

1 LIONEL Z. GLANCY (#134180)  
ROBERT V. PRONGAY (#270796)  
2 LESLEY F. PORTNOY (#304851)  
CHARLES H. LINEHAN (#307439)  
3 **GLANCY PRONGAY & MURRAY LLP**  
4 1925 Century Park East, Suite 2100  
Los Angeles, California 90067  
5 Telephone: (310) 201-9150  
Facsimile: (310) 201-9160  
6 Email: info@glancylaw.com

7 *Attorneys for Plaintiff \_\_\_\_\_*  
8 *[Additional Counsel on Signature Page]*

9  
10 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
11 **WESTERN DIVISION**

12 \_\_\_\_\_, Individually and on Behalf of  
13 All Others Similarly Situated,

14 Plaintiff,

15 v.

16 MOTORCAR PARTS OF AMERICA, INC.,  
17 SELWYN H. JOFFE, DAVID LEE, and  
18 KEVIN DALY,

19 Defendants.

Case No.: DRAFT

**CLASS ACTION**

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all  
2 others similarly situated, by and through his attorneys, alleges the following upon  
3 information and belief, except as to those allegations concerning Plaintiff, which are  
4 alleged upon personal knowledge. Plaintiff’s information and belief is based upon,  
5 among other things, his counsel’s investigation, which includes without limitation:  
6 (a) review and analysis of regulatory filings made by Motorcar Parts of America,  
7 Inc. (“Motorcar” or the “Company”) with the United States (“U.S.”) Securities and  
8 Exchange Commission (“SEC”); (b) review and analysis of press releases and media  
9 reports issued by and disseminated by Motorcar; and (c) review of other publicly  
10 available information concerning Motorcar.

### 11 **NATURE OF THE ACTION AND OVERVIEW**

12 1. This is a class action on behalf of persons and entities that purchased or  
13 otherwise acquired Motorcar securities between August 9, 2018 and November 20,  
14 2018, inclusive (the “Class Period”), seeking to pursue remedies under the  
15 Securities Exchange Act of 1934 (the “Exchange Act”).

16 2. Motorcar purports to manufacture and distribute automotive and light  
17 truck parts, as well as heavy duty truck, industrial, and agricultural automotive  
18 vehicle parts.

19 3. On November 9, 2018, the Company disclosed that it “will delay filing  
20 of its fiscal 2019 second quarter 10-Q and planned conference call scheduled for  
21 [that day] to continue evaluating its accounting policies related to new business  
22 contracts.”

23 4. On this news, the Company’s share price fell \$4.58 per share, more  
24 than 21%, to close at \$17.20 per share on November 9, 2018, on unusually heavy  
25 trading volume.

26 5. Throughout the Class Period, Defendants made materially false and/or  
27 misleading statements, as well as failed to disclose material adverse facts about the  
28 Company’s business, operations, and prospects. Specifically, Defendants failed to

1 disclose to investors: (1) that the Company lacked effective procedures to timely and  
2 effectively adopt a new accounting standard; (2) that, as a result, the Company was  
3 likely to inaccurately recognize expenses incurred in connection with new business;  
4 (3) that, as a result, the Company's quarterly report would not be timely filed; (4)  
5 that, as a result, the Company would not be in compliance with NASDAQ listing  
6 requirements; and (5) that, as a result of the foregoing, Defendants' positive  
7 statements about the Company's business, operations, and prospects were materially  
8 misleading and/or lacked a reasonable basis.

9 6. As a result of Defendants' wrongful acts and omissions, and the  
10 precipitous decline in the market value of the Company's securities, Plaintiff and  
11 other Class members have suffered significant losses and damages.

12 **JURISDICTION AND VENUE**

13 7. The claims asserted herein arise under Sections 10(b) and 20(a) of the  
14 Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated  
15 thereunder by the SEC (17 C.F.R. § 240.10b-5).

16 8. This Court has jurisdiction over the subject matter of this action  
17 pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. §  
18 78aa).

19 9. Venue is proper in this Judicial District pursuant to 28 U.S.C. §  
20 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts  
21 in furtherance of the alleged fraud or the effects of the fraud have occurred in this  
22 Judicial District. Many of the acts charged herein, including the dissemination of  
23 materially false and/or misleading information, occurred in substantial part in this  
24 Judicial District.

25 10. In connection with the acts, transactions, and conduct alleged herein,  
26 Defendants directly and indirectly used the means and instrumentalities of interstate  
27 commerce, including the United States mail, interstate telephone communications,  
28 and the facilities of a national securities exchange.

1 **PARTIES**

2 11. Plaintiff \_\_\_\_\_, as set forth in the accompanying  
3 certification, incorporated by reference herein, purchased Motorcar securities during  
4 the Class Period, and suffered damages as a result of the federal securities law  
5 violations and false and/or misleading statements and/or material omissions alleged  
6 herein.

7 12. Defendant Motorcar is incorporated under the laws of New York with  
8 its principal executive offices located in Torrance, California. Motorcar's common  
9 stock trades on the NASDAQ exchange under the symbol "MPAA."

10 13. Defendant Selwyn H. Joffe ("Joffe") was the Chairman of the Board of  
11 Directors, President, and Chief Executive Officer of the Company at all relevant  
12 times.

13 14. Defendant David Lee ("Lee") was the Chief Financial Officer of the  
14 Company at all relevant times.

15 15. Defendant Kevin Daly ("Daly") was the Chief Accounting Officer of  
16 the Company at all relevant times.

17 16. Defendants Joffe, Lee, and Daly (collectively the "Individual  
18 Defendants"), because of their positions with the Company, possessed the power  
19 and authority to control the contents of the Company's reports to the SEC, press  
20 releases and presentations to securities analysts, money and portfolio managers and  
21 institutional investors, *i.e.*, the market. The Individual Defendants were provided  
22 with copies of the Company's reports and press releases alleged herein to be  
23 misleading prior to, or shortly after, their issuance and had the ability and  
24 opportunity to prevent their issuance or cause them to be corrected. Because of their  
25 positions and access to material non-public information available to them, the  
26 Individual Defendants knew that the adverse facts specified herein had not been  
27 disclosed to, and were being concealed from, the public, and that the positive  
28 representations which were being made were then materially false and/or

1 misleading. The Individual Defendants are liable for the false statements pleaded  
2 herein.

### 3 **SUBSTANTIVE ALLEGATIONS**

#### 4 **Background**

5 17. Motorcar purports to manufacture and distribute automotive and light  
6 truck parts, as well as heavy duty truck, industrial, and agricultural automotive  
7 vehicle parts.

#### 8 **Materially False and Misleading** 9 **Statements Issued During the Class Period**

10 18. The Class Period begins on August 9, 2018. On that day, the Company  
11 reported that net sales for the first quarter 2019 had decreased year-over-year to  
12 “\$92.6 million compared to \$95.5 million for the same period a year earlier.”

13 19. According to the press release, net sales for the quarter “were impacted  
14 by customer allowances related to new business, customer stock adjustment accruals  
15 in connection with future update orders, and the transition to the company’s new  
16 distribution center.”

17 20. Moreover, the Company reported adjusted net income of \$2.8 million,  
18 but that several items which “negatively impacted adjusted net income ha[d] not  
19 been adjusted for: (1) customer stock adjustment accruals in connection with future  
20 update orders, (2) the impact to sales related to the transition to the company’s new  
21 distribution center, (3) lower overhead cost absorption, which is expected to reverse  
22 as sales increase, and (4) increased freight expenses related to external market  
23 rates.”

24 21. The same day, Defendants Joffe, Lee, and Daly participated in a  
25 conference call with analysts to discuss the Company’s financial results. During the  
26 call, Defendant Daly explained that the impact of the new accounting standard,  
27 ASC-606, which the Company had adopted using the full retrospective transition  
28 method on April 1, 2018, “had to primarily do with the previous breakout between

1 unit and core in our financial statements.” He further stated that “the long-term core  
2 asset that used to be on the books is now divvied up into contract assets and regular  
3 inventory, and the contract liabilities comes from what used to a be a contra  
4 accounts receivable accounts, plus the liability for payment for core that are going to  
5 be returning from the customer.”

6 22. The same day, the Company filed its quarterly report on Form 10-Q for  
7 the period ended June 30, 2018 (the “1Q19 10-Q”). This report affirmed the  
8 financial results reported in the press release.

9 23. The 1Q19 10-Q presented Defendant Daly’s explanation of the  
10 accounting change in greater detail. Under the heading “Contract Assets,” the 1Q19  
11 10-Q stated, in relevant part:

12 Contract assets represents the core portion of the finished goods  
13 shipped to the Company’s customers. These assets are valued at  
14 average historical purchase prices determined based on actual  
purchases of inventory on hand.

15 Remanufactured Cores held at customers’ locations as a part of the  
16 finished goods sold to the customer are classified as long-term contract  
17 assets. For these Remanufactured Cores, the Company expects the  
18 finished good containing the Remanufactured Core to be returned under  
19 the Company’s general right of return policy or a similar Used Core to  
20 be returned to the Company by the customer, under the Company’s  
21 core exchange program in each case, for credit. The Remanufactured  
22 Core portion of stock adjustment returns and the Used Cores returned  
23 by consumers to the Company’s customers but not yet returned to the  
Company are classified as short-term contract assets until the Company  
physically receives them during its normal operating cycle, which is  
generally one year.

24 In addition, long-term contract assets include long-term core inventory  
25 deposits. The long-term core inventory deposits represent the cost of  
26 Remanufactured Cores the Company has purchased from customers,  
27 which are held by the customers and remain on the customers’  
28 premises. The costs of these Remanufactured Cores were established at  
the time of the transaction based on the then current cost. The selling  
value of these Remanufactured Cores was established based on agreed

1 upon amounts with these customers. The Company expects to realize  
2 the selling value and the related cost of these Remanufactured Cores  
3 should its relationship with a customer end, a possibility that the  
4 Company considers remote based on existing long-term customer  
agreements and historical experience.

5 24. Under the heading “Contract Liability,” the 1Q19 10-Q stated, in  
6 relevant part:

7 Contract liability consists of: (i) customer allowances earned, (ii)  
8 accrued core payments, and (iii) customer core returns accruals.

9 Customer allowances earned includes all marketing allowances  
10 provided to customers. Such allowances include sales incentives and  
11 concessions. Voluntary marketing allowances related to a single  
12 exchange of product are recorded as a reduction of revenues at the time  
13 the related revenues are recorded or when such incentives are offered.  
14 Other marketing allowances, which may only be applied against future  
15 purchases, are recorded as a reduction to revenues in accordance with a  
schedule set forth in the relevant contract. Sales incentive amounts are  
recorded based on the value of the incentive provided. Customer  
allowances earned are considered to be short-term contract liabilities.

16 Accrued core payments represent the full Remanufactured Core sales  
17 price of Remanufactured Cores purchased from customers, generally in  
18 connection with new business, which are held by these customers and  
19 remain on their premises. At the same time, the long-term contract  
20 assets are recorded for the Remanufactured Cores purchased at its cost,  
21 determined as noted under the caption “Inventory”. The difference  
22 between the full Remanufactured Core sales price of Remanufactured  
23 Cores and its related cost is treated as sales allowance reducing revenue  
24 when the purchases are made. The selling value and the related cost of  
25 these Remanufactured Cores will be realized when the Company’s  
26 relationship with a customer end, a possibility that the Company  
27 considers remote based on existing long-term customer agreements and  
28 historical experience. The payments made to customers for purchases  
of Remanufactured Cores within the Company’s normal operating  
cycle, which is generally one year, are considered short-term contract  
liabilities.

1 Customer core returns accruals represents the full and nominally priced  
2 Remanufactured Cores shipped to the Company's customers. When the  
3 Company ships the product, it recognizes an obligation to accept a  
4 similar Used Core sent back under the core exchange program based  
5 upon the Remanufactured Core price agreed upon by the Company and  
6 its customer. The Contract liability related to Used Cores returned by  
7 consumers to the Company's customers but not yet returned to the  
8 Company are classified as short-term contract liabilities until the  
9 Company physically receives these Used Cores as they are expected to  
10 be returned during the Company's normal operating cycle, which is  
11 generally one year.

12 25. The above statements identified in ¶¶18-24 were materially false and/or  
13 misleading, and failed to disclose material adverse facts about the Company's  
14 business, operations, and prospects. Specifically, Defendants failed to disclose to  
15 investors: (1) that the Company lacked effective procedures to timely and effectively  
16 adopt a new accounting standard; (2) that, as a result, the Company was likely to  
17 inaccurately recognize expenses incurred in connection with new business; (3) that,  
18 as a result, the Company's quarterly report would not be timely filed; (4) that, as a  
19 result, the Company would not be in compliance with NASDAQ listing  
20 requirements; and (5) that, as a result of the foregoing, Defendants' positive  
21 statements about the Company's business, operations, and prospects were materially  
22 misleading and/or lacked a reasonable basis.

### 23 **Disclosures at the End of the Class Period**

24 26. On November 9, 2018, before the market opened, the Company  
25 announced that it would delay filing its 10-Q for the second quarter 2019 "to  
26 continue evaluating its accounting policies related to new business contracts."

27 27. On this news, the Company's share price fell \$4.58 per share, more  
28 than 21%, to close at \$17.20 per share on November 9, 2018, on unusually heavy  
trading volume.

29 28. On November 12, 2018, the Company explained the delay in filing,



1 stating in relevant part:

2 As announced on Friday, the company has delayed the filing of its  
3 fiscal second quarter Form 10-Q while it reviews its accounting  
4 practices primarily related to the timing of recognizing certain expenses  
5 incurred in connection with new business. These expenses are primarily  
6 allowances for core inventory purchase obligations at the start of a new  
7 business relationship.

8 Notwithstanding the delay in filing its Form 10-Q for the fiscal 2019  
9 second quarter, the company expects to report record adjusted net sales  
10 for the first half. In addition, orders for the current fiscal third quarter  
11 are strong and the company anticipates record adjusted net sales for the  
12 second half. Adjusted net sales include adjustments for customer  
13 allowances and initial return accruals related to new business. The  
14 company is currently unable to reconcile adjusted net sales to GAAP  
15 net sales due to the issues discussed above.

16 The company does not believe this review of the accounting for new  
17 business contracts will affect its liquidity, operations or strong growth  
18 momentum.

19 29. On November 20, 2018, the Company disclosed that it had “received a  
20 notice from the NASDAQ Stock Market on November 15, 2018 indicating that the  
21 company is not in compliance with NASDAQ listing rules” due to the delayed  
22 filing. The Company further stated that it “expects to address the notice by filing its  
23 Form 10-Q and submitting a required updated compliance plan within such  
24 timeframe.”

### 25 **CLASS ACTION ALLEGATIONS**

26 30. Plaintiff brings this action as a class action pursuant to Federal Rule of  
27 Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and  
28 entities that purchased or otherwise acquired Motorcar securities between August 9,  
2018 to November 20, 2018, inclusive, and who were damaged thereby (the  
“Class”). Excluded from the Class are Defendants, the officers and directors of the  
Company, at all relevant times, members of their immediate families and their legal  
representatives, heirs, successors, or assigns, and any entity in which Defendants

1 have or had a controlling interest.

2 31. The members of the Class are so numerous that joinder of all members  
3 is impracticable. Throughout the Class Period, Motorcar's common shares actively  
4 traded on the NASDAQ. While the exact number of Class members is unknown to  
5 Plaintiff at this time and can only be ascertained through appropriate discovery,  
6 Plaintiff believes that there are at least hundreds or thousands of members in the  
7 proposed Class. Hundreds of thousands of Motorcar common shares were traded  
8 publicly during the Class Period on the NASDAQ. Record owners and other  
9 members of the Class may be identified from records maintained by Motorcar or its  
10 transfer agent and may be notified of the pendency of this action by mail, using the  
11 form of notice similar to that customarily used in securities class actions.

12 32. Plaintiff's claims are typical of the claims of the members of the Class  
13 as all members of the Class are similarly affected by Defendants' wrongful conduct  
14 in violation of federal law that is complained of herein.

15 33. Plaintiff will fairly and adequately protect the interests of the members  
16 of the Class and has retained counsel competent and experienced in class and  
17 securities litigation.

18 34. Common questions of law and fact exist as to all members of the Class  
19 and predominate over any questions solely affecting individual members of the  
20 Class. Among the questions of law and fact common to the Class are:

21 (a) whether the federal securities laws were violated by Defendants' acts as  
22 alleged herein;

23 (b) whether statements made by Defendants to the investing public during  
24 the Class Period omitted and/or misrepresented material facts about the business,  
25 operations, and prospects of Motorcar; and

26 (c) to what extent the members of the Class have sustained damages and  
27 the proper measure of damages.

28 35. A class action is superior to all other available methods for the fair and

1 efficient adjudication of this controversy since joinder of all members is  
2 impracticable. Furthermore, as the damages suffered by individual Class members  
3 may be relatively small, the expense and burden of individual litigation makes it  
4 impossible for members of the Class to individually redress the wrongs done to  
5 them. There will be no difficulty in the management of this action as a class action.

6 **UNDISCLOSED ADVERSE FACTS**

7 36. The market for Motorcar's securities was open, well-developed and  
8 efficient at all relevant times. As a result of these materially false and/or misleading  
9 statements, and/or failures to disclose, Motorcar's securities traded at artificially  
10 inflated prices during the Class Period. Plaintiff and other members of the Class  
11 purchased or otherwise acquired Motorcar's securities relying upon the integrity of  
12 the market price of the Company's securities and market information relating to  
13 Motorcar, and have been damaged thereby.

14 37. During the Class Period, Defendants materially misled the investing  
15 public, thereby inflating the price of Motorcar's securities, by publicly issuing false  
16 and/or misleading statements and/or omitting to disclose material facts necessary to  
17 make Defendants' statements, as set forth herein, not false and/or misleading. The  
18 statements and omissions were materially false and/or misleading because they  
19 failed to disclose material adverse information and/or misrepresented the truth about  
20 Motorcar's business, operations, and prospects as alleged herein.

21 38. At all relevant times, the material misrepresentations and omissions  
22 particularized in this Complaint directly or proximately caused or were a substantial  
23 contributing cause of the damages sustained by Plaintiff and other members of the  
24 Class. As described herein, during the Class Period, Defendants made or caused to  
25 be made a series of materially false and/or misleading statements about Motorcar's  
26 financial well-being and prospects. These material misstatements and/or omissions  
27 had the cause and effect of creating in the market an unrealistically positive  
28 assessment of the Company and its financial well-being and prospects, thus causing

1 the Company's securities to be overvalued and artificially inflated at all relevant  
2 times. Defendants' materially false and/or misleading statements during the Class  
3 Period resulted in Plaintiff and other members of the Class purchasing the  
4 Company's securities at artificially inflated prices, thus causing the damages  
5 complained of herein when the truth was revealed.

#### 6 **LOSS CAUSATION**

7 39. Defendants' wrongful conduct, as alleged herein, directly and  
8 proximately caused the economic loss suffered by Plaintiff and the Class.

9 40. During the Class Period, Plaintiff and the Class purchased Motorcar's  
10 securities at artificially inflated prices and were damaged thereby. The price of the  
11 Company's securities significantly declined when the misrepresentations made to  
12 the market, and/or the information alleged herein to have been concealed from the  
13 market, and/or the effects thereof, were revealed, causing investors' losses.

#### 14 **SCIENTER ALLEGATIONS**

15 41. As alleged herein, Defendants acted with scienter since Defendants  
16 knew that the public documents and statements issued or disseminated in the name  
17 of the Company were materially false and/or misleading; knew that such statements  
18 or documents would be issued or disseminated to the investing public; and  
19 knowingly and substantially participated or acquiesced in the issuance or  
20 dissemination of such statements or documents as primary violations of the federal  
21 securities laws. As set forth elsewhere herein in detail, the Individual Defendants,  
22 by virtue of their receipt of information reflecting the true facts regarding Motorcar,  
23 their control over, and/or receipt and/or modification of Motorcar's allegedly  
24 materially misleading misstatements and/or their associations with the Company  
25 which made them privy to confidential proprietary information concerning  
26 Motorcar, participated in the fraudulent scheme alleged herein.

1                                   **APPLICABILITY OF PRESUMPTION OF RELIANCE**  
2                                   **(FRAUD-ON-THE-MARKET DOCTRINE)**

3           42.     The market for Motorcar’s securities was open, well-developed and  
4 efficient at all relevant times. As a result of the materially false and/or misleading  
5 statements and/or failures to disclose, Motorcar’s securities traded at artificially  
6 inflated prices during the Class Period. On September 4, 2018, the Company’s share  
7 price closed at a Class Period high of \$26.66 per share. Plaintiff and other members  
8 of the Class purchased or otherwise acquired the Company’s securities relying upon  
9 the integrity of the market price of Motorcar’s securities and market information  
10 relating to Motorcar, and have been damaged thereby.

11           43.     During the Class Period, the artificial inflation of Motorcar’s shares  
12 was caused by the material misrepresentations and/or omissions particularized in  
13 this Complaint causing the damages sustained by Plaintiff and other members of the  
14 Class. As described herein, during the Class Period, Defendants made or caused to  
15 be made a series of materially false and/or misleading statements about Motorcar’s  
16 business, prospects, and operations. These material misstatements and/or omissions  
17 created an unrealistically positive assessment of Motorcar and its business,  
18 operations, and prospects, thus causing the price of the Company’s securities to be  
19 artificially inflated at all relevant times, and when disclosed, negatively affected the  
20 value of the Company shares. Defendants’ materially false and/or misleading  
21 statements during the Class Period resulted in Plaintiff and other members of the  
22 Class purchasing the Company’s securities at such artificially inflated prices, and  
23 each of them has been damaged as a result.

24           44.     At all relevant times, the market for Motorcar’s securities was an  
25 efficient market for the following reasons, among others:

- 26           (a)     Motorcar shares met the requirements for listing, and was listed and  
27 actively traded on the NASDAQ, a highly efficient and automated market;  
28           (b)     As a regulated issuer, Motorcar filed periodic public reports with the

1 SEC and/or the NASDAQ;

2 (c) Motorcar regularly communicated with public investors via established  
3 market communication mechanisms, including through regular dissemination of  
4 press releases on the national circuits of major newswire services and through other  
5 wide-ranging public disclosures, such as communications with the financial press  
6 and other similar reporting services; and/or

7 (d) Motorcar was followed by securities analysts employed by brokerage  
8 firms who wrote reports about the Company, and these reports were distributed to  
9 the sales force and certain customers of their respective brokerage firms. Each of  
10 these reports was publicly available and entered the public marketplace.

11 45. As a result of the foregoing, the market for Motorcar's securities  
12 promptly digested current information regarding Motorcar from all publicly  
13 available sources and reflected such information in Motorcar's share price. Under  
14 these circumstances, all purchasers of Motorcar's securities during the Class Period  
15 suffered similar injury through their purchase of Motorcar's securities at artificially  
16 inflated prices and a presumption of reliance applies.

17 46. A Class-wide presumption of reliance is also appropriate in this action  
18 under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United*  
19 *States*, 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded  
20 on Defendants' material misstatements and/or omissions. Because this action  
21 involves Defendants' failure to disclose material adverse information regarding the  
22 Company's business operations and financial prospects—information that  
23 Defendants were obligated to disclose—positive proof of reliance is not a  
24 prerequisite to recovery. All that is necessary is that the facts withheld be material  
25 in the sense that a reasonable investor might have considered them important in  
26 making investment decisions. Given the importance of the Class Period material  
27 misstatements and omissions set forth above, that requirement is satisfied here.

28

1 **NO SAFE HARBOR**

2 47. The statutory safe harbor provided for forward-looking statements  
3 under certain circumstances does not apply to any of the allegedly false statements  
4 pleaded in this Complaint. The statements alleged to be false and misleading herein  
5 all relate to then-existing facts and conditions. In addition, to the extent certain of  
6 the statements alleged to be false may be characterized as forward looking, they  
7 were not identified as “forward-looking statements” when made and there were no  
8 meaningful cautionary statements identifying important factors that could cause  
9 actual results to differ materially from those in the purportedly forward-looking  
10 statements. In the alternative, to the extent that the statutory safe harbor is  
11 determined to apply to any forward-looking statements pleaded herein, Defendants  
12 are liable for those false forward-looking statements because at the time each of  
13 those forward-looking statements was made, the speaker had actual knowledge that  
14 the forward-looking statement was materially false or misleading, and/or the  
15 forward-looking statement was authorized or approved by an executive officer of  
16 Motorcar who knew that the statement was false when made.

17 **FIRST CLAIM**

18 **Violation of Section 10(b) of The Exchange Act and**  
19 **Rule 10b-5 Promulgated Thereunder**  
20 **Against All Defendants**

21 48. Plaintiff repeats and re-alleges each and every allegation contained  
22 above as if fully set forth herein.

23 49. During the Class Period, Defendants carried out a plan, scheme and  
24 course of conduct which was intended to and, throughout the Class Period, did: (i)  
25 deceive the investing public, including Plaintiff and other Class members, as alleged  
26 herein; and (ii) cause Plaintiff and other members of the Class to purchase  
27 Motorcar’s securities at artificially inflated prices. In furtherance of this unlawful  
28 scheme, plan and course of conduct, Defendants, and each defendant, took the  
actions set forth herein.

1           50. Defendants (i) employed devices, schemes, and artifices to defraud; (ii)  
2 made untrue statements of material fact and/or omitted to state material facts  
3 necessary to make the statements not misleading; and (iii) engaged in acts, practices,  
4 and a course of business which operated as a fraud and deceit upon the purchasers of  
5 the Company's securities in an effort to maintain artificially high market prices for  
6 Motorcar's securities in violation of Section 10(b) of the Exchange Act and Rule  
7 10b-5. All Defendants are sued either as primary participants in the wrongful and  
8 illegal conduct charged herein or as controlling persons as alleged below.

9           51. Defendants, individually and in concert, directly and indirectly, by the  
10 use, means or instrumentalities of interstate commerce and/or of the mails, engaged  
11 and participated in a continuous course of conduct to conceal adverse material  
12 information about Motorcar's financial well-being and prospects, as specified  
13 herein.

14           52. Defendants employed devices, schemes and artifices to defraud, while  
15 in possession of material adverse non-public information and engaged in acts,  
16 practices, and a course of conduct as alleged herein in an effort to assure investors of  
17 Motorcar's value and performance and continued substantial growth, which  
18 included the making of, or the participation in the making of, untrue statements of  
19 material facts and/or omitting to state material facts necessary in order to make the  
20 statements made about Motorcar and its business operations and future prospects in  
21 light of the circumstances under which they were made, not misleading, as set forth  
22 more particularly herein, and engaged in transactions, practices and a course of  
23 business which operated as a fraud and deceit upon the purchasers of the Company's  
24 securities during the Class Period.

25           53. Each of the Individual Defendants' primary liability and controlling  
26 person liability arises from the following facts: (i) the Individual Defendants were  
27 high-level executives and/or directors at the Company during the Class Period and  
28 members of the Company's management team or had control thereof; (ii) each of



1 these defendants, by virtue of their responsibilities and activities as a senior officer  
2 and/or director of the Company, was privy to and participated in the creation,  
3 development and reporting of the Company's internal budgets, plans, projections  
4 and/or reports; (iii) each of these defendants enjoyed significant personal contact  
5 and familiarity with the other defendants and was advised of, and had access to,  
6 other members of the Company's management team, internal reports and other data  
7 and information about the Company's finances, operations, and sales at all relevant  
8 times; and (iv) each of these defendants was aware of the Company's dissemination  
9 of information to the investing public which they knew and/or recklessly  
10 disregarded was materially false and misleading.

11 54. Defendants had actual knowledge of the misrepresentations and/or  
12 omissions of material facts set forth herein, or acted with reckless disregard for the  
13 truth in that they failed to ascertain and to disclose such facts, even though such  
14 facts were available to them. Such defendants' material misrepresentations and/or  
15 omissions were done knowingly or recklessly and for the purpose and effect of  
16 concealing Motorcar's financial well-being and prospects from the investing public  
17 and supporting the artificially inflated price of its securities. As demonstrated by  
18 Defendants' overstatements and/or misstatements of the Company's business,  
19 operations, financial well-being, and prospects throughout the Class Period,  
20 Defendants, if they did not have actual knowledge of the misrepresentations and/or  
21 omissions alleged, were reckless in failing to obtain such knowledge by deliberately  
22 refraining from taking those steps necessary to discover whether those statements  
23 were false or misleading.

24 55. As a result of the dissemination of the materially false and/or  
25 misleading information and/or failure to disclose material facts, as set forth above,  
26 the market price of Motorcar's securities was artificially inflated during the Class  
27 Period. In ignorance of the fact that market prices of the Company's securities were  
28 artificially inflated, and relying directly or indirectly on the false and misleading

1 statements made by Defendants, or upon the integrity of the market in which the  
2 securities trades, and/or in the absence of material adverse information that was  
3 known to or recklessly disregarded by Defendants, but not disclosed in public  
4 statements by Defendants during the Class Period, Plaintiff and the other members  
5 of the Class acquired Motorcar's securities during the Class Period at artificially  
6 high prices and were damaged thereby.

7 56. At the time of said misrepresentations and/or omissions, Plaintiff and  
8 other members of the Class were ignorant of their falsity, and believed them to be  
9 true. Had Plaintiff and the other members of the Class and the marketplace known  
10 the truth regarding the problems that Motorcar was experiencing, which were not  
11 disclosed by Defendants, Plaintiff and other members of the Class would not have  
12 purchased or otherwise acquired their Motorcar securities, or, if they had acquired  
13 such securities during the Class Period, they would not have done so at the  
14 artificially inflated prices which they paid.

15 57. By virtue of the foregoing, Defendants violated Section 10(b) of the  
16 Exchange Act and Rule 10b-5 promulgated thereunder.

17 58. As a direct and proximate result of Defendants' wrongful conduct,  
18 Plaintiff and the other members of the Class suffered damages in connection with  
19 their respective purchases and sales of the Company's securities during the Class  
20 Period.

21 **SECOND CLAIM**  
22 **Violation of Section 20(a) of The Exchange Act**  
23 **Against the Individual Defendants**

24 59. Plaintiff repeats and re-alleges each and every allegation contained  
25 above as if fully set forth herein.

26 60. Individual Defendants acted as controlling persons of Motorcar within  
27 the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of  
28 their high-level positions and their ownership and contractual rights, participation

1 in, and/or awareness of the Company's operations and intimate knowledge of the  
2 false financial statements filed by the Company with the SEC and disseminated to  
3 the investing public, Individual Defendants had the power to influence and control  
4 and did influence and control, directly or indirectly, the decision-making of the  
5 Company, including the content and dissemination of the various statements which  
6 Plaintiff contends are false and misleading. Individual Defendants were provided  
7 with or had unlimited access to copies of the Company's reports, press releases,  
8 public filings, and other statements alleged by Plaintiff to be misleading prior to  
9 and/or shortly after these statements were issued and had the ability to prevent the  
10 issuance of the statements or cause the statements to be corrected.

11 61. In particular, Individual Defendants had direct and supervisory  
12 involvement in the day-to-day operations of the Company and, therefore, had the  
13 power to control or influence the particular transactions giving rise to the securities  
14 violations as alleged herein, and exercised the same.

15 62. As set forth above, Motorcar and Individual Defendants each violated  
16 Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this  
17 Complaint. By virtue of their position as controlling persons, Individual Defendants  
18 are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate  
19 result of Defendants' wrongful conduct, Plaintiff and other members of the Class  
20 suffered damages in connection with their purchases of the Company's securities  
21 during the Class Period.

### 22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

24 (a) Determining that this action is a proper class action under Rule 23 of  
25 the Federal Rules of Civil Procedure;

26 (b) Awarding compensatory damages in favor of Plaintiff and the other  
27 Class members against all defendants, jointly and severally, for all damages  
28 sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial,

1 including interest thereon;

2 (c) Awarding Plaintiff and the Class their reasonable costs and expenses  
3 incurred in this action, including counsel fees and expert fees; and

4 (d) Such other and further relief as the Court may deem just and proper.

5 **JURY TRIAL DEMANDED**

6 Plaintiff hereby demands a trial by jury.

7 Dated: \_\_\_\_\_, 2018

8 By: \_\_\_\_\_ *Draft*

9 **GLANCY PRONGAY & MURRAY LLP**

10 Lionel Z. Glancy  
11 Robert V. Prongay  
12 Lesley F. Portnoy  
13 Charles H. Linehan  
14 1925 Century Park East, Suite 2100  
15 Los Angeles, CA 90067  
16 Telephone: (310) 201-9150  
17 Facsimile: (310) 201-9160

18 **LAW OFFICES OF HOWARD G. SMITH**

19 Howard G. Smith  
20 3070 Bristol Pike, Suite 112  
21 Bensalem, PA 19020  
22 Telephone: (215) 638-4847  
23 Facsimile: (215) 638-4867

24 *Attorneys for Plaintiff* \_\_\_\_\_