both in the State of California and nationwide.

16 155. The California State Class requests that this Court enter such orders or judgments
17 as may be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or
18 deceptive practices and to restore to the California State Class any money Defendants acquired by
19 unfair competition, including restitution and/or restitutionary disgorgement, and for such other
20 relief set forth below.

21 **CALIFORNIA COUNT III:**
22 **Breach of Express Warranty**
23 **Cal. Com. Code §§ 2313 and 10210**
(By Plaintiff Broadmoor on Behalf of the California State Class)

24 156. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 157. Plaintiff Broadmoor (for the purposes of this count, "Plaintiff") brings this claim
27 on behalf of itself and the California State Class against all Defendants.
28

1 158. Defendants are and were at all relevant times “merchant[s]” with respect to
2 vehicles under Cal. Com. Code §§ 2104(1) and 10103(c), and “sellers” of vehicles under
3 § 2103(1)(d).

4 159. With respect to leases, Defendants are and were at all relevant times “lessors” of
5 vehicles under Cal. Com. Code § 10103(a)(16).

6 160. The Class Vehicles are and were at all relevant times “goods” within the meaning
7 of Cal. Com. Code §§ 2105(1) and 10103(a)(8).

8 161. In connection with the purchase or lease of new Class Vehicles, Defendants
9 provide a Basic Truck Factory Warranty for a period of one year or 2,000 hours, to cover all
10 factory installed options (except tires and batteries), and a Powertrain Warranty for a period of
11 three years or 6,000 hours, to cover the engines, transmission, differential, or drive axle. This
12 warranty exists to repair the vehicle in case of “defects in material and workmanship.”

13 162. In addition, federal regulations also require manufacturers of spark-ignition
14 (gasoline) non-road engines and compression ignition (diesel) non-road engines to provide federal
15 emissions control warranties applicable to each category.

16 163. For spark-ignition engines, this includes a warranty that the “new nonroad engine,
17 including all parts of its emission-control system” was “designed, built, and equipped so it
18 conforms at the time of sale” with applicable emissions requirements, and is “free from defects in
19 materials and workmanship that may keep it from meeting these requirements.” *See* 40 C.F.R.
20 § 1048.120. Analogous warranty requirements govern for compression-ignition vehicles as well.
21 *See* 40 C.F.R. § 1039.120. Thus, Defendants also provide an express warranty for their Class
22 Vehicles through a Federal Emissions Warranty.

23 164. The warranty required by the EPA for spark-ignition vehicles applies for three
24 years, or at least 50 percent of the engine's useful life in hours of operation, whichever comes
25 first. Further, for “a high-cost warranted part” (i.e., a part with a replacement value greater than
26 \$400, *see* 40 C.F.R. § 1048.801) the warranty must be valid for at least five years, or 70 percent
27 of the engine's useful life in hours of operation, whichever comes first. In any case, the emission-
28

1 related warranty for the engine may not be shorter than the standard warranty terms. *See* 40
2 C.F.R. § 1048.120.

3 165. The Warranty required by the EPA for compression-ignition vehicles applies for
4 3,000 hours or five years, whichever comes first, and likewise may not be shorter than the
5 standard warranty terms. *See* 40 C.F.R. § 1039.120.

6 166. As manufacturers of large spark- and compression-ignition-powered vehicles,
7 Defendants were required to provide these warranties to purchasers or lessees of Class Vehicles.

8 167. Defendants' warranties formed a basis of the bargain that was reached when
9 consumers purchased or leased Class Vehicles.

10 168. Despite the existence of warranties, Defendants failed to inform Plaintiff and
11 California State Class members that the Class Vehicles were defectively designed and
12 manufactured to emit more pollution and achieve inferior output performance than what was
13 disclosed to regulators and represented to individual and entities who purchased or leased them,
14 and Defendants failed to fix the defective emission components free of charge.

15 169. Defendants breached the express warranty promising to repair and correct
16 Defendants' defects in materials and workmanship. Defendants have not repaired or adjusted, and
17 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

18 170. Affording Defendants a reasonable opportunity to cure their breach of written
19 warranties would be unnecessary and futile here.

20 171. Furthermore, the limited warranty promising to repair and correct Defendants'
21 defects in materials and workmanship fails in its essential purpose because the contractual remedy
22 is insufficient to make California State Class members whole and because Defendants have failed
23 and/or have refused to adequately provide the promised remedies within a reasonable time.

24 172. Accordingly, recovery by Plaintiff and California State Class members is not
25 restricted to the limited warranty promising to repair and correct Defendants' defects in materials
26 and workmanship, and they seek all remedies as allowed by law.

27 173. Also, as alleged in more detail herein, at the time Defendants warranted and sold
28 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did

1 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
2 material facts regarding the Class Vehicles. California State Class members were therefore
3 induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

4 174. Moreover, many of the injuries flowing from the Class Vehicles cannot be
5 resolved through the limited remedy of repairing and correcting Defendants' defects in materials
6 and workmanship as many incidental and consequential damages have already been suffered
7 because of Defendants' fraudulent conduct as alleged herein, and because of its failure and/or
8 continued failure to provide such limited remedy within a reasonable time, and any limitation on
9 Plaintiff and California State Class members' remedies would be insufficient to make them
10 whole.

11 175. Finally, because of Defendants' breach of warranty as set forth herein, Plaintiff
12 and California State Class members assert, as additional and/or alternative remedies, the
13 revocation of acceptance of the goods and the return to them of the purchase or lease price of all
14 Class Vehicles currently owned or leased, and for such other incidental and consequential
15 damages as allowed.

16 176. Defendants were provided reasonable notice of these issues by way of a letter sent
17 by Plaintiff as well as the regulators' investigations.

18 177. As a direct and proximate result of Defendants' breach of express warranties,
19 California State Class members have been damaged in an amount to be determined at trial.

20 **CALIFORNIA COUNT IV:**
21 **Breach of Implied Warranty of Merchantability**
22 **Cal. Com. Code §§ 2314 and 10212**
(By Plaintiff Broadmoor on Behalf of the California State Class)

23 178. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
24 forth herein.

25 179. Plaintiff Broadmoor (for the purposes of this count, "Plaintiff") brings this claim
26 on behalf of itself and the California State Class against all Defendants.

1 180. Defendants are and were at all relevant times “merchant[s]” with respect to
2 vehicles under Cal. Com. Code §§ 2104(1) and 10103(c), and “sellers” of vehicles under
3 § 2103(1)(d).

4 181. With respect to leases, Defendants are and were at all relevant times “lessors” of
5 vehicles under Cal. Com. Code § 10103(a)(16).

6 182. The Class Vehicles are and were at all relevant times “goods” within the meaning
7 of Cal. Com. Code §§ 2105(1) and 10103(a)(8).

8 183. A warranty that the Class Vehicles were in merchantable condition and fit for the
9 ordinary purpose for which vehicles are used is implied by law pursuant to Cal. Com. Code
10 §§ 2314 and 10212.

11 184. These Class Vehicles, when sold or leased and at all times thereafter, were
12 materially different from vehicles and component engines Defendants used for emissions testing,
13 included defects that led to inflated and misleading output performance and emissions ratings,
14 and/or did not comply with emissions regulations when being driven, and were therefore not
15 merchantable and not fit for the ordinary purpose for which vehicles are used.

16 185. Defendants were provided reasonable notice of these issues by way of a letter sent
17 by Plaintiff as well as the regulators’ investigations.

18 186. As a direct and proximate result of Defendants’ breach of the implied warranty of
19 merchantability, Plaintiff and California State Class members have been damaged in an amount to
20 be proven at trial.

21 **CALIFORNIA COUNT V:**
22 **Violation of Song-Beverly Consumer Warranty Act, Breach of Implied Warranty**
23 **Cal Civ. Code § 1790, *et seq.***
(By Plaintiff Broadmoor on Behalf of the California State Class)

24 187. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 188. Plaintiff Broadmoor (for the purposes of this count, “Plaintiff”) brings this claim
27 on behalf of itself and the California State Class against all Defendants.
28

1 189. Plaintiff and members of the California State Class who purchased Class Vehicles
2 in California are “buyers” within the meaning of Cal. Civ. Code § 1791.

3 190. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code
4 § 1791(a).

5 191. Defendants are the “manufacturer[s]” of the Class Vehicles within the meaning of
6 Cal. Civ. Code § 1791(j).

7 192. Defendants impliedly warranted to Plaintiff and the other members of the
8 California State Class that the Class Vehicles were “merchantable” within the meaning of Cal.
9 Civ. Code §§ 1791.1(a) & 1792; however, the Class Vehicles do not have the quality that a buyer
10 would reasonably expect.

11 193. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of merchantability” or
12 “implied warranty that goods are merchantable” means that the consumer goods meet each of the
13 following:

- 14 A. Pass without objection in the trade under the contract description.
- 15 B. Are fit for the ordinary purposes for which such goods are used.
- 16 C. Are adequately contained, packaged, and labeled.
- 17 D. Conform to the promises or affirmations of fact made on the container or
18 label.

19 194. The Class Vehicles would not pass without objection in the automotive trade
20 because they share a common design defect in that they were materially different from vehicles
21 and component engines Defendants used for emissions testing, included defects that led to
22 inflated and misleading output performance and emissions ratings, and/or did not comply with
23 emissions regulations when being driven, which conceals the vehicles’ true emissions.

24 195. Class Vehicles are not adequately labeled because the labeling fails to disclose the
25 fact that they are defective.

26 196. In the various channels of information through which Defendants sold and
27 marketed Class Vehicles, Defendants failed to disclose material information concerning the Class
28 Vehicles, which they had a duty to disclose. Defendants had a duty to disclose the defect because,

1 as detailed above: (a) Defendants knew about the defect; (b) Defendants had exclusive knowledge
2 of material facts not known to the general public or the other California State Class members;
3 (c) Defendants actively concealed material facts from the general public and California State
4 Class members concerning the Class Vehicles' true emissions and performance; and
5 (d) Defendants made partial representations about the Class Vehicles that were misleading
6 because they did not disclose the full truth. As detailed above, Defendants knew the information
7 concerning the defect at the time of advertising and selling the Class Vehicles, all of which was
8 intended to induce consumers to purchase the Class Vehicles.

9 197. Defendants breached the implied warranty of merchantability by manufacturing
10 and selling Class Vehicles that are defective. Furthermore, this defect has caused members of the
11 California State Class to not receive the benefit of their bargain and have caused the Class
12 Vehicles to depreciate in value.

13 198. Plaintiff and members of the California State Class have been damaged as a result
14 of the diminished value of Defendants' products.

15 199. Under Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiff and other members of the
16 California State Class are entitled to damages and other legal and equitable relief including, at
17 their election, the purchase price of their Class Vehicles, or the overpayment or diminution in
18 value of their Class Vehicles.

19 200. Under Cal. Civ. Code § 1794, Plaintiff and the other members of the California
20 State Class are entitled to costs and attorneys' fees.

21 **CALIFORNIA COUNT VI:**
22 **Violation of the Song-Beverly Consumer Protection Act, Breach of Express Warranty**
23 **Cal Civ. Code § 1790, *et seq.***
(By Plaintiff Broadmoor on Behalf of the California State Class)

24 201. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
25 forth herein.

26 202. Plaintiff Broadmoor (for the purposes of this count, "Plaintiff") brings this claim
27 on behalf of itself and the California State Class against all Defendants.
28

1 203. Plaintiff and Members of the California State Class who purchased or leased the
2 Class Vehicles in California are “buyers” within the meaning of California Civil Code § 1791(b).

3 204. The Class Vehicles are “consumer goods” within the meaning of California Civil
4 Code § 1791(a).

5 205. Defendants are “manufacturer[s]” of the Class Vehicles within the meaning of
6 California Civil Code § 1791(j).

7 206. Defendants made express warranties to members of the California State Class
8 within the meaning of California Civil Code §§ 1791.2 and 1793.2, as described above.

9 207. As set forth above in detail, the Class Vehicles are inherently defective in that they
10 were materially different from vehicles and component engines Defendants used for emissions
11 testing, included defects that led to inflated and misleading output and emissions ratings, and/or
12 did not comply with emissions regulations when being driven. This defect substantially impairs
13 the use and value of the Class Vehicles to reasonable consumers.

14 208. As a result of Defendants’ breach of their express warranties, members of the
15 California State Class received goods whose defect substantially impairs their value to Plaintiff
16 and the other members of the California State Class. Plaintiff and members of the California State
17 Class have been damaged as a result of, *inter alia*, the lesser value of Defendants’ products.

18 209. Pursuant to California Civil Code §§ 1793.2 & 1794, Plaintiff and members of the
19 California State Class are entitled to damages and other legal and equitable relief including, at
20 their election, the purchase price of their Class Vehicles, or the overpayment or diminution in
21 value of their Class Vehicles.

22 210. Pursuant to California Civil Code § 1794, Plaintiff and the other members of the
23 California State Class are entitled to costs and attorneys’ fees.

24 **CALIFORNIA COUNT VII:**
25 **Breach of Express California Emissions Warranties**
 Cal. Code Regs. 13 § 2425, 2435.
26 **(By Plaintiff Broadmoor on Behalf of the California State Class)**

27 211. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 212. Plaintiff Broadmoor (for the purposes of this count, “Plaintiff”) brings this claim
2 on behalf of itself and the California State Class against all Defendants.

3 213. Each Class Vehicle is covered by express California Emissions Warranties as a
4 matter of law. *See* Cal. Code Regs. tit. 13, §§ 2425, 2435.

5 214. The express California Emissions Warranties generally warrant “that the engine is
6 designed, built, and equipped so as to conform with all applicable regulations adopted by the Air
7 Resources Board” and “[f]ree from defects in materials and workmanship which cause the failure
8 of a warranted part to be identical in all material respects to the part as described in the engine
9 manufacturer's application for certification for a period of five years or 3,000 hours of operation,
10 whichever occurs first.” Cal. Code Regs. tit. 13, § 2425 (regulation applicable to compression
11 ignition engines, typically diesel).

12 215. For spark ignition vehicles (typically gasoline-powered), the warranty applies for
13 “3 years or 2,500 hours, whichever occurs first” and additionally provides the engine must be
14 “[f]ree from defects in materials and workmanship which cause the failure of a high-cost
15 warranted part to be identical in all material respects to the part as described in the engine
16 manufacturer's application for certification . . . for a period of five years or 3,500 hours of
17 operation, whichever occurs first.” Cal. Code Regs. tit. 13, § 2435 (spark ignition). High-cost
18 warranted parts are determined pursuant to a statutory formula. *Id.*

19 216. California law imposes express duties “on the manufacturer of consumer goods
20 sold in this state and for which the manufacturer has made an express warranty.” Cal. Civ. Code
21 § 1793.2. Among those duties, “if the manufacturer or its representative in this state does not
22 service or repair the goods to conform to the applicable express warranties after a reasonable
23 number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an
24 amount equal to the purchase price paid by the buyer, less that amount directly attributable to use
25 by the buyer prior to the discovery of the nonconformity.” *See* Cal. Civ. Code § 1793.2(d)(1).

26 217. Plaintiffs and California Subclass members are excused from the requirement to
27 “deliver nonconforming goods to the manufacturer’s service and repair facility within this state”
28

1 because it is unnecessary and futile, including due to the nature of the nonconformity. Cal. Civ.
2 Code § 1793.2(c).

3 218. This Complaint, as well as a letter sent by Plaintiffs to Defendants in advance of
4 filing, are written notice of nonconformity to Defendants and “shall constitute return of the
5 goods.” *Id.*

6 219. In addition to all other damages and remedies, California State Class members are
7 entitled to “recover a civil penalty of up to two times the amount of damages” for the
8 aforementioned violation. *See* Cal. Civ. Code § 1794(e).

9 **CALIFORNIA COUNT VIII:**
10 **Failure to Recall/Retrofit**
(By Plaintiff Broadmoor on Behalf of the California State Class)

11 220. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
12 forth herein.

13 221. Plaintiff Broadmoor (for the purposes of this count, “Plaintiff”) brings this claim
14 on behalf of itself and the California State Class against all Defendants.

15 222. Defendants manufactured, marketed, distributed, sold, or otherwise placed into the
16 stream of U.S. commerce the Class Vehicles, as set forth above.

17 223. Defendants knew or reasonably should have known that the Class Vehicles emit a
18 substantially increased amount of pollution and reasonably should have known that the Class
19 Vehicles were likely to be dangerous when used in a reasonably foreseeable manner.

20 224. Defendants failed to recall the Class Vehicles in a timely manner or warn of the
21 Class Vehicles’ heightened emissions.

22 225. A reasonable manufacturer in same or similar circumstances would have timely
23 and properly recalled the Class Vehicles.

24 226. Plaintiff and California State Class members were harmed by Defendants’ failure
25 to recall the Class Vehicles properly and in a timely manner and, as a result, have suffered
26 damages, caused by Defendants’ ongoing failure to properly recall, retrofit, and fully repair the
27 Class Vehicles. Defendants’ failure to timely recall the Class Vehicles was a substantial factor in
28 causing harm to Plaintiff and California State Class members as alleged herein.

1 2. New Jersey

2 **NEW JERSEY COUNT I:**
3 **Violations of the New Jersey Consumer Fraud Act**
4 **N.J. Stat. Ann. § 56:8-1 *et seq.***
5 **(By Plaintiff Ferraro Foods on Behalf of the New Jersey State Class)**

6 208. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
7 forth herein.

8 209. Plaintiff Ferraro Foods (for the purposes of this count, “Plaintiff”) brings this
9 claim on behalf of itself and the New Jersey State Class against all Defendants.

10 210. Plaintiff and New Jersey State Class members and Defendants are “persons” under
11 the New Jersey Consumer Fraud Act (“New Jersey CFA”), N.J. Stat. § 56:8-1(d).

12 211. Defendants engaged in “sales” of “merchandise” within the meaning of N.J. Stat.
13 §56:8-1(c), (e). Defendants’ actions as set forth herein occurred in the conduct of trade or
14 commerce.

15 212. The New Jersey CFA makes unlawful “[t]he act, use or employment by any person
16 of any unconscionable commercial practice, deception, fraud, false pretense, false promise,
17 misrepresentation, or the knowing concealment, suppression, or omission of any material fact
18 with the intent that others rely upon such concealment, suppression or omission, in connection
19 with the sale or advertisement of any merchandise or real estate, or with the subsequent
20 performance of such person as aforesaid, whether or not any person has in fact been misled,
21 deceived or damaged thereby.” N.J. Stat. § 56:8-2.

22 213. In the course of their business, Defendants concealed and suppressed material facts
23 concerning the Class Vehicles. Defendants accomplished this by (a) manipulating the data in the
24 emissions certification and output testing for the Class Engines such that they falsely represented
25 emissions data and performance data, and/or (b) falsely attesting that Class Vehicles could pass
26 emissions tests when they in fact did not.

27 214. Plaintiff and New Jersey State Class members had no way of discerning that
28 Defendants’ representations were false and misleading because Plaintiff and New Jersey State

1 Class members did not have access to Defendants' emissions certification and output test engines
2 and data.

3 215. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
4 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
5 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
6 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
7 a transaction involving Class Vehicles has been supplied in accordance with a previous
8 representation when it has not.

9 216. Defendants intentionally and knowingly misrepresented material facts regarding
10 the Class Vehicles with intent to mislead Plaintiff and the New Jersey State Class.

11 217. Defendants knew or should have known that their conduct violated the New Jersey
12 CFA.

13 218. Defendants owed Plaintiff and the New Jersey State Class a duty to disclose the
14 illegality and public health risks, the true nature of the Class Vehicles, because Defendants:

15 A. possessed exclusive knowledge that they were manufacturing, selling, and
16 distributing vehicles throughout the United States that did not perform as advertised;

17 B. intentionally concealed the foregoing from regulators, Plaintiff, and New
18 Jersey State Class members; and/or

19 C. made incomplete representations about the Class Vehicles' output
20 performance and emissions, while purposefully withholding material facts from Plaintiffs
21 and the Florida State Class that contradicted these representations.

22 219. Defendants' concealment of the Class Vehicles' true emissions and performance
23 was material to Plaintiff and the New Jersey State Class.

24 220. Defendants' unfair or deceptive acts or practices were likely to and did in fact
25 deceive regulators and reasonable consumers, including Plaintiff and the New Jersey State Class,
26 about the true environmental cleanliness and performance of the Class Vehicles, the quality of the
27 Defendants' brands, and the true value of the Class Vehicles.
28

1 221. Defendants’ violations present a continuing risk to Plaintiff and the New Jersey
2 State Class as well as to the general public. Defendants’ unlawful acts and practices complained
3 of herein affect the public interest.

4 222. Plaintiff and New Jersey State Class members suffered ascertainable loss and
5 actual damages as a direct and proximate result of Defendants’ misrepresentations and
6 concealment of and failure to disclose material information. Absent those misrepresentations and
7 omissions, Plaintiff and New Jersey State Class members would not have purchased or leased the
8 Class Vehicles, would not have purchased or leased them at the prices they paid, and/or would
9 have purchased or leased less expensive alternative vehicles that did not have inflated
10 performance values or issues with exhaust emissions. Defendants had an ongoing duty to all their
11 customers to refrain from unfair and deceptive practices under the New Jersey CFA.

12 223. As a direct and proximate result of Defendants’ violations of the New Jersey CFA,
13 Plaintiff and the New Jersey State Class have suffered injury-in-fact and/or actual damage in an
14 amount to be proven at trial, and seek all just and proper remedies, including, but not limited to,
15 actual and statutory damages, treble damages, an order enjoining Defendants’ deceptive and
16 unfair conduct, costs and reasonable attorneys’ fees under N.J. Stat. § 56:8-19, and all other just
17 and appropriate relief.

18 **NEW JERSEY COUNT II:**
19 **Breach of Express Warranty**
20 **N.J.S. 12A:2-313 and 2A-210**
(By Plaintiff Ferraro Foods on Behalf of the New Jersey State Class)

21 224. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
22 forth herein.

23 225. Plaintiff Ferraro Foods (for the purposes of this count, “Plaintiff”) brings this
24 claim on behalf of itself and the New Jersey State Class against all Defendants.

25 226. Defendants are and were at all relevant times “merchant[s]” with respect to motor
26 vehicles under N.J.S. 12A:2-104(1) and “sellers” of motor vehicles under 2-103(1)(d).

27 227. With respect to leases, Defendants are and were at all relevant times “lessors” of
28 motor vehicles under N.J.S. 12A:2A-103(1)(p).

1 228. The Class Vehicles are and were at all relevant times “goods” within the meaning
2 of N.J.S. 12A:2-105(1) and 2A-103(1)(h).

3 229. In connection with the purchase or lease of new Class Vehicles, Defendants
4 provide a Basic Truck Factory Warranty for a period of one year or 2,000 hours, to cover all
5 factory installed options (except tires and batteries), and a Powertrain Warranty for a period of
6 three years of 6,000 hours, to cover the engines, transmission, differential, or drive axle. This
7 warranty exists to repair the vehicle in case of “defects in material and workmanship.”

8 230. In addition, federal regulations also require manufacturers of spark-ignition
9 (gasoline) non-road engines and compression ignition (diesel) non-road engines to provide federal
10 emissions control warranties applicable to each category.

11 231. For spark-ignition engines, this includes a warranty that the “new nonroad engine,
12 including all parts of its emission-control system” was “designed, built, and equipped so it
13 conforms at the time of sale” with applicable emissions requirements, and is “free from defects in
14 materials and workmanship that may keep it from meeting these requirements.” *See* 40 C.F.R.
15 § 1048.120. Analogous warranty requirements govern for compression-ignition vehicles as well.
16 *See* 40 C.F.R. § 1039.120. Thus, Defendants also provide an express warranty for their Class
17 Vehicles through a Federal Emissions Warranty.

18 232. The Warranty required by the EPA for spark-ignition vehicles applies for three
19 years, or at least 50 percent of the engine's useful life in hours of operation, whichever comes
20 first. Further, for “a high-cost warranted part” (i.e., a part with a replacement value greater than
21 \$400, *see* 40 C.F.R. § 1048.801) the warranty must be valid for at least five years, or 70 percent
22 of the engine's useful life in hours of operation, whichever comes first. In any case, the emission-
23 related warranty for the engine may not be shorter than the standard warranty terms. *See* 40
24 C.F.R. § 1048.120.

25 233. The Warranty required by the EPA for compression-ignition vehicles applies for
26 3,000 hours or five years, whichever comes first, and likewise may not be shorter than the
27 standard warranty terms. *See* 40 C.F.R. § 1039.120.
28

1 234. As manufacturers of large spark and compression ignition powered Vehicles,
2 Defendants were required to provide these warranties to purchasers or lessees of Class Vehicles.

3 235. Defendants' warranties formed a basis of the bargain that was reached when
4 consumers purchased or leased Class Vehicles.

5 236. Despite the existence of warranties, Defendants failed to inform Plaintiff and New
6 Jersey State Class members that the Class Vehicles were defective and were defectively designed
7 and manufactured to emit more pollution and achieve inferior output performance than what was
8 disclosed to regulators and represented to individuals and entities who purchased or leased them,
9 and Defendants failed to fix the defective emission components free of charge.

10 237. Defendants breached the express warranty promising to repair and correct
11 Defendants' defects in materials and workmanship. Defendants have not repaired or adjusted, and
12 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

13 238. Affording Defendants a reasonable opportunity to cure their breach of written
14 warranties would be unnecessary and futile here.

15 239. Furthermore, the limited warranty promising to repair and correct Defendants'
16 defects in materials and workmanship fails in its essential purpose because the contractual remedy
17 is insufficient to make Plaintiff and New Jersey State Class members whole and because
18 Defendants have failed and/or have refused to adequately provide the promised remedies within a
19 reasonable time.

20 240. Despite the existence of warranties, Defendants failed to inform Plaintiff and New
21 Jersey State Class members that the Class Vehicles were defective and intentionally designed and
22 manufactured to emit more pollution and achieve worse fuel economy on the road than what was
23 disclosed to regulators and represented to consumers who purchased or leased them, and
24 Defendants failed to fix the defective emission components free of charge.

25 241. Defendants breached the express warranty promising to repair and correct
26 Defendants' defect in materials and workmanship. Defendants have not repaired or adjusted, and
27 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.
28

1 242. Accordingly, recovery by Plaintiff and New Jersey State Class members is not
2 restricted to the limited warranty promising to repair and correct Defendants' defect in materials
3 and workmanship, and they seek all remedies as allowed by law.

4 243. Also, as alleged in more detail herein, at the time Defendants warranted and sold
5 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
6 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
7 material facts regarding the Class Vehicles. Plaintiff and New Jersey State Class members were
8 therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

9 244. Moreover, many of the injuries flowing from the Class Vehicles cannot be
10 resolved through the limited remedy of repairing and correcting Defendants' defect in materials
11 and workmanship because of Defendants' failure and/or continued failure to provide such limited
12 remedy within a reasonable time, and any limitation on Plaintiff's and New Jersey State Class
13 members' remedies would be insufficient to make them whole.

14 245. Finally, because of Defendants' breach of warranty as set forth herein, Plaintiff
15 and New Jersey State Class members assert, as additional and/or alternative remedies, the
16 revocation of acceptance of the goods and the return to them of the purchase or lease price of all
17 Class Vehicles currently owned or leased, and for such other incidental and consequential
18 damages as allowed.

19 246. Defendants were provided reasonable notice of these issues by way of a letter sent
20 by Plaintiffs as well as the regulators' investigations.

21 247. As a direct and proximate result of Defendants' breach of express warranties,
22 Plaintiff and New Jersey State Class members have been damaged in an amount to be determined
23 at trial.

24 **NEW JERSEY COUNT III:**
25 **Breach of Implied Warranty of Merchantability**
 N.J.S. 12A:2-314 and 2A-212
26 **(By Plaintiff Ferraro Foods on Behalf of the New Jersey State Class)**

27 248. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 249. Plaintiff Ferraro Foods (for the purposes of this count, “Plaintiff”) brings this
2 claim on behalf of itself and the New Jersey State Class against all Defendants.

3 250. Defendants are and were at all relevant times “merchant[s]” with respect to motor
4 vehicles under N.J.S. 12A:2-104(1) and “sellers” of motor vehicles under 2-103(1)(d).

5 251. With respect to leases, Defendants are and were at all relevant times “lessors” of
6 motor vehicles under N.J.S. 12A:2A-103(1)(p).

7 252. The Class Vehicles are and were at all relevant times “goods” within the meaning
8 of N.J.S. 12A:2-105(1) and 2A-103(1)(h).

9 253. A warranty that the Class Vehicles were in merchantable condition and fit for the
10 ordinary purpose for which vehicles are used is implied by law pursuant to N.J.S. 12A:2-314 and
11 2A-212.

12 254. These Class Vehicles, when sold or leased and at all times thereafter, were
13 materially different from vehicles and component engines Defendants used for emissions testing,
14 included defects that led to inflated and misleading output performance and emissions ratings,
15 and/or did not comply with emissions regulations when being driven, and were therefore not
16 merchantable and not fit for the ordinary purpose for which vehicles are used.

17 255. Defendants were provided reasonable notice of these issues by way of a letter sent
18 by Plaintiff as well as the regulators’ investigations.

19 256. As a direct and proximate result of Defendants’ breach of the implied warranty of
20 merchantability, Plaintiff and New Jersey State Class members have been damaged in an amount
21 to be proven at trial.

22 **3. New York**

23 **NEW YORK COUNT I:**
24 **Violations of the New York General Business Law § 349**
25 **N.Y. Gen. Bus. Law § 349**
26 **(By Plaintiff Marders on Behalf of the New York State Class)**

27 257. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
28 forth herein.

1 258. Plaintiff Marders (for the purposes of this count, “Plaintiff”) brings this count on
2 behalf of itself and the New York State Class against all Defendants.

3 259. Plaintiff and the New York State Class members and Defendants are “persons”
4 under N.Y. Gen. Bus. Law § 349(h), the New York Deceptive Acts and Practices Act (“NY
5 DAPA”).

6 260. Defendants’ actions as set forth herein occurred in the conduct of trade or
7 commerce under the NY DAPA.

8 261. The NY DAPA makes unlawful “[d]eceptive acts or practices in the conduct of
9 any business, trade or commerce.” N.Y. Gen. Bus. Law § 349. Defendants’ conduct, as set forth
10 herein, constitutes deceptive acts or practices under this section.

11 262. In the course of their business, Defendants concealed and suppressed material facts
12 concerning the Class Vehicles. Defendants accomplished this by (a) manipulating the data in the
13 emissions certification and output testing for the Class Engines such that they falsely represented
14 emissions data and performance data, and/or (b) falsely attesting that Class Vehicles could pass
15 emissions tests when they in fact did not.

16 263. Plaintiff and New York State Class members had no way of discerning that
17 Defendants’ representations were false and misleading because Plaintiff and New York State
18 Class members did not have access to Defendants’ emissions certification and output test engines
19 and data.

20 264. Defendants thus violated the Act by, at minimum: representing that Class Vehicles
21 have characteristics, uses, benefits, and qualities which they do not have; representing that Class
22 Vehicles are of a particular standard, quality, and grade when they are not; advertising Class
23 Vehicles with the intent not to sell or lease them as advertised; and representing that the subject of
24 a transaction involving Class Vehicles has been supplied in accordance with a previous
25 representation when it has not.

26 265. Defendants intentionally and knowingly misrepresented material facts regarding
27 the Class Vehicles with intent to mislead Plaintiff and the New York State Class.

28 266. Defendants knew or should have known that their conduct violated the NY DAPA.

1 267. Defendants owed Plaintiff and the New York State Class a duty to disclose the
2 illegality and public health risks, the true nature of the Class Vehicles, because Defendants:

3 A. possessed exclusive knowledge that they were manufacturing, selling, and
4 distributing vehicles throughout the United States that did not perform as advertised;

5 B. intentionally concealed the foregoing from regulators and New York State
6 Class members; and/or

7 C. made incomplete representations about the Class Vehicles' emissions and
8 performance while purposefully withholding material facts that contradicted these
9 representations.

10 268. Defendants' concealment of the true characteristics of the Class Vehicles' true
11 emissions and performance was material to Plaintiff and the New York State Class.

12 269. Defendants' unfair or deceptive acts or practices were likely to and did in fact
13 deceive regulators and reasonable consumers, including Plaintiff and the New York State Class,
14 about the true environmental cleanliness and performance of the Class Vehicles, the quality of the
15 Defendants' brands, and the true value of the Class Vehicles

16 270. Defendants' violations present a continuing risk to Plaintiff and the New York
17 State Class as well as to the general public. Defendants' unlawful acts and practices complained
18 of herein affect the public interest.

19 271. Plaintiff and New York State Class members suffered ascertainable loss and actual
20 damages as a direct and proximate result of Defendants' misrepresentations and concealment of
21 and failure to disclose material information. Absent those misrepresentations and omissions,
22 Plaintiff and New York State Class members would not have purchased or leased the Class
23 Vehicles, would not have purchased or leased them at the prices they paid, and/or would have
24 purchased or leased less expensive alternative vehicles that did not have inflated performance
25 values or issues with exhaust emissions. Defendants had an ongoing duty to all their customers to
26 refrain from unfair and deceptive practices under the NY DAPA. All owners of Class Vehicles
27 suffered ascertainable loss as a result of Defendants' deceptive and unfair acts and practices made
28 in the course of Defendants' business.

1 279. Defendants made numerous material misrepresentations and omissions of fact with
2 intent to mislead and deceive concerning the Class Vehicles, particularly concerning the
3 illegality, efficacy and functioning of the emissions systems on the Class Vehicles. Specifically,
4 Defendants intentionally concealed and suppressed material facts concerning the legality and
5 quality of the Class Vehicles to intentionally and grossly defraud and mislead the New York State
6 Class concerning the true emissions produced by the Class Vehicles and their performance.

7 280. The misrepresentations and omissions regarding emissions and performance set
8 forth above were material and likely to deceive a reasonable consumer.

9 281. Defendants intentionally and knowingly misrepresented material facts regarding
10 the Class Vehicles with intent to mislead Plaintiff and the New York State Class.

11 282. Defendants' false advertising was likely to and did in fact deceive regulators and
12 reasonable consumers, including Plaintiff and the New York State Class, about the illegality and
13 true characteristics of the Class Vehicles, the quality of Defendants' brand and the true value of
14 the Class Vehicles.

15 283. Defendants' violations of the NY FAA present a continuing risk to Plaintiff and
16 New York State Class members and to the general public. Defendants' deceptive acts and
17 practices affect the public interest.

18 284. The Class Vehicles do not perform as advertised and are not compliant with EPA
19 regulations, making them far less valuable than advertised.

20 285. Plaintiff and New York State Class members have suffered injury-in-fact and/or
21 actual damages and ascertainable loss as a direct and proximate result of the Defendant's false
22 advertising in violation of the NY FAA.

23 286. Plaintiff and the New York State Class seek monetary relief against Defendants
24 measured as the greater of (a) actual damages in an amount to be determined at trial, and (b)
25 statutory damages in the amount of \$500 each for New York State Class members. Because
26 Defendants' conduct was committed willingly and knowingly, New York State Class members
27 are entitled to recover three times actual damages, up to \$10,000.
28

1 287. The New York State Class also seeks an order enjoining Defendants’ false
2 advertising, attorneys’ fees, and any other just and proper relief under N.Y. Gen. Bus. Law § 350.

3 **NEW YORK COUNTY III:**
4 **Breach of Express Warranty**
5 **N.Y. U.C.C. Law §§ 2-313 and 2A-210**
6 **(By Plaintiff Marders on Behalf of the New York State Class)**

7 288. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
8 forth herein.

9 289. Plaintiff Marders (for the purposes of this count, “Plaintiff”) brings this count on
10 behalf of itself and the New York State Class against all Defendants.

11 290. Defendants are and were at all relevant times “merchant[s]” with respect to
12 vehicles under N.Y. UCC Law § 2-104(1) and “sellers” of vehicles under § 2-103(1)(d).

13 291. With respect to leases, Defendants are and were at all relevant times “lessors” of
14 motor vehicles under N.Y. UCC Law § 2A-103(1)(p).

15 292. The Class Vehicles are and were at all relevant times “goods” within the meaning
16 of N.Y. UCC Law §§ 2-105(1) and 2A-103(1)(h).

17 293. In connection with the purchase or lease of new Class Vehicles, Defendants
18 provide a Basic Truck Factory Warranty for a period of one year or 2,000 hours, to cover all
19 factory installed options (except tires and batteries), and a Powertrain Warranty for a period of
20 three years or 6,000 hours, to cover the engines, transmission, differential, or drive axle. This
21 warranty exists to repair the vehicle in case of “defects in material and workmanship.”

22 294. In addition, federal regulations also require manufacturers of spark-ignition
23 (gasoline) non-road engines and compression ignition (diesel) non-road engines to provide federal
24 emissions control warranties applicable to each category.

25 295. For spark-ignition engines, this includes a warranty that the “new nonroad engine,
26 including all parts of its emission-control system” was “designed, built, and equipped so it
27 conforms at the time of sale” with applicable emissions requirements, and is “free from defects in
28 materials and workmanship that may keep it from meeting these requirements.” See 40 C.F.R.
§ 1048.120. Analogous warranty requirements govern for compression-ignition vehicles as well.

1 See 40 C.F.R. § 1039.120. Thus, Defendants also provide an express warranty for their Class
2 Vehicles through a Federal Emissions Warranty.

3 296. The Warranty required by the EPA for spark-ignition vehicles applies for three
4 years, or at least 50 percent of the engine's useful life in hours of operation, whichever comes
5 first. Further, for “a high-cost warranted part” (i.e., a part with a replacement value greater than
6 \$400, *see* 40 C.F.R. § 1048.801) the warranty must be valid for at least five years, or 70 percent
7 of the engine's useful life in hours of operation, whichever comes first. In any case, the emission-
8 related warranty for the engine may not be shorter than the standard warranty terms. *See* 40
9 C.F.R. § 1048.120.

10 297. The Warranty required by the EPA for compression-ignition vehicles applies for
11 3,000 hours or five years, whichever comes first, and likewise may not be shorter than the
12 standard warranty terms. *See* 40 C.F.R. § 1039.120.

13 298. Defendants were required to provide these warranties to purchasers or lessees of
14 Class Vehicles.

15 299. Defendants' warranties formed a basis of the bargain that was reached when
16 consumers purchased or leased Class Vehicles.

17 300. Despite the existence of warranties, Defendants failed to inform Plaintiff and New
18 York State Class members that the Class Vehicles were defectively designed and manufactured to
19 emit more pollution and achieve inferior output performance than what was disclosed to
20 regulators and represented to the individuals and entities who purchased or leased them, and
21 Defendants failed to fix the defective emission components free of charge.

22 301. Defendants breached the express warranty promising to repair and correct
23 Defendants' defects in materials and workmanship. Defendants have not repaired or adjusted, and
24 have been unable to repair or adjust, the Class Vehicles' materials and workmanship defects.

25 302. Affording Defendants a reasonable opportunity to cure their breach of written
26 warranties would be unnecessary and futile here.

27 303. Furthermore, the limited warranty promising to repair and correct Defendants'
28 defects in materials and workmanship fails in its essential purpose because the contractual remedy

1 is insufficient to make Plaintiff and New York State Class members whole and because
2 Defendants have failed and/or have refused to adequately provide the promised remedies within a
3 reasonable time.

4 304. Accordingly, recovery by Plaintiff and New York State Class members is not
5 restricted to the limited warranty promising to repair and correct Defendants' defects in materials
6 and workmanship, and they seek all remedies as allowed by law.

7 305. Also, as alleged in more detail herein, at the time Defendants warranted and sold
8 or leased the Class Vehicles, they knew that the Class Vehicles were inherently defective and did
9 not conform to their warranties; further, Defendants had wrongfully and fraudulently concealed
10 material facts regarding the Class Vehicles. Plaintiff and New York State Class members were
11 therefore induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

12 306. Moreover, many of the injuries flowing from the Class Vehicles cannot be
13 resolved through the limited remedy of repairing and correcting Defendants' defects in materials
14 and workmanship because of Defendants' failure and/or continued failure to provide such limited
15 remedy within a reasonable time, and any limitation on Plaintiff and New York State Class
16 members' remedies would be insufficient to make them whole.

17 307. Finally, because of Defendants' breach of warranty as set forth herein, Plaintiff
18 and New York State Class members assert, as additional and/or alternative remedies, the
19 revocation of acceptance of the goods and the return to them the purchase or lease price of all
20 Class Vehicles currently owned or leased, and for such other incidental and consequential
21 damages as allowed.

22 308. Defendants were provided reasonable notice of these issues by way of a letter sent
23 by Plaintiff as well as the regulators' investigations.

24 309. As a direct and proximate result of Defendants' breach of express warranties,
25 Plaintiff and New York State Class members have been damaged in an amount to be determined
26 at trial.

**NEW YORK COUNT IV:
Breach of Implied Warranty of Merchantability
N.Y. U.C.C. Law §§ 2-314 and 2A-212
(By Plaintiff Marders on Behalf of the New York State Class)**

1
2
3
4 310. Plaintiffs re-allege and incorporate by reference all paragraphs as though fully set
5 forth herein.

6 311. Plaintiff Marders (for the purposes of this count, “Plaintiff”) brings this count on
7 behalf of itself and the New York State Class against all Defendants.

8 312. Defendants are and were at all relevant times “merchant[s]” with respect to
9 vehicles under N.Y. UCC Law § 2-104(1) and “sellers” of vehicles under § 2-103(1)(d).

10 313. With respect to leases, Defendants are and were at all relevant times “lessors” of
11 vehicles under N.Y. UCC Law § 2A-103(1)(p).

12 314. The Class Vehicles are and were at all relevant times “goods” within the meaning
13 of N.Y. UCC Law §§ 2-105(1) and 2A-103(1)(h).

14 315. A warranty that the Class Vehicles were in merchantable condition and fit for the
15 ordinary purpose for which vehicles are used is implied by law pursuant to N.Y. UCC Law §§ 2-
16 314 and 2A-212.

17 316. These Class Vehicles, when sold or leased and at all times thereafter, were
18 materially different from vehicles and component engines Defendants used for emissions testing,
19 included defects that led to inflated and misleading emissions ratings and/or performance
20 representations, and/or did not comply with emissions regulations when being used in the real
21 world, and were therefore not merchantable and not fit for the ordinary purpose for which
22 vehicles are used.

23 317. Defendants were provided reasonable notice of these issues by way of a letter sent
24 by Plaintiff as well as the regulators’ investigations.

25 318. As a direct and proximate result of Defendants’ breach of the implied warranty of
26 merchantability, Plaintiff and New York State Class members have been damaged in an amount
27 to be proven at trial.
28

1 **X. REQUEST FOR RELIEF**

2 WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide Class
3 and all State Classes, respectfully request that the Court enter judgment in their favor and against
4 Defendants, as follows:

5 A. An order certifying the Nationwide and State Classes under the applicable
6 provisions of Rule 23; appointing and designating the Plaintiffs to serve as
7 representatives of the Class and applicable State Classes; and appointing the undersigned
8 attorneys to serve as Class Counsel;

9 B. An order temporarily and permanently enjoining Defendants from
10 continuing the unlawful, deceptive, fraudulent, harmful, and unfair business conduct and
11 practices alleged in this Complaint;

12 C. Relief in the form of a comprehensive program to fully reimburse and
13 make whole all Class members for all costs and economic losses that resulted from the
14 inaccurate emissions and performance disclosures, as well as any other consequential
15 damages suffered as a result;

16 D. A declaration that Defendants are financially responsible for all Class
17 notices and the administration of Class relief;

18 E. Costs, restitution, compensatory damages for economic loss and out-of-
19 pocket costs, multiple damages under applicable states' laws, punitive and exemplary
20 damages under applicable law; and disgorgement, in an amount to be determined at trial;

21 F. Rescission of all Class Vehicle purchases or leases, including
22 reimbursement and/or compensation of the full purchase price of all Class Vehicles,
23 including taxes, licenses, and other fees;

24 G. Any and all applicable statutory and civil penalties;

25 H. An order requiring Defendants to pay both pre- and post-judgment interest
26 on any amounts awarded;

27 I. An award of costs and attorneys' fees, as allowed by law;
28

1 J. Leave to amend this Complaint to conform to the evidence produced at
2 trial; and

3 K. Such other or further relief as the Court may deem appropriate, just, and
4 equitable.

5 **XI. DEMAND FOR JURY TRIAL**

6 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any
7 and all issues in this action so triable of right.

8 Dated: September 22, 2024 Respectfully submitted,

9
10 By: /s/ Elizabeth J. Cabraser

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