

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PLAINTIFF, Individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CUMMINS INC., N. THOMAS
LINEBARGER, JENNIFER RUMSEY,
and MARK A. SMITH,

Defendants.

No.

**CLASS ACTION COMPLAINT
FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS**

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS

Plaintiff, individually and on behalf of all other persons similarly situated, by Plaintiff's undersigned attorneys, for Plaintiff's complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and information and belief as to all other matters, based upon, among other things, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants' public documents, public filings, wire and press releases published by and regarding Cummins Inc. ("Cummins" or the "Company"), and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a class action on behalf of persons or entities who purchased or otherwise acquired publicly traded Cummins securities between April 30, 2019 and December 21, 2023, inclusive (the "Class Period"). Plaintiff seeks to recover compensable damages caused by Defendants' violations of the federal securities laws under the Securities Exchange Act of 1934 (the "Exchange Act").

JURISDICTION AND VENUE

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

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

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged

misstatements entered and the subsequent damages took place in this judicial district.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants (defined below), directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

6. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased Cummins securities during the Class Period and was economically damaged thereby.

7. Defendant Cummins purports to be a “a global power leader”. It “designs, manufactures, distributes and services diesel, natural gas, electric and hybrid powertrains and powertrain-related components including filtration, aftertreatment, turbochargers, fuel systems, controls systems, air handling systems, automated transmissions, axles, drivelines, brakes, suspension systems, electric power generation systems, batteries, electrified power systems, electric powertrains, hydrogen production and fuel cell products.”

8. Defendant Cummins is incorporated in Indiana and its head office is located at 500 Jackson Street, Columbus, Indiana 47202-3005.

9. Cummins’ common stock trades on the New York Stock Exchange (“NYSE”) under the ticker symbol “CMI”.

10. Defendant N. Thomas Linebarger (“Linebarger”) served as the Company’s Chief Executive Officer (“CEO”), from 2012 through August 1, 2022, and Chairman of the Board of Directors (the “Board”) from 2012 through August 1, 2023.

11. Defendant Jennifer Rumsey (“Rumsey”) became the Company’s President and CEO on August 1, 2022, and has served as Chair of the Board since August 1, 2023.

12. Defendant Mark A. Smith (“Smith”) has served as the Company’s Chief Financial Officer from the beginning of the Class Period.

13. Defendants Linebarger, Rumsey, and Smith are collectively referred to herein as the “Individual Defendants.”

14. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;
- (c) was privy to confidential proprietary information concerning the Company and its business and operations;
- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (e) was directly or indirectly involved in the oversight or implementation of the Company’s internal controls;
- (f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or
- (g) approved or ratified these statements in violation of the federal securities laws.

15. The Company is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

16. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to Cummins under *respondeat superior* and agency principles.

17. Defendant Cummins and the Individual Defendants are collectively referred to herein as “Defendants.”

SUBSTANTIVE ALLEGATIONS

Background

18. On April 29, 2019, Cummins issued a press release entitled “Cummins Reviewing Emissions Certification and Compliance Process for its Pickup Truck Applications” (the “April 2019 Announcement”), in which it announced that “the company is formally reviewing its emissions certification and compliance process for its pickup truck applications.”

19. The April 2019 Announcement stated, in pertinent part the following: Following conversations with the U.S. EPA and CARB regarding certification for the engines in the 2019 RAM 2500 and 3500 trucks, the company made the decision to review its certification process and compliance with emissions standards. This review is being conducted with external advisors to ensure the certification process for Cummins pickup truck applications is consistent with its internal policies, engineering standards and applicable laws. Cummins has voluntarily disclosed the review to our regulators and other agencies and will cooperate with them to ensure a complete and thorough review and implement recommendations for improvement.

Materially False and Misleading

Statements Issued During the Class Period

20. On April 30, 2019, the Company filed with the SEC its quarterly report on Form 10-Q for the period ended March 31, 2019 (the “1Q19 Report”). Attached to the 1Q19 Report were certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Linebarger and Smith attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

21. The 1Q19 Report contained the following risk disclosure:

We are conducting a formal review of our emissions certification process and compliance with emissions standards with respect to our pick-up truck applications. The results of this formal review or the discovery of any noncompliance issues, could have a materially adverse impact on our results of operations, financial condition and cash flows.

We previously announced that we are conducting a formal review of our emissions certification process and compliance with emissions standards with respect to our pick-up truck applications, following conversations with the EPA and CARB regarding certification of our engines for model year 2019 RAM 2500 and 3500 trucks. While we have voluntarily disclosed our formal review to our regulators and other agencies, we have not been issued any official notice from regulators regarding potential noncompliance issues with these particular engines. *We plan to work together closely with the relevant regulators to develop a resolution for these matters and we will implement recommendations for improvement as part of our ongoing commitment to compliance. At this time, we have not yet determined the impact, if any, to other model years or engines or the percentage of the engine populations that could be affected.*

Due to the preliminary nature of the formal review and the presence of many unknown facts and circumstances, we are not yet able to estimate the financial impact of these matters. It is possible that the consequences of remediation plans resulting from our formal review could have a materially adverse impact on our results of operations, financial condition and cash flows in the periods in which these emission certification issues are addressed.

(Emphasis added).

22. This statement was materially false and misleading at the time it was made because Cummins was continuing to make engines for RAM 2500 and 3500 trucks with unlawful emission control devices.

23. The 1Q19 Report contained the following statement regarding legal proceedings:

On April 29, 2019, we announced that we are conducting a formal review of our emissions certification process and compliance with emissions standards for our pick-up truck applications, following conversations with the U.S. Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regarding certification for our engines *in model year 2019 RAM 2500 and 3500 trucks*. In addition, we announced that we have voluntarily disclosed our formal review to our regulators and other agencies and will work cooperatively to ensure a complete and thorough review. *Due to the preliminary nature of our formal review and the presence of many unknown facts and circumstances, we cannot predict the outcome and we cannot provide assurance that the matter will not have a materially adverse impact on our results of operations, financial condition and cash flows.*

(Emphasis added).

24. This statement was materially false and misleading because, at the time it was made, Cummins was continuing to make engines for RAM 2500 and 3500 trucks with unlawful emission control devices, raising the likelihood of a stringent penalty in this matter.

25. On July 30, 2019 and October 29, 2019, Cummins filed with the SEC its quarterly reports on Form 10-Q for the periods ending June 30, 2019 (the “2Q19 Report”) and September 29, 2019 (the “3Q19 Report”). Attached to the 2Q19 and 3Q19 Reports were certifications pursuant to SOX signed by Defendants Linebarger and Smith attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

26. The 2Q19 and 3Q19 Reports contained substantially similar disclosures as those discussed above in paragraphs 21 and 23.

27. Those statements were materially false and misleading for the reasons discussed in paragraphs 22 and 24.

28. On February 11, 2020, Cummins filed with the SEC its Annual Report on 10-K for the year ended December 31, 2019 (the “2019 Annual Report”).

Attached to the 2019 Annual Report were certifications pursuant to SOX signed by Defendants Linebarger and Smith attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

29. The 2019 Annual Report contained the following risk disclosure:

We are conducting a formal internal review of our emission certification process and compliance with emission standards with respect to our pick-up truck applications and working with the EPA and CARB, as well as the Department of Justice (DOJ) and SEC, to address their questions about these applications. The results of this formal review and regulatory and government agency processes, or the discovery of any noncompliance issues, could have a material adverse impact on our results of operations and cash flows.

We previously announced that we are conducting a formal internal review of our emissions certification process and compliance with emission standards with respect to all of our pick-up truck applications, ***following conversations with the EPA and CARB regarding certification of our engines for model year 2019 RAM 2500 and 3500 trucks.*** During conversations with the EPA and CARB about the effectiveness of our pick-up truck applications, the regulators raised concerns that certain aspects of our emissions systems may reduce the effectiveness of our emissions control systems and thereby act as defeat devices. As a result, our internal review focuses, in part, on the regulators' concerns. We are working closely with the regulators to enhance our emissions systems to improve the effectiveness of all of our pick-up truck applications and to fully address the regulators' requirements. Based on discussions with the regulators, we have developed a new calibration for the engines in model year 2019 RAM 2500 and 3500 trucks that has been included in all engines shipped since September 2019. During our discussions, the regulators have asked us to look at other model years and other engines, though the primary focus of our review has been the model year 2019 RAM. ***We will continue to work together closely with the relevant regulators to develop and implement recommendations for improvement as part of our ongoing commitment to compliance. We are also fully cooperating with the DOJ's and the SEC's information requests and inquiries.***

Due to the continuing nature of the formal review, our ongoing cooperation with the regulators and other government agencies, and the presence of many unknown facts and circumstances, we are not yet able to estimate the financial impact of these matters. It is possible that the consequences of any remediation plans resulting from our formal review and these regulatory and agency processes could have a material adverse impact on our results of operations and cash flows in the periods in which these emissions certification issues are addressed.

(Emphasis added).

30. This statement was materially false and misleading at the time it was made because the Company continued to make engines for RAM 2500 and 3500 trucks with unlawful emissions control devices.

31. The 2019 Annual Report contained the following risk disclosure regarding the regulatory environment in which Cummins operates:

Our products are subject to extensive statutory and regulatory requirements that can significantly increase our costs and, along with increased scrutiny from regulatory agencies and unpredictability in the adoption, implementation and enforcement of increasingly stringent emission standards by multiple jurisdictions around the world, could have a material adverse impact on our results of operations, financial condition and cash flows.

Our engines are subject to extensive statutory and regulatory requirements governing emissions and noise, including standards imposed by the EPA, the EU, state regulatory agencies (such as the CARB) and other regulatory agencies around the world. Regulatory agencies are making certification and compliance with emissions and noise standards more stringent and subjecting diesel engine products to an increasing level of scrutiny. ***The discovery of noncompliance issues could have a material adverse impact on our results of operations, financial condition and cash flows.***

Developing engines and components to meet more stringent and changing regulatory requirements, with different implementation timelines and emission requirements, makes developing engines efficiently for multiple markets complicated and could result in substantial additional costs that may be difficult to recover in certain markets. ***While we have met previous deadlines, our ability to comply with existing and future regulatory***

standards will be essential for us to maintain our competitive advantage in the engine markets we serve. The successful development and introduction of new and enhanced products in order to comply with new regulatory requirements are subject to other risks, such as delays in product development, cost over-runs and unanticipated technical and manufacturing difficulties.

In addition to these risks, the nature and timing of government implementation and enforcement of increasingly stringent emission standards in our worldwide markets are unpredictable and subject to change. Any delays in implementation or enforcement could result in a loss of our competitive advantage and could have a material adverse impact on our results of operations, financial condition and cash flows.

(Emphasis added).

32. This statement was materially false and misleading at the time it was made because Cummins was producing engines for the RAM 2500 and 3500 trucks with unlawful emissions control devices, raising the risk of regulatory enforcement and penalties.

33. The 2019 Annual Report contained the following section on environmental sustainability:

We adopted our comprehensive environmental sustainability plan in 2014 after examining our entire environmental footprint, focusing on the key areas of water, waste, energy and greenhouse gases (GHG). As the concept and scope of environmental sustainability has matured and broadened, leaders have moved from initially working on environmental impacts within our direct control in our operations to an expanded view of fuel and raw materials that reaches across the entire product life-cycle from design to manufacture to end of life. *Our environmental sustainability plan is the way we carry out our priorities, goals and initiatives in our action areas, including reducing our carbon footprint, using fewer natural resources and partnering to solve complex problems.*

The highest level of accountability for Cummins' climate-related risks and opportunities is with the Safety, Environment and Technology (SET) committee of the Board of Directors (the Board). The Action Committee for

Environmental Sustainability meets monthly and reports to the Chairman and to the SET committee at least annually.

Our Sustainability Progress Report for 2018/2019 includes goal progress and other key environmental and climate metrics and targets. This and prior reports as well as a Data Book of more detailed environmental data in accordance with the Global Reporting Initiative's Standard core compliance designation are available on our website at www.cummins.com. Our annual submission to the Carbon Disclosure Project (CDP) for climate change and water are also available on the website. The climate submission provides information on our scenario planning exercise for climate and other risks as requested by CDP. These reports and data book are not incorporated into this Form 10-K by reference. We currently report on the following environmental sustainability goals and commitments from our 2014 plan:

- a product vision statement — "powering the future through product innovation that makes people's lives better and reduces our environmental footprint;"
- partnering with customers to improve the fuel efficiency of our products in use, ***targeting an annual run-rate reduction of 3.5 million metric tons of carbon dioxide***;
- achieving a 32 percent energy intensity reduction from company facilities by the end of 2020 (using a baseline year of 2010) and increasing the portion of electricity we use derived from renewable sources;
- reducing direct water use by 50 percent adjusted for hours worked and achieving water neutrality at 15 sites by the end of 2020;
- increasing our recycling rate from 88 percent to 95 percent and achieving zero disposal at 30 sites by the end of 2020; and
- utilizing the most efficient methods and modes to move goods across our network to reduce carbon dioxide per kilogram of goods moved by 10 percent by the end of 2020.

We continue to articulate our positions on key public policy issues and on a wide range of environmental issues. We are actively engaged with regulatory, industry and other stakeholder groups around the world as GHG and fuel efficiency standards become more prevalent globally. We were named number 17 in Newsweek's 2019 Green Ranking of U.S. companies, number 14 among Barron's Top 100 Most Sustainable Companies as well as

named to the Dow Jones North American Sustainability Index for the fourteenth consecutive year in 2019.

In late 2019, Cummins introduced PLANET 2050, a sustainability strategy focused on three priority areas: addressing climate change and air emissions, using natural resources in the most sustainable way and improving communities. It includes eight specific goals to achieve by 2030, as well as aspirational targets for 2050. Cummins is currently evaluating how the new goals will be integrated into business planning and will report on progress beginning in 2022.

(Emphasis added).

34. This statement was materially false and misleading at the time that it was made because Cummins was producing engines for the RAM 2500 and 3500 trucks with unlawful emissions control devices. As such, Cummins materially overstated its commitment to environmental sustainability.

35. The 2019 Annual Report contained the following statement on environmental compliance:

Our engines are subject to extensive statutory and regulatory requirements that directly or indirectly impose standards governing emission and noise. Over the past several years we have substantially increased our global environmental compliance presence and expertise to understand and meet emerging product environmental regulations around the world. Our ability to comply with these and future emission standards is an essential element in maintaining our leadership position in regulated markets. We have made, and will continue to make, significant capital and research expenditures to comply with these standards.

Following conversations with the U.S. Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regarding certification for the engines in the 2019 RAM 2500 and 3500 trucks, we made the decision to review our certification process and compliance with emission standards. This review is being conducted with external advisers to ensure the certification and all of our processes for our pick-up truck applications are consistent with our internal policies, engineering standards and applicable laws. In addition, we voluntarily disclosed our formal internal

review to our regulators and other agencies and have been working cooperatively with them to ensure a complete and thorough review.

We strive to be a leader in developing and implementing technologies that provide customers with the highest performing products that also have the least impact on the environment and have a long history of working with governments and regulators to achieve these goals. We remain committed to ensuring that our products meet all current and future emission standards and delivering value to our customers.

On October 17, 2019, the Board approved the creation of a new Product Compliance and Regulatory Affairs Organization to lead engine emission certification and compliance and regulatory affairs. This new organization is led by the Vice President - Product Compliance and Regulatory Affairs who reports directly to the Chief Executive Officer, and the new Vice President joins the Cummins Executive Team and Cummins Leadership Team. The focus of this new organization will be to strengthen our ability to design great products that help our customers win while ensuring compliance with increasingly challenging global emission regulations. The organization will also work to enhance our collaboration with the agencies that set the direction and regulations of emissions to best ensure we are meeting every expectation today while planning ahead for future changes.

(Emphasis added).

36. This statement was materially false and misleading because at the time that it was made, Cummins was producing engines for the RAM 2500 and 3500 trucks with unlawful emissions control devices. As such, Cummins overstated its commitment to environmental compliance.

37. The 2019 Annual Report contained the following disclosure regarding legal proceedings:

On April 29, 2019, we announced that we were conducting a formal internal review of our emissions certification process and compliance with emission standards for our pick-up truck applications, following conversations with the EPA and the CARB regarding certification of our engines in model year 2019 RAM 2500 and 3500 trucks. This review is being conducted with external advisors to ensure the certification and compliance processes for all of our pick-up truck applications are consistent with our internal policies,

engineering standards and applicable laws. *In addition, we voluntarily disclosed our formal internal review to our regulators and to other government agencies, the DOJ and the SEC, and have been working cooperatively with them to ensure a complete and thorough review.* During conversations with the EPA and CARB about the effectiveness of our pick-up truck applications, the regulators raised concerns that certain aspects of our emissions systems may reduce the effectiveness of our emissions control systems and thereby act as defeat devices. As a result, our internal review focuses, in part, on the regulators' concerns. We are working closely with the regulators to enhance our emissions systems to improve the effectiveness of all of our pick-up truck applications and to fully address the regulators' requirements. *Based on discussions with the regulators, we have developed a new calibration for the engines in model year 2019 RAM 2500 and 3500 trucks that has been included in all engines shipped since September 2019.* During our discussions, the regulators have asked us to look at other model years and other engines, though the primary focus of our review has been the model year 2019 RAM. *We are also fully cooperating with the DOJ's and the SEC's information requests and inquiries.* Due to the continuing nature of our formal review, our ongoing cooperation with our regulators and other government agencies, and the presence of many unknown facts and circumstances, *we cannot predict the final outcome of this review and these regulatory and agency processes, and we cannot provide assurance that the matter will not have a materially adverse impact on our results of operations and cash flows.*

(Emphasis added).

38. This statement was materially false and misleading at the time it was made because Cummins was producing engines for RAM 2500 and 3500 trucks with unlawful emission control devices, raising the likelihood of a stringent penalty in this matter.

39. On April 28, 2020, July 28, 2020, and October 27, 2020, the Company filed with the SEC its quarterly reports on Form 10-Q for the periods ending March 29, 2020 (the "1Q20 Report"), June 28, 2020 (the "2Q20 Report"), and September 27, 2020 (the "3Q20 Report") Attached to the 1Q20, 2Q20, and 3Q20 Reports were certifications pursuant to SOX signed by Defendants Linebarger and Smith

attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

40. The 1Q20, 2Q20, and 3Q20 Reports each contained the following risk disclosure:

We are conducting a formal internal review of our emission certification process and compliance with emission standards with respect to our pick-up truck applications and working with the EPA and CARB, as well as the Department of Justice (DOJ) and SEC, to address their questions about these applications. The results of this formal review and regulatory and government agency processes, or the discovery of any noncompliance issues, could have a material adverse impact on our results of operations and cash flows.

We previously announced that we are conducting a formal internal review of our emissions certification process and compliance with emission standards with respect to all of our pick-up truck applications, following conversations with the EPA and CARB regarding certification of our engines for model year 2019 RAM 2500 and 3500 trucks. *During conversations with the EPA and CARB about the effectiveness of our pick-up truck applications, the regulators raised concerns that certain aspects of our emissions systems may reduce the effectiveness of our emissions control systems and thereby act as defeat devices.* As a result, our internal review focuses, in part, on the regulators' concerns. We are working closely with the regulators to enhance our emissions systems to improve the effectiveness of all of our pick-up truck applications and to fully address the regulators' requirements. Based on discussions with the regulators, we have developed a new calibration for the engines in model year 2019 RAM 2500 and 3500 trucks that has been included in all engines shipped since September 2019. *During our discussions, the regulators have asked us to look at other model years and other engines, though the primary focus of our review has been the model year 2019 RAM. We will continue to work together closely with the relevant regulators to develop and implement recommendations for improvement as part of our ongoing commitment to compliance.* We are also fully cooperating with the DOJ's and the SEC's information requests and inquiries.[] Due to the continuing nature of the formal review, our ongoing cooperation with the regulators and other

government agencies, and the presence of many unknown facts and circumstances, we are not yet able to estimate the financial impact of these matters. It is possible that the consequences of any remediation plans resulting from our formal review and these regulatory and agency processes could have a material adverse impact on our results of operations and cash flows in the periods in which these emissions certification issues are addressed.

(Emphasis added).

41. This statement was materially false and misleading at the time it was made because Cummins was continuing to produce engines for RAM 2500 and 3500 trucks with unlawful emission control devices.

42. On February 10, 2021, Cummins filed with the SEC its Annual Report on 10-K for the year ended December 31, 2020 (the “2020 Annual Report”). Attached to the 2020 Annual Report were certifications pursuant to SOX signed by Defendants Linebarger and Smith attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

43. The 2020 Annual Report contained the following risk disclosure:
We are conducting a formal internal review of our emission certification process and compliance with emission standards with respect to our pick-up truck applications and are working with the EPA and CARB to address their questions about these applications. The results of this formal review and regulatory processes, or the discovery of any noncompliance issues, could have a material adverse impact on our results of operations and cash flows.

We previously announced that we are conducting a formal internal review of our emissions certification process and compliance with emission standards with respect to all of our pick-up truck applications, *following conversations with the EPA and CARB regarding certification of our engines for model year 2019 RAM 2500 and 3500 trucks. During conversations with the EPA and CARB about the effectiveness of our pick-up truck applications, the regulators raised concerns that certain aspects of our emissions systems may reduce the effectiveness of our emissions*

control systems and thereby act as defeat devices. As a result, our internal review focuses, in part, on the regulators' concerns. We are working closely with the regulators to enhance our emissions systems to improve the effectiveness of all of our pick-up truck applications and to fully address the regulators' requirements. *Based on discussions with the regulators, we have developed a new calibration for the engines in model year 2019 RAM 2500 and 3500 trucks that has been included in all engines shipped since September 2019.* During our discussions, the regulators have asked us to look at other model years and other engines. We will continue to work together closely with the relevant regulators to develop and implement recommendations for improvement as part of our ongoing commitment to compliance.

(Emphasis added).

44. This statement was materially false and misleading because, at the time it was made, Cummins was continuing to make engines for RAM 2500 and 3500 trucks with unlawful emission control devices.

45. The 2020 Annual Report contained the following risk disclosure regarding the regulatory environment in which Cummins operates:

Our products are subject to extensive statutory and regulatory requirements that can significantly increase our costs and, along with increased scrutiny from regulatory agencies and unpredictability in the adoption, implementation and enforcement of increasingly stringent and fragmented emission standards by multiple jurisdictions around the world, could have a material adverse impact on our results of operations, financial condition and cash flows.

Our engines are subject to extensive statutory and regulatory requirements governing emissions and noise, including standards imposed by the EPA, the EU, state regulatory agencies (such as the CARB) and other regulatory agencies around the world. *Regulatory agencies are making certification and compliance with emissions and noise standards more stringent and subjecting diesel engine products to an increasing level of scrutiny. The discovery of noncompliance issues could have a material adverse impact on our results of operations, financial condition and cash flows.*

Developing engines and components to meet more stringent and changing regulatory requirements, with different implementation timelines and emission requirements, makes developing engines efficiently for multiple markets complicated and could result in substantial additional costs that may be difficult to recover in certain markets. While we have met previous deadlines, our ability to comply with existing and future regulatory standards will be essential for us to maintain our competitive position in the engine applications and industries we serve. The successful development and introduction of new and enhanced products in order to comply with new regulatory requirements are subject to other risks, such as delays in product development, cost over-runs and unanticipated technical and manufacturing difficulties.

In addition to these risks, the nature and timing of government implementation and enforcement of increasingly stringent emission standards in our worldwide markets are unpredictable and subject to change. Any delays in implementation or enforcement could result in a loss of our competitive advantage and could have a material adverse impact on our results of operations, financial condition and cash flows.

(Emphasis added).

46. This statement was materially false and misleading at the time it was made because Cummins was producing engines for the RAM 2500 and 3500 trucks with unlawful emissions control devices, raising the risk of regulatory enforcement and penalties.

47. The 2020 Annual Report contained the following section on environmental sustainability:

We are committed to making people's lives better by powering a more prosperous world. That prosperity includes strong communities, robust business and environmental sustainability.

The highest level of accountability for our climate-related risks and opportunities is with the Safety, Environment and Technology (SET) Committee of the Board of Directors (the Board). The Action Committee for Environmental Sustainability meets monthly and reports to the Chairman and to the SET Committee at least annually.

In late 2019, we introduced PLANET 2050, a sustainability strategy focused on three priority areas: addressing climate change and air emissions, using natural resources in the most sustainable way and improving communities. The strategy includes eight specific goals to achieve by 2030, including science-based carbon dioxide reduction targets for newly sold products and facilities, as well as aspirational targets for 2050. We are currently evaluating how the new goals will be integrated into business planning and will report on progress beginning in 2022.

Our Sustainability Progress Report for 2019/2020 reports on environmental sustainability goals and commitments from our 2014 plan as well as other key environmental and climate metrics and targets. The 2014 plan goals were as follows:

- *partnering with customers to improve the fuel efficiency of our products in use, targeting an annual run-rate reduction of 3.5 million metric tons of carbon dioxide;*
- achieving a 32 percent energy intensity reduction from company facilities by the end of 2020 (using a baseline year of 2010) and increasing the portion of electricity we use derived from renewable sources;
- reducing direct water use by 50 percent adjusted for hours worked and achieving water neutrality at 15 sites by the end of 2020;
- increasing our recycling rate from 88 percent to 95 percent and achieving zero disposal at 30 sites by the end of 2020 and
- utilizing the most efficient methods and modes to move goods across our network to reduce carbon dioxide per kilogram of goods moved by 10 percent by the end of 2020.

* * *

We continue to articulate our positions on key public policy issues and on a wide range of environmental issues. We are actively engaged with regulatory, industry and other stakeholder groups around the world as greenhouse gases (GHG) and fuel efficiency standards become more prevalent globally. We were named number 24 in Newsweek's Most Responsible Companies ranking, number 50 among Barron's Top 100 Most Sustainable Companies as well as named to the Dow Jones North American Sustainability Index for the fifteenth consecutive year in 2020.

(Emphasis added).

48. This statement was materially false and misleading because at the time that it was made, Cummins was producing engines for the RAM 2500 and 3500 trucks with unlawful emissions control devices. As such, Cummins overstated its commitment to environmental sustainability.

49. The 2020 Annual Report contained the following statement on environmental compliance:

Our engines are subject to extensive statutory and regulatory requirements that directly or indirectly impose standards governing emissions and noise. Over the past several years we have increased our global environmental compliance presence and expertise to understand and meet emerging product environmental regulations around the world. Our ability to comply with these and future emission standards is an essential element in maintaining our leadership position in regulated markets. We have made, and will continue to make, significant capital and research expenditures to comply with these standards.

We strive to be a leader in developing and implementing technologies that provide customers with the highest performing products while minimizing the impact on the environment, and we have a long history of working with governments and regulators to achieve these goals. We remain committed to ensuring our products meet all current and future emission standards and delivering value to our customers.

Formed in 2019, the Product Compliance and Regulatory Affairs team leads both engine emissions certification and compliance and regulatory affairs initiatives. This organization is led by the Vice President - Product Compliance and Regulatory Affairs who reports directly to the Chief Executive Officer, and the new Vice President joins the Cummins Executive Team and Cummins Leadership Team. The focus of this organization is to strengthen our ability to design great products that help our customers win while ensuring compliance with increasingly challenging global emission regulations. The organization also works to enhance our collaboration with the agencies setting the direction and regulations of emissions to best ensure we are meeting every expectation today while planning for future changes.

Following conversations with the U.S. Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regarding certification for the engines in the 2019 RAM 2500 and 3500 trucks, we made the decision to review our certification process and compliance with emission standards. This review is being conducted with external advisers to ensure the certification and all of our processes for our pick-up truck applications are consistent with our internal policies, engineering standards and applicable laws. In addition, we voluntarily disclosed our formal internal review to the regulators and to other government agencies, the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), and worked cooperatively with them to ensure a complete and thorough review. ***We fully cooperated with the DOJ's and the SEC's information requests and inquiries and, based on recent communications with these agencies, we do not expect further inquiries.*** [. . .]

(Emphasis added).

50. This statement was materially false and misleading at the time it was made because Cummins was producing engines for the RAM 2500 and 3500 trucks with unlawful emissions control devices. As such, Cummins overstated its commitment to environmental compliance.

51. On May 4, 2021, August 3, 2021, and November 2, 2021, the Company filed with the SEC its quarterly reports on Form 10-Q for the periods ending April 4, 2021 (the “1Q21 Report”), July 4, 2021 (the “2Q21 Report”), and October 3, 2021 (the “3Q21 Report”) Attached to the 1Q21, 2Q21, and 3Q21 Reports were certifications pursuant to SOX signed by Defendants Linebarger and Smith attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

52. The 1Q21 and 2Q21 Reports each incorporated by reference the risk disclosures in the 2020 Annual Report, as discussed in paragraphs 45, 47, and 49.

53. These risk disclosures mentioned in paragraph 52 were materially false and misleading for the reasons discussed in paragraphs 46, 48, and 50.

54. The 3Q21 Report contained the following risk disclosure:

We are conducting a formal internal review of our emission certification process and compliance with emission standards with respect to our pick-up truck applications and are working with the U.S. Environmental Protection Agency (EPA) and California Air Resources Board (CARB) to address their questions about these applications. Due to the continuing nature of our formal internal review and on-going discussions with EPA and CARB, we cannot predict the final results of this formal review and these regulatory processes, nor whether, or the extent to which, they could have a material adverse impact on our results of operations and cash flows.

We previously announced that we are conducting a formal internal review of our emissions certification process and compliance with emission standards with respect to all of our pick-up truck applications, following conversations with the EPA and CARB regarding certification of our engines for model year 2019 RAM 2500 and 3500 trucks. During conversations with the EPA and CARB about the effectiveness of our pick-up truck applications, the regulators raised concerns that certain aspects of our emissions systems may reduce the effectiveness of our emissions control systems and thereby act as defeat devices. As a result, our internal review focuses, in part, on the regulators' concerns. We are working closely with the regulators to enhance our emissions systems to improve the effectiveness of all of our pick-up truck applications and to fully address the regulators' requirements. *Based on discussions with the regulators, we have developed a new calibration for the engines in model year 2019 RAM 2500 and 3500 trucks that has been included in all engines shipped since September 2019. During our discussions, the regulators turned their attention to other model years and other engines, most notably our pick-up truck applications for RAM 2500 and 3500 trucks for model years 2013 through 2018.* We will continue to work together closely with the relevant regulators to develop and implement recommendations for improvement as part of our ongoing commitment to compliance.

(Emphasis added).

55. This statement was materially false and misleading at the time it was made because, contrary to Cummins' assurances about the legal compliance of

engines shipped since September 2019, Cummins was continuing to produce engines for RAM 2500 and 3500 trucks with unlawful emission control devices.

56. On February 8, 2022, Cummins filed with the SEC its Annual Report on 10-K for the year ended December 31, 2021 (the “2021 Annual Report”). Attached to the 2021 Annual Report were certifications pursuant to SOX signed by Defendants Linebarger and Smith attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

57. The 2021 Annual Report contained the following risk disclosure:

We are conducting a formal internal review of our emission certification process and compliance with emission standards with respect to our pick-up truck applications and are working with the EPA and CARB to address their questions about these applications. Due to the continuing nature of our formal internal review and on-going discussions with the EPA and CARB, we cannot predict the final results of this formal review and these regulatory processes, nor whether, or the extent to which, they could have a material adverse impact on our results of operations and cash flows.

We previously announced that we are conducting a formal internal review of our emissions certification process and compliance with emission standards with respect to all of our pick-up truck applications, following conversations with the EPA and CARB regarding certification of our engines for model year 2019 RAM 2500 and 3500 trucks. During conversations with the EPA and CARB about the effectiveness of our pick-up truck applications, the regulators raised concerns that certain aspects of our emissions systems may reduce the effectiveness of our emissions control systems and thereby act as defeat devices. As a result, our internal review focuses, in part, on the regulators’ concerns. We are working closely with the regulators to enhance our emissions systems to improve the effectiveness of all of our pick-up truck applications and to fully address the regulators’ requirements. ***Based on discussions with the regulators, we have developed a new calibration for the engines in model year 2019 RAM 2500 and 3500 trucks that has been included in all engines shipped since September 2019.*** During our discussions, the regulators turned their attention to other model years and other engines, most notably our pick-up truck applications for

RAM 2500 and 3500 trucks for model years 2013 through 2018. *We will continue to work together closely with the relevant regulators to develop and implement recommendations for improvement as part of our ongoing commitment to compliance.*

Due to the continuing nature of the formal review, our ongoing cooperation with the regulators and the presence of many unknown facts and circumstances, we are not yet able to estimate the financial impact of these matters. It is possible that the consequences of any remediation plans resulting from our formal review and these regulatory processes could have a material adverse impact on our results of operations and cash flows.

(Emphasis added).

58. This statement was materially false and misleading at the time it was made because, contrary to Cummins' assurances about the legal compliance of engines shipped since September 2019, Cummins was continuing to produce engines for RAM 2500 and 3500 trucks with unlawful emission control devices.

59. The 2021 Annual Report contained the following risk disclosure regarding the regulatory environment in which Cummins operates:

Our products are subject to extensive statutory and regulatory requirements that can significantly increase our costs and, along with increased scrutiny from regulatory agencies and unpredictability in the adoption, implementation and enforcement of increasingly stringent and fragmented emission standards by multiple jurisdictions around the world, could have a material adverse impact on our results of operations, financial condition and cash flows.

Our engines are subject to extensive statutory and regulatory requirements governing emissions and noise, including standards imposed by the EPA, the EU, state regulatory agencies (such as the CARB) and other regulatory agencies around the world. *Regulatory agencies are making certification and compliance with emissions and noise standards more stringent and subjecting diesel engine products to an increasing level of scrutiny. The discovery of noncompliance issues could have a material adverse impact on our results of operations, financial condition and cash flows.*

Developing engines and components to meet more stringent and changing regulatory requirements, with different implementation timelines and emission requirements, makes developing engines efficiently for multiple markets complicated and could result in substantial additional costs that may be difficult to recover in certain markets. While we have met previous deadlines, our ability to comply with existing and future regulatory standards will be essential for us to maintain our competitive position in the engine applications and industries we serve. The successful development and introduction of new and enhanced products in order to comply with new regulatory requirements are subject to other risks, such as delays in product development, cost over-runs and unanticipated technical and manufacturing difficulties.

In addition to these risks, the nature and timing of government implementation and enforcement of increasingly stringent emission standards in our worldwide markets are unpredictable and subject to change. Any delays in implementation or enforcement could result in a loss of our competitive advantage and could have a material adverse impact on our results of operations, financial condition and cash flows.

(Emphasis added).

60. This statement was materially false and misleading at the time it was made because Cummins was producing engines for the RAM 2500 and 3500 trucks with unlawful emissions control devices, raising the risk of regulatory enforcement and penalties.

61. The 2021 Annual Report contained the following section on environmental sustainability:

We are committed to making people's lives better by powering a more prosperous world. That prosperity includes strong communities, robust business and environmental sustainability.

The highest level of accountability for our climate-related risks and opportunities is with the Safety, Environment and Technology (SET) Committee of the Board of Directors (the Board). The internal Action Committee for Environmental Sustainability meets monthly and reports to the Chairman and to the SET Committee at least annually.

In late 2019, we introduced PLANET 2050, a sustainability strategy focused on three priority areas: addressing climate change and air emissions, using natural resources in the most sustainable way and improving communities. Additional commitments followed in 2021 with Cummins Water Works, which is our multi-million dollar program for strengthening communities through sustainable water and addressing the global water crisis. The PLANET 2050 strategy includes nine specific goals to achieve by 2030, including science-based carbon dioxide reduction targets for newly sold products and facilities, as well as aspirational targets for 2050. We are currently evaluating how the new goals will be integrated into business planning and will report on progress beginning in 2022. Key areas of focus in 2021 included product decarbonization pathways, customer sustainability collaboration and circular economy efforts such as incorporating expanded lifecycle analysis tools.

The nine PLANET 2050 goals for 2030 are as follows:

- Reduce absolute greenhouse gas (GHG) emissions from facilities and operations by 50 percent.
- ***Reduce scope three absolute lifetime GHG emissions from newly sold products by 25 percent.***
- Partner with customers to reduce scope three GHG emissions from products in the field by 55 million metric tons.
- Reduce volatile organic compounds emissions from paint and coating operations by 50 percent.
- Create a circular lifecycle plan for every part to use less, use better, use again.
- Generate 25 percent less waste in facilities and operations as percent of revenue.
- Reuse or responsibly recycle 100 percent of packaging plastics and eliminate single-use plastics in dining facilities, employee amenities and events.
- Reduce absolute water consumption in facilities and operations by 30 percent.
- Produce net water benefits that exceed our annual water use in all our regions.

* * *

We continue to articulate our positions on key public policy issues and on a wide range of environmental issues. We are actively engaged

around the world to promote science-based climate policies by working with regulatory, industry and other stakeholders, including joining advocacy groups and testifying before legislators and regulators. We will continue to work in partnership with others to advocate for tough, clear and enforceable regulations around the globe to address air and GHG emissions. In 2021, we were named to the S&P Dow Jones World and North American Sustainability Indices. It was the sixteenth consecutive time we were named to the North American index and the first time we were named to the world index since 2013. We were also named one of the inaugural recipients of the Prince Charles' Terra Carta Seal, recognizing companies for their leadership in climate action and sustainability.

We were named to Investor Business Daily's Best ESG Companies list for performance on environmental, social and governance matters, ranking number 37. We were also ranked number 84 among Barron's Top 100 Most Sustainable Companies.

(Emphasis added).

62. This statement was materially false and misleading at the time that it was made because Cummins was producing engines for the RAM 2500 and 3500 trucks with unlawful emissions control devices. As such, Cummins materially overstated its commitment to environmental sustainability.

63. The 2021 Annual Report contained the following statement on environmental compliance:

Our engines are subject to extensive statutory and regulatory requirements that directly or indirectly impose standards governing emissions and noise. Over the past several years we have increased our global environmental compliance presence and expertise to understand and meet emerging product environmental regulations around the world. Our ability to comply with these and future emission standards is an essential element in maintaining our leadership position in regulated markets. We made, and will continue to make, significant capital and research expenditures to comply with these standards.

We strive to be a leader in developing and implementing technologies that provide customers with the highest performing products while minimizing the impact on the environment, and we have a long history of working with governments and regulators to achieve these goals. We remain committed to ensuring our products meet all current and future emission standards and delivering value to our customers.

Formed in 2019, the Product Compliance and Regulatory Affairs team leads both engine emissions certification and compliance and regulatory affairs initiatives and is overseen and reports directly to the SET Committee of the Board at least annually. This organization is led by the Vice President - Product Compliance and Regulatory Affairs who reports directly to the Chief Executive Officer. The Vice President is a member of both the Cummins Executive Team and Cummins Leadership Team. *The focus of this organization is to strengthen our ability to design great products that help our customers win while complying with increasingly challenging global emission regulations.* The organization also works to enhance our collaboration with the agencies setting the direction and regulations of emissions as we strive to meet every expectation today while planning for future changes.

Following conversations with the U.S. Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regarding certification for the engines in the 2019 RAM 2500 and 3500 trucks, we made the decision to review our certification process and compliance with emission standards. *This review is being conducted with external advisers as we strive to ensure the certification and all of our processes for our pick-up truck applications are consistent with our internal policies, engineering standards and applicable laws.* We are working closely with the regulators to enhance our emissions systems to improve the effectiveness of all of our pick-up truck applications and to fully address the regulators' requirements. *Based on discussions with the regulators, we have developed a new calibration for the engines in model year 2019 RAM 2500 and 3500 trucks that has been included in all engines shipped since September 2019.* During our discussions, the regulators turned their attention to other model years and other engines, most notably our pick-up truck applications for RAM 2500 and 3500 trucks for model years 2013 through 2018. We will continue to work together closely with the relevant regulators to develop and implement recommendations for improvement as part of our ongoing commitment to compliance. [. . .]

(Emphasis added).

64. This statement was materially false and misleading at the time it was made because Cummins was producing engines for the RAM 2500 and 3500 trucks with unlawful emissions control devices. As such, Cummins overstated its commitment to environmental compliance.

65. On May 3, 2022, the Company filed with the SEC its quarterly reports on Form 10-Q for the period ending March 31, 2022 (the “1Q22 Report”). Attached to the 1Q22 Report were certifications pursuant to SOX signed by Defendants Linebarger and Smith attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

66. The 1Q22 Report contained the following risk disclosure:

We are conducting a formal internal review of our emission certification process and compliance with emission standards with respect to our pick-up truck applications and are working with the EPA and CARB to address their questions about these applications. Due to the continuing nature of our formal internal review and on-going discussions with the EPA and CARB, we cannot predict the final results of this formal review and these regulatory processes, nor whether, or the extent to which, they could have a material adverse impact on our results of operations and cash flows.

We previously announced that we are conducting a formal internal review of our emissions certification process and compliance with emission standards with respect to all of our pick-up truck applications, *following conversations with the EPA and CARB regarding certification of our engines for model year 2019 RAM 2500 and 3500 trucks. During conversations with the EPA and CARB about the effectiveness of our pick-up truck applications, the regulators raised concerns that certain aspects of our emissions systems may reduce the effectiveness of our emissions control systems and thereby act as defeat devices.* As a result, our internal review focuses, in part, on the regulators’ concerns. We are working closely with the regulators to enhance our emissions systems to improve the effectiveness of all of our pick-up truck applications and to fully address the regulators’ requirements. *Based on discussions with the regulators, we*

have developed a new calibration for the engines in model year 2019 RAM 2500 and 3500 trucks that has been included in all engines shipped since September 2019. During our discussions, the regulators turned their attention to other model years and other engines, most notably our pick-up truck applications for RAM 2500 and 3500 trucks for model years 2013 through 2018. In connection with these and other ongoing discussions with the EPA and CARB, we are developing a new software calibration and will recall model years 2013 through 2018 RAM 2500 and 3500 trucks. ***We accrued \$30 million for the recall during the first quarter of 2022, an amount that reflects our current estimate of the cost of the recall.***

We will continue to work together closely with the relevant regulators to develop and implement recommendations for improvement and seek to reach further resolutions as part of our ongoing commitment to compliance. Due to the presence of many unknown facts and circumstances, we are not yet able to estimate any further financial impact of these matters. It is possible that the consequences of any remediation plans resulting from our formal review and these regulatory processes could have a material adverse impact on our results of operations and cash flows.

(Emphasis added).

67. This statement was materially false and misleading at the time it was made because, contrary to Cummins' assurances about the legal compliance of engines shipped since September 2019, Cummins was continuing to produce engines for RAM 2500 and 3500 trucks with unlawful emission control devices.

68. On August 3, 2022 and November 4, 2022, the Company filed with the SEC its quarterly reports on Form 10-Q for the periods ending June 30, 2022 (the "2Q22 Report"), and September 30, 2022 (the "3Q22 Report"), respectively. Attached to the 2Q22 and 3Q22 Reports were SOX certifications signed by Rumsey and Smith attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

69. The 2Q22 Report contained the following risk disclosure:

We are conducting a formal internal review of our emission certification process and compliance with emission standards with respect to our pick-up truck applications and are working with the EPA and CARB to address their questions about these applications. Due to the continuing nature of our formal internal review and on-going discussions with the EPA and CARB, we cannot predict the final results of this formal review and these regulatory processes, nor whether, or the extent to which, they could have a material adverse impact on our results of operations and cash flows.

We previously announced that we are conducting a formal internal review of our emissions certification process and compliance with emission standards with respect to all of our pick-up truck applications, following conversations with the EPA and CARB regarding certification of our engines for model year 2019 RAM 2500 and 3500 trucks. During conversations with the EPA and CARB about the effectiveness of our pick-up truck applications, the regulators raised concerns that certain aspects of our emissions systems may reduce the effectiveness of our emissions control systems and thereby act as defeat devices. As a result, our internal review focuses, in part, on the regulators' concerns. *We are working closely with the regulators to enhance our emissions systems to improve the effectiveness of all of our pick-up truck applications and to fully address the regulators' requirements. Based on discussions with the regulators, we have developed a new calibration for the engines in model year 2019 RAM 2500 and 3500 trucks that has been included in all engines shipped since September 2019.* During our discussions, the regulators turned their attention to other model years and other engines, most notably our pick-up truck applications for RAM 2500 and 3500 trucks for model years 2013 through 2018. In connection with these and other ongoing discussions with the EPA and CARB, we are developing a new software calibration and will recall model years 2013 through 2018 RAM 2500 and 3500 trucks. We accrued \$30 million for the recall during the first quarter of 2022, an amount that reflects our current estimate of the cost of the recall.

(Emphasis added).

70. This statement was materially false and misleading at the time it was made because, contrary to Cummins' assurances about the legal compliance of

engines shipped since September 2019, Cummins was continuing to produce engines for RAM 2500 and 3500 trucks with unlawful emission control devices.

71. The 3Q22 Report contained a similar risk disclosure:

We are conducting a formal internal review of our emission certification process and compliance with emission standards with respect to our pick-up truck applications and are working with the EPA and CARB to address their questions about these applications. Due to the continuing nature of our formal internal review and on-going discussions with the EPA and CARB, we cannot predict the final results of this formal review and these regulatory processes, nor whether, or the extent to which, they could have a material adverse impact on our results of operations and cash flows.

We previously announced that we are conducting a formal internal review of our emissions certification process and compliance with emission standards with respect to all of our pick-up truck applications, following conversations with the EPA and CARB regarding certification of our engines for model year 2019 RAM 2500 and 3500 trucks. During conversations with the EPA and CARB about the effectiveness of our pick-up truck applications, the regulators raised concerns that certain aspects of our emissions systems may reduce the effectiveness of our emissions control systems and thereby act as defeat devices. As a result, our internal review focuses, in part, on the regulators' concerns. We are working closely with the regulators to enhance our emissions systems to improve the effectiveness of all of our pick-up truck applications and to fully address the regulators' requirements. Based on discussions with the regulators, we have developed a new calibration for the engines in model year 2019 RAM 2500 and 3500 trucks that has been included in all engines shipped since September 2019. During our ongoing discussions, the regulators turned their attention to other model years and other engines, most notably our pick-up truck applications for RAM 2500 and 3500 trucks for model years 2013 through 2018 and Titan trucks for model years 2016 through 2019. In connection with these and other ongoing discussions with the EPA and CARB, we are developing a new software calibration and will recall model years 2013 through 2018 RAM 2500 and 3500 trucks. We accrued \$30 million for the RAM recall during the first quarter of 2022, an amount that reflected our current estimate of the cost of that recall. We are also developing a new software calibration and hardware fix and will recall model years 2016 through 2019 Titan trucks. We accrued \$29 million for the Titan recall during the third quarter

of 2022, an amount that reflected our current estimate of the cost of that recall.

We will continue to work together closely with the relevant regulators to develop and implement recommendations for improvement and seek to reach further resolutions as part of our ongoing commitment to compliance. Due to the presence of many unknown facts and circumstances, we are not yet able to estimate any further financial impact of these matters. It is possible that the consequences resulting from our formal review and these regulatory processes could have a material adverse impact on our results of operations and cash flows.

(Emphasis added).

72. This statement was materially false and misleading at the time it was made because, contrary to Cummins' assurances about the legal compliance of engines shipped since September 2019, Cummins was continuing to produce engines for RAM 2500 and 3500 trucks with unlawful emission control devices.

73. On February 14, 2023, Cummins filed with the SEC its Annual Report on 10-K for the year ended December 31, 2022 (the "2022 Annual Report"). Attached to the 2022 Annual Report were certifications pursuant to SOX signed by Defendants Rumsey and Smith attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

74. The 2022 Annual Report contained the following risk disclosure:
We are conducting a formal internal review of our emission certification process and compliance with emission standards with respect to our pick-up truck applications and are working with the EPA and CARB to address their questions about these applications. Due to the continuing nature of our formal internal review and on-going discussions with the EPA and CARB, we cannot predict the final results of this formal review and these regulatory processes, nor whether, or the extent to which, they could have a material adverse impact on our results of operations and cash flows.

We previously announced that we are conducting a formal internal review of our emissions certification process and compliance with emission standards with respect to all of our pick-up truck applications, following conversations with the EPA and CARB regarding certification of our engines for model year 2019 RAM 2500 and 3500 trucks. During conversations with the EPA and CARB about the effectiveness of our pick-up truck applications, the regulators raised concerns that certain aspects of our emissions systems may reduce the effectiveness of our emissions control systems and thereby act as defeat devices. As a result, our internal review focuses, in part, on the regulators' concerns. We are working closely with the regulators to enhance our emissions systems to improve the effectiveness of all of our pick-up truck applications and to fully address the regulators' requirements. ***Based on discussions with the regulators, we have developed a new calibration for the engines in model year 2019 RAM 2500 and 3500 trucks that has been included in all engines shipped since September 2019.*** During our ongoing discussions, the regulators turned their attention to other model years and other engines, most notably our pick-up truck applications for RAM 2500 and 3500 trucks for model years 2013 through 2018 and Titan trucks for model years 2016 through 2019. We have also been in communication with Environmental and Climate Change Canada regarding similar issues relating to some of these very same platforms. ***In connection with these and other ongoing discussions with the EPA and CARB, we are developing a new software calibration and will recall model years 2013 through 2018 RAM 2500 and 3500 trucks.*** We accrued \$30 million for the RAM recall during the first quarter of 2022, an amount that reflected our current estimate of the cost of that recall. ***We are also developing a new software calibration and hardware fix and will recall model years 2016 through 2019 Titan trucks. We accrued \$29 million for the Titan recall during the third quarter of 2022, an amount that reflected our current estimate of the cost of that recall.***

We will continue to work together closely with the relevant regulators to develop and implement recommendations for improvement and seek to reach further resolutions as part of our ongoing commitment to compliance. ***Due to the presence of many unknown facts and circumstances, we are not yet able to estimate any further financial impact of these matters. It is possible that the consequences resulting from our formal review and these regulatory processes could have a material adverse impact on our results of operations and cash flows.***

(Emphasis added).

75. This statement was materially false and misleading at the time it was made because, contrary to Cummins' assurances about the legal compliance of engines shipped since September 2019, Cummins was continuing to produce engines for RAM 2500 and 3500 trucks with unlawful emission control devices.

76. The 2022 Annual Report contained the following risk disclosure regarding the regulatory environment in which Cummins operates:

Our products are subject to extensive statutory and regulatory requirements that can significantly increase our costs and, along with increased scrutiny from regulatory agencies and unpredictability in the adoption, implementation and enforcement of increasingly stringent and fragmented emission standards by multiple jurisdictions around the world, could have a material adverse impact on our results of operations, financial condition and cash flows.

Our engines are subject to extensive statutory and regulatory requirements governing emissions and noise, including standards imposed by the EPA, the EU, state regulatory agencies (such as the CARB) and other regulatory agencies around the world. Regulatory agencies are making certification and compliance with emissions and noise standards more stringent and subjecting diesel engine products to an increasing level of scrutiny. ***The discovery of noncompliance issues could have a material adverse impact on our results of operations, financial condition and cash flows.***

Developing engines and components to meet more stringent and changing regulatory requirements, with different implementation timelines and emission requirements, makes developing engines efficiently for multiple markets complicated and could result in substantial additional costs that may be difficult to recover in certain markets. ***While we have met previous deadlines, our ability to comply with existing and future regulatory standards will be essential for us to maintain our competitive position in the engine applications and industries we serve.*** The successful development and introduction of new and enhanced products in order to comply with new regulatory requirements are subject to other risks, such as delays in product development, cost over-runs and unanticipated technical and manufacturing difficulties.

In addition to these risks, the nature and timing of government implementation and enforcement of increasingly stringent emission standards in our worldwide markets are unpredictable and subject to change. Any delays in implementation or enforcement could result in a loss of our competitive advantage and could have a material adverse impact on our results of operations, financial condition and cash flows.

(Emphasis added).

77. This statement was materially false and misleading at the time it was made because Cummins was producing engines for the RAM 2500 and 3500 trucks with unlawful emissions control devices, raising the risk of regulatory enforcement and penalties.

78. The 2022 Annual Report contained the following statement on environmental compliance:

We are committed to making people's lives better by powering a more prosperous world. That prosperity includes strong communities, robust business and environmental sustainability.

The highest level of accountability for our climate-related risks and opportunities is with the Safety, Environment and Technology (SET) Committee of the Board of Directors (the Board). The internal Action Committee for Environmental Sustainability meets monthly and reports to the Chief Executive Officer (CEO) and to the SET Committee at least annually.

In 2019, we introduced PLANET 2050, a sustainability strategy focused on three priority areas: addressing climate change and air emissions, using natural resources in the most sustainable way and improving communities. Additional commitments followed including Cummins Water Works, our program for strengthening communities through sustainable water and addressing the global water crisis, and Destination Zero, our long-term product decarbonization strategy. The PLANET 2050 strategy includes nine specific goals to achieve by 2030, including science-based carbon dioxide reduction targets for newly sold products and facilities, as well as aspirational targets for 2050. We started reporting progress in 2022. Key areas of focus in 2022 included product decarbonization pathways, customer

sustainability collaboration and circular economy efforts such as incorporating expanded lifecycle analysis tools.

The nine PLANET 2050 goals for 2030 are as follows:

- Reduce absolute greenhouse gas (GHG) emissions from facilities and operations by 50 percent.
- Reduce scope three absolute lifetime GHG emissions from newly sold products by 25 percent.
- Partner with customers to reduce scope three GHG emissions from products in the field by 55 million metric tons.
- Reduce volatile organic compounds emissions from paint and coating operations by 50 percent.
- Create a circular lifecycle plan for every part to use less, use better, use again.
- Generate 25 percent less waste in facilities and operations as percent of revenue.
- Reuse or responsibly recycle 100 percent of packaging plastics and eliminate single-use plastics in dining facilities, employee amenities and events.
- Reduce absolute water consumption in facilities and operations by 30 percent.
- Produce net water benefits that exceed our annual water use in all our regions.

* * *

We continue to articulate our positions on key public policy issues and on a wide range of environmental issues. We are actively engaged around the world to promote science-based climate policies by working with regulatory, industry and other stakeholders, including joining advocacy groups and testifying before legislators and regulators. We will continue to work in partnership with others to advocate for tough, clear and enforceable regulations around the globe to address air and GHG emissions. In 2022, we were named to the S&P Dow Jones World and North American Sustainability Indices. It was the seventeenth consecutive time we were named to the North American index and the second time we were named to the world index since 2013. In 2021, we were named one of the inaugural recipients of the Terra Carta Seal by the Sustainable Markets Initiative, the effort founded by King Charles III while the Prince of Wales to recognize industry leaders in environmental sustainability.

In addition, in 2022 we were awarded a gold medal for sustainability performance by EcoVadis, a globally collaborative platform for trading partners to share sustainability performance information.

We were named to Investor Business Daily's Best ESG Companies list for performance on environmental, social and governance matters, ranking number 27. We were also ranked number 47 among Barron's Top 100 Most Sustainable Companies.

(Emphasis added).

79. This statement was materially false and misleading at the time that it was made because Cummins was producing engines for the RAM 2500 and 3500 trucks with unlawful emissions control devices. As such, Cummins materially overstated its commitment to environmental compliance.

80. The 2022 Annual Report contained the following statement on environmental compliance:

Our engines are subject to extensive statutory and regulatory requirements that directly or indirectly impose standards governing emissions and noise. Over the past several years we have increased our global environmental compliance presence and expertise to understand and meet emerging product environmental regulations around the world. Our ability to comply with these and future emission standards is an essential element in maintaining our leadership position in regulated markets.

We strive to be a leader in developing and implementing technologies that provide customers with the highest performing products while minimizing the impact on the environment, and we have a long history of working with governments and regulators to achieve these goals. We remain committed to ensuring our products meet all current and future emission standards and delivering value to our customers.

Announced in late 2019 and launched in early 2020, the Product Compliance and Regulatory Affairs team leads both engine emissions certification and compliance and regulatory affairs initiatives and reports to the SET Committee of the Board at least annually. This organization is led by the Vice President - Product Compliance and Regulatory Affairs. The focus of this organization is to strengthen our ability to design great products that

help our customers win while complying with increasingly challenging global emission regulations. The organization also works to enhance our collaboration with the agencies setting the direction and regulations of emissions as we strive to meet every expectation today while planning for future changes.

Following conversations with the U.S. Environmental Protection Agency (EPA) and California Air Resources Board (CARB) regarding certification for the engines in the 2019 RAM 2500 and 3500 trucks, we made the decision to review our certification process and compliance with emission standards. *This review is being conducted with external advisors as we strive to ensure the certification and compliance processes for all of our pick-up truck applications are consistent with our internal policies, engineering standards and applicable laws.* During conversations with the EPA and CARB about the effectiveness of our pick-up truck applications, the regulators raised concerns that certain aspects of our emissions systems may reduce the effectiveness of our emissions control systems and thereby act as defeat devices. As a result, our internal review focuses, in part, on the regulators' concerns. *We are working closely with the regulators to enhance our emissions systems to improve the effectiveness of all of our pick-up truck applications and to fully address the regulators' requirements. Based on discussions with the regulators, we have developed a new calibration for the engines in model year 2019 RAM 2500 and 3500 trucks that has been included in all engines shipped since September 2019.* During our ongoing discussions, the regulators turned their attention to other model years and other engines, most notably our pick-up truck applications for RAM 2500 and 3500 trucks for model years 2013 through 2018 and Titan trucks for model years 2016 through 2019. We have also been in communication with Environmental and Climate Change Canada regarding similar issues relating to some of these very same platforms. In connection with these and other ongoing discussions with the EPA and CARB, we are developing a new software calibration and will recall model years 2013 through 2018 RAM 2500 and 3500 trucks. We are also developing a new software calibration and hardware fix and will recall model years 2016 through 2019 Titan trucks. We will continue to work together closely with the relevant regulators to develop and implement recommendations for improvement as part of our ongoing commitment to compliance. [. . .]

(Emphasis added)

81. This statement was materially false and misleading at the time that it was made because Cummins was producing engines for the RAM 2500 and 3500 trucks with unlawful emissions control devices. As such, Cummins overstated its commitment to environmental compliance.

82. On May 2, 2023, August 3, 2023, and November 2, 2023 the Company filed with the SEC its quarterly reports on Form 10-Q for the periods ending March 31, 2023 (the “1Q23 Report”), June 30, 2023 (the “2Q23 Report”) and September 30, 2023 (the “3Q23 Report”). Attached to the 1Q23, 2Q23 and 3Q23 Reports were certifications pursuant to SOX signed by Defendants Rumsey and Smith attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

83. The 1Q23, 2Q23 and 3Q23 Reports contained a substantially similar risk disclosure to the one discussed in paragraph 74.

84. The statement referenced in paragraph 74 was accordingly materially false and misleading for the same reason discussed in paragraph 75.

85. The statements contained in ¶¶ 20, 21, 23, 25, 26, 28, 29, 31, 33, 35, 37, 39, 40, 42, 43, 45, 47, 49, 51, 52, 54, 56, 57, 59, 61, 63, 65, 66, 68, 69, 71, 73, 74, 76, 78, and 80 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company’s business, operations and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) Contrary to its post-April 2019 Announcement assurances about its commitment to compliance, Cummins continued to produce engines with unlawful emission defeating devices from 2019 to 2023; (2) accordingly, Cummins understated its legal and regulatory risk, and overstated its commitment to environmental protection; and (3) as a result,

Defendants' statements about its business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times.

THE TRUTH EMERGES

86. On December 22, 2023, before the market opened, the Company filed with the SEC a current report on Form 8-K in which it announced the following:

On December 22, 2023, Cummins Inc. (the "Company") issued a press release announcing that the Company has reached an agreement in principle with the U.S. Environmental Protection Agency, the California Air Resources Board ("CARB"), *the Environmental and Natural Resources Division of the U.S. Department of Justice* and the California Attorney General's Office *to resolve civil claims regarding the Company's emissions certification and compliance process for certain engines primarily used in pick-up truck applications in the United States (collectively, the "Agreement in Principle")*. The Agreement in Principle relates to the ongoing formal review of the Company's emissions certification process and compliance with emissions standards for certain pickup truck applications. *The Company first announced this review on April 29, 2019*, has since provided regular updates in periodic filings with the Securities and Exchange Commission and is continuing to cooperate with Environment and Climate Change Canada ("ECCC") with respect to ECCC's requests for certification-related information for certain pick-up truck applications.

The Company expects to record a charge of approximately \$2.04 billion in the fourth quarter of 2023 to resolve these claims and related matters. Certain additional related immaterial charges will likely be incurred as these matters are fully concluded. The Company is in a strong financial position with existing liquidity and access to capital to satisfy obligations associated with the settlement, support ongoing obligations and execute its growth strategy.

(Emphasis added).

87. On the same day, the United States Department of Justice released a press release entitled "Attorney General Merrick Garland Statement on the

Agreement in Principle with Cummins to Settle Alleged Installation of Illegal Defeat Devices in Engines” (the “DOJ Press Release”).

88. The DOJ Press Release stated that Cummins “allegedly installed defeat devices on 630,000 model year 2013 to 2019 RAM 2500 and 3500 pickup truck engines”, but then revealed that Cummins *“also allegedly installed undisclosed auxiliary emission control devices on 330,000 model year 2019 to 2023 RAM 2500 and 3500 pickup truck engines”*, revealing that the Company engaged in malfeasance for years after it disclosed the review of its compliance with emissions standards.

89. The DOJ Press Release noted that the penalty agreed to with Cummins would be the *“largest ever for a clean air act violation and the second largest ever environmental penalty.”* (Emphasis added).

90. The DOJ Press Release quoted Attorney General Merrick Garland as saying the following:

The Justice Department is committed to vigorously enforcing the environmental laws that protect the American people from harmful pollutants.

Today, the Justice Department reached an initial agreement with Cummins Inc. to settle claims that, over the past decade, the company unlawfully altered hundreds of thousands of engines to bypass emissions tests in violation of the Clean Air Act. As part of the agreement, the Justice Department will require Cummins to pay \$1.675 billion, the largest civil penalty we have ever secured under the Clean Air Act, and the second largest environmental penalty ever secured.

The types of devices we allege that Cummins installed in its engines to cheat federal environmental laws have a significant and harmful impact on people’s health and safety. For example, in this case, our preliminary estimates suggest that defeat devices on some Cummins engines have caused them to produce thousands of tons of excess emissions of nitrogen oxides. The cascading effect of those pollutants can, over long-term exposure, lead to breathing issues like asthma and respiratory infections.

(Emphasis added)

91. On this news, the price of Cummins stock fell by \$7.01 per share, or 2.87%, to close at \$236.99 on December 22, 2023.

92. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's common shares, Plaintiff and other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

93. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other than defendants who acquired the Company's securities publicly traded on NYSE during the Class Period, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

94. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, the Company's securities were actively traded on NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands of members in the proposed Class.

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

96. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class

CLASS ACTION COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS

and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

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

- whether the Exchange Act was violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and financial condition of the Company;
- whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- whether the Defendants caused the Company to issue false and misleading filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false filings;
- whether the prices of the Company securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

98. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it

impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

99. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- the Company's shares met the requirements for listing, and were listed and actively traded on NYSE, an efficient market;
- as a public issuer, the Company filed periodic public reports;
- the Company regularly communicated with public investors via established market communication mechanisms, including through the regular dissemination of press releases via major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;
- the Company's securities were liquid and traded with moderate to heavy volume during the Class Period; and
- the Company was followed by a number of securities analysts employed by major brokerage firms who wrote reports that were widely distributed and publicly available.

100. Based on the foregoing, the market for the Company's securities promptly digested current information regarding the Company from all publicly available sources and reflected such information in the prices of the shares, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

101. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information as detailed above.

COUNT I

**For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder
Against All Defendants**

102. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

103. This Count is asserted against Defendants is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

104. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

105. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of the Company's securities during the Class Period.

106. Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such

statements or documents as primary violations of the securities laws. These defendants by virtue of their receipt of information reflecting the true facts of the Company, their control over, and/or receipt and/or modification of the Company's allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning the Company, participated in the fraudulent scheme alleged herein.

107. Individual Defendants, who are the senior officers of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or any other of the Company's personnel to members of the investing public, including Plaintiff and the Class.

108. As a result of the foregoing, the market price of the Company's securities was artificially inflated during the Class Period. In ignorance of the falsity of Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of the Company's securities during the Class Period in purchasing the Company's securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

109. Had Plaintiff and the other members of the Class been aware that the market price of the Company's securities had been artificially and falsely inflated by Defendants' misleading statements and by the material adverse information which Defendants did not disclose, they would not have purchased the Company's securities at the artificially inflated prices that they did, or at all.

110. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

111. By reason of the foregoing, Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of the Company's securities during the Class Period.

COUNT II

Violations of Section 20(a) of the Exchange Act

Against the Individual Defendants

112. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

113. During the Class Period, the Individual Defendants participated in the operation and management of the Company, and conducted and participated, directly and indirectly, in the conduct of the Company's business affairs. Because of their senior positions, they knew the adverse non-public information about the Company's false financial statements.

114. As officers of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to the Company's financial condition and results of operations, and to correct promptly any public statements issued by the Company which had become materially false or misleading.

115. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which the Company disseminated in the marketplace during the Class Period concerning the Company's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause the Company to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling

persons” of the Company within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of the Company’s securities.

116. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by the Company.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for judgment and relief as follows:

(a) declaring this action to be a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and designating Plaintiff’s counsel as Lead Counsel;

(b) awarding damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, together with interest thereon;

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

(d) awarding Plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.