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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

_____, 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

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

12 **NATURE OF THE ACTION**

13
14 1. This is a class action on behalf of persons or entities who purchased
15 or otherwise acquired publicly traded Cummins securities between April 30, 2019
16 and December 21, 2023, inclusive (the “Class Period”). Plaintiff seeks to recover
17 compensable damages caused by Defendants’ violations of the federal securities
18 laws under the Securities Exchange Act of 1934 (the “Exchange Act”).

19 **JURISDICTION AND VENUE**

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

23 3. This Court has jurisdiction over the subject matter of this action
24 pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act (15 U.S.C.
25 §78aa).

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

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

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

8 PARTIES

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

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

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

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

23 10. Defendant N. Thomas Linebarger (“Linebarger”) served as the
24 Company’s Chief Executive Officer (“CEO”), from 2012 through August 1, 2022,
25 and Chairman of the Board of Directors (the “Board”) from 2012 through August
26 1, 2023.

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

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

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

8 14. Each of the Individual Defendants:

9 (a) directly participated in the management of the Company;

10 (b) was directly involved in the day-to-day operations of the Company at
11 the highest levels;

12 (c) was privy to confidential proprietary information concerning the
13 Company and its business and operations;

14 (d) was directly or indirectly involved in drafting, producing, reviewing
15 and/or disseminating the false and misleading statements and information
16 alleged herein;

17 (e) was directly or indirectly involved in the oversight or implementation
18 of the Company’s internal controls;

19 (f) was aware of or recklessly disregarded the fact that the false and
20 misleading statements were being issued concerning the Company; and/or

21 (g) approved or ratified these statements in violation of the federal
22 securities laws.

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

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1 21. The 1Q19 Report contained the following risk disclosure:
2 *We are conducting a formal review of our emissions certification process*
3 *and compliance with emissions standards with respect to our pick-up truck*
4 *applications. The results of this formal review or the discovery of any*
5 *noncompliance issues, could have a materially adverse impact on our*
6 *results of operations, financial condition and cash flows.*

7 We previously announced that we are conducting a formal review of our
8 emissions certification process and compliance with emissions standards
9 with respect to our pick-up truck applications, following conversations with
10 the EPA and CARB regarding certification of our engines for model year
11 2019 RAM 2500 and 3500 trucks. While we have voluntarily disclosed our
12 formal review to our regulators and other agencies, we have not been issued
13 any official notice from regulators regarding potential noncompliance issues
14 with these particular engines. *We plan to work together closely with the*
15 *relevant regulators to develop a resolution for these matters and we will*
16 *implement recommendations for improvement as part of our ongoing*
17 *commitment to compliance. At this time, we have not yet determined the*
18 *impact, if any, to other model years or engines or the percentage of the*
19 *engine populations that could be affected.*

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

27 (Emphasis added).

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

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

14 (Emphasis added).

15 24. This statement was materially false and misleading because, at the
16 time it was made, Cummins was continuing to make engines for RAM 2500 and
17 3500 trucks with unlawful emission control devices, raising the likelihood of a
18 stringent penalty in this matter.

19 25. On July 30, 2019 and October 29, 2019, Cummins filed with the SEC
20 its quarterly reports on Form 10-Q for the periods ending June 30, 2019 (the “2Q19
21 Report”) and September 29, 2019 (the “3Q19 Report”). Attached to the 2Q19 and
22 3Q19 Reports were certifications pursuant to SOX signed by Defendants
23 Linebarger and Smith attesting to the accuracy of financial reporting, the disclosure
24 of any material changes to the Company’s internal control over financial reporting
25 and the disclosure of all fraud.

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

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

29 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”).

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

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

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

12 We previously announced that we are conducting a formal internal review
13 of our emissions certification process and compliance with emission
14 standards with respect to all of our pick-up truck applications, *following*
15 *conversations with the EPA and CARB regarding certification of our*
16 *engines for model year 2019 RAM 2500 and 3500 trucks.* During
17 conversations with the EPA and CARB about the effectiveness of our pick-
18 up truck applications, the regulators raised concerns that certain aspects of
19 our emissions systems may reduce the effectiveness of our emissions control
20 systems and thereby act as defeat devices. As a result, our internal review
21 focuses, in part, on the regulators' concerns. We are working closely with
22 the regulators to enhance our emissions systems to improve the effectiveness
23 of all of our pick-up truck applications and to fully address the regulators'
24 requirements. Based on discussions with the regulators, we have developed
25 a new calibration for the engines in model year 2019 RAM 2500 and 3500
26 trucks that has been included in all engines shipped since September 2019.
27 During our discussions, the regulators have asked us to look at other model
28 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.

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

(Emphasis added).

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

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

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

21 Our engines are subject to extensive statutory and regulatory requirements
22 governing emissions and noise, including standards imposed by the EPA,
23 the EU, state regulatory agencies (such as the CARB) and other regulatory
24 agencies around the world. Regulatory agencies are making certification and
25 compliance with emissions and noise standards more stringent and
26 subjecting diesel engine products to an increasing level of scrutiny. *The*
27 *discovery of noncompliance issues could have a material adverse impact*
28 *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

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

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

13 (Emphasis added).

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

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

20 We adopted our comprehensive environmental sustainability plan in 2014
21 after examining our entire environmental footprint, focusing on the key areas
22 of water, waste, energy and greenhouse gases (GHG). As the concept and
23 scope of environmental sustainability has matured and broadened, leaders
24 have moved from initially working on environmental impacts within our
25 direct control in our operations to an expanded view of fuel and raw
26 materials that reaches across the entire product life-cycle from design to
27 manufacture to end of life. *Our environmental sustainability plan is the*
28 *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

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

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

- 14 • a product vision statement — "powering the future through product
15 innovation that makes people's lives better and reduces our
16 environmental footprint;"
- 17 • partnering with customers to improve the fuel efficiency of our
18 products in use, ***targeting an annual run-rate reduction of 3.5***
19 ***million metric tons of carbon dioxide***;
- 20 • achieving a 32 percent energy intensity reduction from company
21 facilities by the end of 2020 (using a baseline year of 2010) and
22 increasing the portion of electricity we use derived from renewable
23 sources;
- 24 • reducing direct water use by 50 percent adjusted for hours worked and
25 achieving water neutrality at 15 sites by the end of 2020;
- 26 • increasing our recycling rate from 88 percent to 95 percent and
27 achieving zero disposal at 30 sites by the end of 2020; and
- 28 • 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.

24 We continue to articulate our positions on key public policy issues and on a
25 wide range of environmental issues. We are actively engaged with
26 regulatory, industry and other stakeholder groups around the world as GHG
27 and fuel efficiency standards become more prevalent globally. We were
28 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

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

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

8 (Emphasis added).

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

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

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

24 Following conversations with the U.S. Environmental Protection Agency
25 (EPA) and California Air Resources Board (CARB) regarding certification
26 for the engines in the 2019 RAM 2500 and 3500 trucks, we made the
27 decision to review our certification process and compliance with emission
28 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

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

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

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

21 (Emphasis added).

22 36. This statement was materially false and misleading because at the
23 time that it was made, Cummins was producing engines for the RAM 2500 and
24 3500 trucks with unlawful emissions control devices. As such, Cummins
25 overstated its commitment to environmental compliance.

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

28 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,

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

25 (Emphasis added).

26 38. This statement was materially false and misleading at the time it was
27 made because Cummins was producing engines for RAM 2500 and 3500 trucks
28 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

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

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

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

12 We previously announced that we are conducting a formal internal review
13 of our emissions certification process and compliance with emission
14 standards with respect to all of our pick-up truck applications, following
15 conversations with the EPA and CARB regarding certification of our
16 engines for model year 2019 RAM 2500 and 3500 trucks. *During*
17 *conversations with the EPA and CARB about the effectiveness of our pick-*
18 *up truck applications, the regulators raised concerns that certain aspects*
19 *of our emissions systems may reduce the effectiveness of our emissions*
20 *control systems and thereby act as defeat devices.* As a result, our internal
21 review focuses, in part, on the regulators' concerns. We are working closely
22 with the regulators to enhance our emissions systems to improve the
23 effectiveness of all of our pick-up truck applications and to fully address the
24 regulators' requirements. Based on discussions with the regulators, we have
25 developed a new calibration for the engines in model year 2019 RAM 2500
26 and 3500 trucks that has been included in all engines shipped since
27 September 2019. *During our discussions, the regulators have asked us to*
28 *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

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

8 (Emphasis added).

9 41. This statement was materially false and misleading at the time it was
10 made because Cummins was continuing to produce engines for RAM 2500 and
11 3500 trucks with unlawful emission control devices.

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

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

26 We previously announced that we are conducting a formal internal review
27 of our emissions certification process and compliance with emission
28 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

1 *control systems and thereby act as defeat devices*. As a result, our internal
2 review focuses, in part, on the regulators' concerns. We are working closely
3 with the regulators to enhance our emissions systems to improve the
4 effectiveness of all of our pick-up truck applications and to fully address the
5 regulators' requirements. *Based on discussions with the regulators, we*
6 *have developed a new calibration for the engines in model year 2019 RAM*
7 *2500 and 3500 trucks that has been included in all engines shipped since*
8 *September 2019*. During our discussions, the regulators have asked us to
9 look at other model years and other engines. We will continue to work
10 together closely with the relevant regulators to develop and implement
11 recommendations for improvement as part of our ongoing commitment to
12 compliance.

13 (Emphasis added).

14 44. This statement was materially false and misleading because, at the
15 time it was made, Cummins was continuing to make engines for RAM 2500 and
16 3500 trucks with unlawful emission control devices.

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

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

26 Our engines are subject to extensive statutory and regulatory requirements
27 governing emissions and noise, including standards imposed by the EPA,
28 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.*

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

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

19 (Emphasis added).

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

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

26 We are committed to making people's lives better by powering a more
27 prosperous world. That prosperity includes strong communities, robust
28 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.

1 *In late 2019, we introduced PLANET 2050, a sustainability strategy*
2 *focused on three priority areas: addressing climate change and air*
3 *emissions, using natural resources in the most sustainable way and*
4 *improving communities.* The strategy includes eight specific goals to
5 achieve by 2030, including science-based carbon dioxide reduction targets
6 for newly sold products and facilities, as well as aspirational targets for
7 2050. We are currently evaluating how the new goals will be integrated into
8 business planning and will report on progress beginning in 2022.

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

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

27 * * *

28 *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).

1
2 48. This statement was materially false and misleading because at the
3 time that it was made, Cummins was producing engines for the RAM 2500 and
4 3500 trucks with unlawful emissions control devices. As such, Cummins
5 overstated its commitment to environmental sustainability.

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

8 Our engines are subject to extensive statutory and regulatory requirements
9 that directly or indirectly impose standards governing emissions and noise.
10 Over the past several years we have increased our global environmental
11 compliance presence and expertise to understand and meet emerging
12 product environmental regulations around the world. Our ability to comply
13 with these and future emission standards is an essential element in
14 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.

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

20 Formed in 2019, the Product Compliance and Regulatory Affairs team leads
21 both engine emissions certification and compliance and regulatory affairs
22 initiatives. This organization is led by the Vice President - Product
23 Compliance and Regulatory Affairs who reports directly to the Chief
24 Executive Officer, and the new Vice President joins the Cummins Executive
25 Team and Cummins Leadership Team. The focus of this organization is to
26 strengthen our ability to design great products that help our customers win
27 while ensuring compliance with increasingly challenging global emission
28 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.

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

15 (Emphasis added).

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

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

28 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.

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

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

12 We previously announced that we are conducting a formal internal review
13 of our emissions certification process and compliance with emission
14 standards with respect to all of our pick-up truck applications, following
15 conversations with the EPA and CARB regarding certification of our
16 engines for model year 2019 RAM 2500 and 3500 trucks. During
17 conversations with the EPA and CARB about the effectiveness of our pick-
18 up truck applications, the regulators raised concerns that certain aspects of
19 our emissions systems may reduce the effectiveness of our emissions control
20 systems and thereby act as defeat devices. As a result, our internal review
21 focuses, in part, on the regulators' concerns. We are working closely with
22 the regulators to enhance our emissions systems to improve the effectiveness
23 of all of our pick-up truck applications and to fully address the regulators'
24 requirements. *Based on discussions with the regulators, we have developed*
25 *a new calibration for the engines in model year 2019 RAM 2500 and 3500*
26 *trucks that has been included in all engines shipped since September 2019.*
27 *During our discussions, the regulators turned their attention to other*
28 *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

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

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

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

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

18 We previously announced that we are conducting a formal internal review
19 of our emissions certification process and compliance with emission
20 standards with respect to all of our pick-up truck applications, following
21 conversations with the EPA and CARB regarding certification of our
22 engines for model year 2019 RAM 2500 and 3500 trucks. During
23 conversations with the EPA and CARB about the effectiveness of our pick-
24 up truck applications, the regulators raised concerns that certain aspects of
25 our emissions systems may reduce the effectiveness of our emissions control
26 systems and thereby act as defeat devices. As a result, our internal review
27 focuses, in part, on the regulators’ concerns. We are working closely with
28 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

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

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

11 (Emphasis added).

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

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

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

25 Our engines are subject to extensive statutory and regulatory requirements
26 governing emissions and noise, including standards imposed by the EPA,
27 the EU, state regulatory agencies (such as the CARB) and other regulatory
28 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.

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

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

19 (Emphasis added).

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

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

26 We are committed to making people's lives better by powering a more
27 prosperous world. That prosperity includes strong communities, robust
28 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.

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

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

17 (Emphasis added).

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

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

24 Our engines are subject to extensive statutory and regulatory requirements
25 that directly or indirectly impose standards governing emissions and noise.
26 Over the past several years we have increased our global environmental
27 compliance presence and expertise to understand and meet emerging
28 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.

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

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

20 Following conversations with the U.S. Environmental Protection Agency
21 (EPA) and California Air Resources Board (CARB) regarding certification
22 for the engines in the 2019 RAM 2500 and 3500 trucks, we made the
23 decision to review our certification process and compliance with emission
24 standards. *This review is being conducted with external advisers as we
25 strive to ensure the certification and all of our processes for our pick-up
26 truck applications are consistent with our internal policies, engineering
27 standards and applicable laws.* We are working closely with the regulators
28 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. [. . .]

1 (Emphasis added).

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

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

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

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

21 We previously announced that we are conducting a formal internal review
22 of our emissions certification process and compliance with emission
23 standards with respect to all of our pick-up truck applications, *following*
24 *conversations with the EPA and CARB regarding certification of our*
25 *engines for model year 2019 RAM 2500 and 3500 trucks. During*
26 *conversations with the EPA and CARB about the effectiveness of our pick-*
27 *up truck applications, the regulators raised concerns that certain aspects*
28 *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*

1 ***have developed a new calibration for the engines in model year 2019 RAM***
2 ***2500 and 3500 trucks that has been included in all engines shipped since***
3 ***September 2019.*** During our discussions, the regulators turned their
4 attention to other model years and other engines, most notably our pick-up
5 truck applications for RAM 2500 and 3500 trucks for model years 2013
6 through 2018. In connection with these and other ongoing discussions with
7 the EPA and CARB, we are developing a new software calibration and will
8 recall model years 2013 through 2018 RAM 2500 and 3500 trucks. ***We***
9 ***accrued \$30 million for the recall during the first quarter of 2022, an***
10 ***amount that reflects our current estimate of the cost of the recall.***

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

19 (Emphasis added).

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

24 68. On August 3, 2022 and November 4, 2022, the Company filed with
25 the SEC its quarterly reports on Form 10-Q for the periods ending June 30, 2022
26 (the "2Q22 Report"), and September 30, 2022 (the "3Q22 Report"), respectively.
27 Attached to the 2Q22 and 3Q22 Reports were SOX certifications signed by
28 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:

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

9 We previously announced that we are conducting a formal internal review
10 of our emissions certification process and compliance with emission
11 standards with respect to all of our pick-up truck applications, following
12 conversations with the EPA and CARB regarding certification of our
13 engines for model year 2019 RAM 2500 and 3500 trucks. During
14 conversations with the EPA and CARB about the effectiveness of our pick-
15 up truck applications, the regulators raised concerns that certain aspects of
16 our emissions systems may reduce the effectiveness of our emissions control
17 systems and thereby act as defeat devices. As a result, our internal review
18 focuses, in part, on the regulators' concerns. ***We are working closely with***
19 ***the regulators to enhance our emissions systems to improve the***
20 ***effectiveness of all of our pick-up truck applications and to fully address***
21 ***the regulators' requirements. Based on discussions with the regulators, we***
22 ***have developed a new calibration for the engines in model year 2019 RAM***
23 ***2500 and 3500 trucks that has been included in all engines shipped since***
24 ***September 2019.*** During our discussions, the regulators turned their
25 attention to other model years and other engines, most notably our pick-up
26 truck applications for RAM 2500 and 3500 trucks for model years 2013
27 through 2018. In connection with these and other ongoing discussions with
28 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

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

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

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

12 We previously announced that we are conducting a formal internal review
13 of our emissions certification process and compliance with emission
14 standards with respect to all of our pick-up truck applications, following
15 conversations with the EPA and CARB regarding certification of our
16 engines for model year 2019 RAM 2500 and 3500 trucks. During
17 conversations with the EPA and CARB about the effectiveness of our pick-
18 up truck applications, the regulators raised concerns that certain aspects of
19 our emissions systems may reduce the effectiveness of our emissions control
20 systems and thereby act as defeat devices. As a result, our internal review
21 focuses, in part, on the regulators' concerns. We are working closely with
22 the regulators to enhance our emissions systems to improve the effectiveness
23 of all of our pick-up truck applications and to fully address the regulators'
24 requirements. Based on discussions with the regulators, we have developed
25 a new calibration for the engines in model year 2019 RAM 2500 and 3500
26 trucks that has been included in all engines shipped since September 2019.
27 During our ongoing discussions, the regulators turned their attention to other
28 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

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

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

11 (Emphasis added).

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

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

22 74. The 2022 Annual Report contained the following risk disclosure:
23 ***We are conducting a formal internal review of our emission certification***
24 ***process and compliance with emission standards with respect to our pick-***
25 ***up truck applications and are working with the EPA and CARB to address***
26 ***their questions about these applications. Due to the continuing nature of***
27 ***our formal internal review and on-going discussions with the EPA and***
28 ***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.

1 We previously announced that we are conducting a formal internal review
2 of our emissions certification process and compliance with emission
3 standards with respect to all of our pick-up truck applications, following
4 conversations with the EPA and CARB regarding certification of our
5 engines for model year 2019 RAM 2500 and 3500 trucks. During
6 conversations with the EPA and CARB about the effectiveness of our pick-
7 up truck applications, the regulators raised concerns that certain aspects of
8 our emissions systems may reduce the effectiveness of our emissions control
9 systems and thereby act as defeat devices. As a result, our internal review
10 focuses, in part, on the regulators' concerns. We are working closely with
11 the regulators to enhance our emissions systems to improve the effectiveness
12 of all of our pick-up truck applications and to fully address the regulators'
13 requirements. ***Based on discussions with the regulators, we have developed
14 a new calibration for the engines in model year 2019 RAM 2500 and 3500
15 trucks that has been included in all engines shipped since September 2019.***
16 During our ongoing discussions, the regulators turned their attention to other
17 model years and other engines, most notably our pick-up truck applications
18 for RAM 2500 and 3500 trucks for model years 2013 through 2018 and Titan
19 trucks for model years 2016 through 2019. We have also been in
20 communication with Environmental and Climate Change Canada regarding
21 similar issues relating to some of these very same platforms. ***In connection
22 with these and other ongoing discussions with the EPA and CARB, we are
23 developing a new software calibration and will recall model years 2013
24 through 2018 RAM 2500 and 3500 trucks.*** We accrued \$30 million for the
25 RAM recall during the first quarter of 2022, an amount that reflected our
26 current estimate of the cost of that recall. ***We are also developing a new
27 software calibration and hardware fix and will recall model years 2016
28 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.***

1 (Emphasis added).

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

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

8 *Our products are subject to extensive statutory and regulatory*
9 *requirements that can significantly increase our costs and, along with*
10 *increased scrutiny from regulatory agencies and unpredictability in the*
11 *adoption, implementation and enforcement of increasingly stringent and*
12 *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.

13 Our engines are subject to extensive statutory and regulatory requirements
14 governing emissions and noise, including standards imposed by the EPA,
15 the EU, state regulatory agencies (such as the CARB) and other regulatory
16 agencies around the world. Regulatory agencies are making certification and
17 compliance with emissions and noise standards more stringent and
18 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.

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

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

(Emphasis added).

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

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

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

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

***In 2019, we introduced PLANET 2050, a sustainability strategy focused
21 on three priority areas: addressing climate change and air emissions,
22 using natural resources in the most sustainable way and improving
23 communities.*** Additional commitments followed including Cummins Water
24 Works, our program for strengthening communities through sustainable
25 water and addressing the global water crisis, and Destination Zero, our long-
26 term product decarbonization strategy. The PLANET 2050 strategy includes
27 nine specific goals to achieve by 2030, including science-based carbon
28 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

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

3 The nine PLANET 2050 goals for 2030 are as follows:

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

23 * * *

24 *We continue to articulate our positions on key public policy issues*
25 *and on a wide range of environmental issues. We are actively*
26 *engaged around the world to promote science-based climate policies*
27 *by working with regulatory, industry and other stakeholders,*
28 *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.

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

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

8 (Emphasis added).

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

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

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

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

28 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

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

6 Following conversations with the U.S. Environmental Protection Agency
7 (EPA) and California Air Resources Board (CARB) regarding certification
8 for the engines in the 2019 RAM 2500 and 3500 trucks, we made the
9 decision to review our certification process and compliance with emission
10 standards. ***This review is being conducted with external advisors as we
11 strive to ensure the certification and compliance processes for all of our
12 pick-up truck applications are consistent with our internal policies,
13 engineering standards and applicable laws.*** During conversations with the
14 EPA and CARB about the effectiveness of our pick-up truck applications,
15 the regulators raised concerns that certain aspects of our emissions systems
16 may reduce the effectiveness of our emissions control systems and thereby
17 act as defeat devices. As a result, our internal review focuses, in part, on the
18 regulators' concerns. ***We are working closely with the regulators to
19 enhance our emissions systems to improve the effectiveness of all of our
20 pick-up truck applications and to fully address the regulators'
21 requirements. Based on discussions with the regulators, we have
22 developed a new calibration for the engines in model year 2019 RAM 2500
23 and 3500 trucks that has been included in all engines shipped since
24 September 2019.*** During our ongoing discussions, the regulators turned their
25 attention to other model years and other engines, most notably our pick-up
26 truck applications for RAM 2500 and 3500 trucks for model years 2013
27 through 2018 and Titan trucks for model years 2016 through 2019. We have
28 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)

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

5 82. On May 2, 2023, August 3, 2023, and November 2, 2023 the
6 Company filed with the SEC its quarterly reports on Form 10-Q for the periods
7 ending March 31, 2023 (the “1Q23 Report”), June 30, 2023 (the “2Q23 Report”)
8 and September 30, 2023 (the “3Q23 Report”). Attached to the 1Q23, 2Q23 and
9 3Q23 Reports were certifications pursuant to SOX signed by Defendants Rumsey
10 and Smith attesting to the accuracy of financial reporting, the disclosure of any
11 material changes to the Company’s internal control over financial reporting and
12 the disclosure of all fraud.

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

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

17 85. The statements contained in ¶¶ 20, 21, 23, 25, 26, 28, 29, 31, 33, 35,
18 37, 39, 40, 42, 43, 45, 47, 49, 51, 52, 54, 56, 57, 59, 61, 63, 65, 66, 68, 69, 71, 73,
19 74, 76, 78, and 80 were materially false and/or misleading because they
20 misrepresented and failed to disclose the following adverse facts pertaining to the
21 Company’s business, operations and prospects, which were known to Defendants
22 or recklessly disregarded by them. Specifically, Defendants made false and/or
23 misleading statements and/or failed to disclose that: (1) Contrary to its post-April
24 2019 Announcement assurances about its commitment to compliance, Cummins
25 continued to produce engines with unlawful emission defeating devices from 2019
26 to 2023; (2) accordingly, Cummins understated its legal and regulatory risk, and
27 overstated its commitment to environmental protection; and (3) as a result,

28

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

4 **THE TRUTH EMERGES**

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

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

23 *The Company expects to record a charge of approximately \$2.04 billion in*
24 *the fourth quarter of 2023 to resolve these claims and related matters.*
25 Certain additional related immaterial charges will likely be incurred as these
26 matters are fully concluded. The Company is in a strong financial position
27 with existing liquidity and access to capital to satisfy obligations associated
28 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

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

3 88. The DOJ Press Release stated that Cummins “allegedly installed
4 defeat devices on 630,000 model year 2013 to 2019 RAM 2500 and 3500 pickup
5 truck engines”, but then revealed that Cummins *“also allegedly installed*
6 *undisclosed auxiliary emission control devices on 330,000 model year 2019 to*
7 *2023 RAM 2500 and 3500 pickup truck engines”*, revealing that the Company
8 engaged in malfeasance for years after it disclosed the review of its compliance
9 with emissions standards.

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

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

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

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

25 *The types of devices we allege that Cummins installed in its engines to*
26 *cheat federal environmental laws have a significant and harmful impact*
27 *on people’s health and safety. For example, in this case, our preliminary*
28 *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.

1 (Emphasis added)

2
3 91. On this news, the price of Cummins stock fell by \$7.01 per share, or
4 2.87%, to close at \$236.99 on December 22, 2023.

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

8 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

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

17
18 94. The members of the Class are so numerous that joinder of all members
19 is impracticable. Throughout the Class Period, the Company's securities were
20 actively traded on NYSE. While the exact number of Class members is unknown
21 to Plaintiff at this time and can be ascertained only through appropriate discovery,
22 Plaintiff believes that there are hundreds, if not thousands of members in the
23 proposed Class.

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

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

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

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

- 6 • whether the Exchange Act was violated by Defendants' acts as alleged
7 herein;
- 8 • whether statements made by Defendants to the investing public during
9 the Class Period misrepresented material facts about the business and
10 financial condition of the Company;
- 11 • whether Defendants' public statements to the investing public during
12 the Class Period omitted material facts necessary to make the statements
13 made, in light of the circumstances under which they were made, not
14 misleading;
- 15 • whether the Defendants caused the Company to issue false and
16 misleading filings during the Class Period;
- 17 • whether Defendants acted knowingly or recklessly in issuing false
18 filings;
- 19 • whether the prices of the Company securities during the Class Period
20 were artificially inflated because of the Defendants' conduct complained of
21 herein; and
- 22 • whether the members of the Class have sustained damages and, if so,
23 what is the proper measure of damages.

24 98. A class action is superior to all other available methods for the fair
25 and efficient adjudication of this controversy since joinder of all members is
26 impracticable. Furthermore, as the damages suffered by individual Class members
27 may be relatively small, the expense and burden of individual litigation make it
28

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

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

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

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

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

28 **COUNT I**

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

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

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

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

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

28

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

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

7 **PRAYER FOR RELIEF**

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

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

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

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

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

20 **JURY TRIAL DEMANDED**

21 Plaintiff hereby demands a trial by jury.

22
23 Dated:

THE ROSEN LAW FIRM, P.A.

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