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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

S.L. ANDERSON & SONS, INC., BEACON
HARDWOOD, and, SANTORO
TRANSPORTATION, INC., on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

PACCAR, INC., PACCAR ENGINE
COMPANY, KENWORTH TRUCK
COMPANY, and PETERBILT MOTORS
COMPANY,

Defendants.

No. 2:18-cv-00742

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. JURISDICTION AND VENUE	3
III. THE PARTIES.....	4
IV. FACTUAL ALLEGATIONS	5
A. The Engine and the Emissions Aftertreatment System.....	5
B. Defendants’ representations and the defective nature of the Engines.....	7
C. Defendants’ knowledge of the defective nature of the Vehicles	9
D. Defendants’ failure to honor warranties covering the Defective Vehicles and defective ATS.....	10
E. The warranty terms are unconscionable.	12
F. The limited remedies fail of their essential purpose.	13
G. Plaintiffs’ and the Class’s experience	14
1. Plaintiffs’ experiences.....	15
V. TOLLING AND ESTOPPEL	18
VI. CLASS ACTION ALLEGATIONS	21
COUNT I VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT (ON BEHALF OF THE NATIONWIDE CLASS) (WASH. REV. CODE ANN. § 19.86.010 ET SEQ.).....	23
COUNT II BREACH OF EXPRESS WARRANTY (ON BEHALF OF THE NATIONWIDE CLASS) (WASH. REV. CODE ANN. § 62A.2-313).....	25
COUNT III BREACH OF EXPRESS WARRANTY (IN THE ALTERNATIVE, ON BEHALF OF THE CALIFORNIA CLASS).....	27
COUNT IV VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW (IN THE ALTERNATIVE, ON BEHALF OF THE CALIFORNIA CLASS).....	28
COUNT V BREACH OF EXPRESS WARRANTY (IN THE ALTERNATIVE, ON BEHALF OF THE FLORIDA CLASS).....	30
COUNT VI VIOLATION OF FLORIDA’S UNFAIR AND DECEPTIVE TRADE PRACTICES ACT (IN THE ALTERNATIVE, ON BEHALF OF THE FLORIDA CLASS).....	32

1 COUNT VII BREACH OF EXPRESS WARRANTY (IN THE
ALTERNATIVE, ON BEHALF OF THE WISCONSIN CLASS)..... 34
2
3 DEMAND 36
4 DEMAND FOR JURY TRIAL 36
5
6
7
8
9
10
11
12
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14
15
16
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18
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1 Plaintiffs, S.L. Anderson & Sons, Inc. (“Anderson”), Beacon Hardwood (“Beacon”), and
2 Santoro Transportation, Inc. (“Santoro”) (collectively “Plaintiffs”), bring this action against
3 Defendants, PACCAR, Inc., PACCAR Engine Company, Kenworth Truck Company, and
4 Peterbilt Motors Company (collectively “Defendants” or “PACCAR”), by and through their
5 attorneys, individually and on behalf of all others similarly situated, and allege as follows based
6 on: (a) personal knowledge; (b) the investigation of counsel; and (c) information and belief:
7

8 I. INTRODUCTION

9 1. This is a class action lawsuit brought by Plaintiffs on behalf of themselves and a
10 nationwide class of current and former owners and lessees of Peterbilt or Kenworth trucks and
11 other heavy-duty vehicles containing PACCAR MX-13 diesel engines (“Defective Vehicles” or
12 “Vehicles”). The PACCAR MX-13 engine (“Engine(s)”) includes an Emissions Aftertreatment
13 System (“EAS”) which include exhaust gas recirculation within the engine section (“EGR”) and
14 an Aftertreatment System with integrated systems and their parts and components (“ATS”). The
15 Engines with the EAS were produced by Defendants, who jointly developed, designed,
16 manufactured, marketed, assembled, and sold the Vehicles and Engines to comply with the
17 Environmental Protection Agency’s (“EPA”) 2010 Heavy-Duty On Highway Emissions
18 Standard (“2010 Standard” or “EPA 2010 Emission Standard(s)”), as well as the California Air
19 Resources Board emissions standards, and includes the Model Years (“MY”) beginning in 2010.

20 2. This action arises from Defendants’ failure, despite longstanding knowledge, to
21 disclose to Plaintiffs and other customers that the Vehicles are defective and that the EAS and
22 integrated systems, and their parts and components, were and are defective when sold. The EAS
23 suffers from constant failure under all conditions and applications on a consistent basis, even
24 after repeated warranty repairs. These repeated warranty repairs and replacements failed to
25 repair and/or correct the defects, resulting in damages to Plaintiffs and the putative Class
26 members. Damages include, but are not limited to, diminished value of the Vehicles, out-of-
27 pocket costs such as repairs and related hotel/taxi charges, towing charges, and the costs to re-
28 power the Vehicles with suitable replacement diesel engines.

1 3. It is important to note what this suit is not about. This suit is not about the level
2 of emissions from Defendants' Engines, nor is it about the certification of those engines.
3 Plaintiffs do not claim that Defendants violated any provision of the Clean Air Act, nor any
4 regulation promulgated by the Environmental Protection Agency ("EPA"). Plaintiffs do not seek
5 to enforce any provision of the Clean Air Act or regulations promulgated thereunder. Rather,
6 Plaintiffs allege that Engines suffer from a common defect that renders them unreliable, resulting
7 in the Engine failing, derating, or requiring repowering. This is a defect Defendants knew about,
8 or should have known about, before releasing the Engine into the stream of commerce. The
9 defect is one that Defendants cannot fix and caused Plaintiffs and putative class members to
10 suffer substantial damages.

11 4. Defendants were aware of the defective nature of the Vehicles prior to bringing
12 them to market. In particular, Defendants witnessed increases in warranty repair work and
13 complaints immediately after the introduction of the Engines beginning with the 2010 MY.
14 Internally, Defendants have acknowledged excessive "downtime" for truck owners due to the
15 unreliability of the emissions aftertreatment system, and a failure to properly validate all aspects
16 of the emissions systems prior to launch in July 2010. Notwithstanding this knowledge,
17 Defendants have intentionally concealed, withheld from, and/or misrepresented to Plaintiffs and
18 other purchasers of the Defective Vehicles this material information. Meanwhile, Defendants
19 made numerous false affirmative statements touting the high quality, durability and reliability of
20 the Vehicles. (*See, e.g., PACCAR, PACCAR Launches PACAR MX Engine* (Jan. 25, 2010),
21 [http://www.PACCAR.com/news/archived-news/2010/PACCAR-launches-PACCAR-mx-](http://www.PACCAR.com/news/archived-news/2010/PACCAR-launches-PACCAR-mx-engine/)
22 [engine/.](http://www.PACCAR.com/news/archived-news/2010/PACCAR-launches-PACCAR-mx-engine/))

23 5. Additionally, the defects cause the Vehicles to lose power and stop, forcing the
24 driver of the Vehicle to pull to the side of the road and be towed to a PACCAR-authorized repair
25 shop. This creates a serious safety concern to the drivers of the Vehicles, the occupants of other
26 vehicles, and the public.

27 6. As a result of Defendants' unfair, deceptive and fraudulent business practices, as
28 set forth herein, the Vehicles have a lower market value and are inherently worth less than they

1 would be in the absence of the defects. Plaintiffs and Class members are forced to absorb losses
2 upon purchase and sale of the vehicles due to their defective nature.

3 7. For customers with Vehicles within the standard warranty period of 24 months or
4 250,000 miles, extended warranty, as discussed further below, Defendants have done no more
5 than to temporarily repair the Vehicle or replace a defective component with another equally
6 defective and inherently failure-prone component and/or system, but has not remedied the defect.
7 Further, Defendants have refused to take any action to correct the concealed defects when
8 Vehicles continue to experience the same failures again and again, outside the warranty period.
9 Since the defect surfaces well within the warranty period for the Vehicles, and continues
10 unabated after the expiration of the warranty, even where Defendants have made repairs or
11 replaced the EAS components several times and falsely told Class members that their vehicles
12 were repaired—and given Defendants’ knowledge of the concealed defect—any attempt by
13 Defendants to limit their warranty with respect to the defect is unconscionable here.

14 8. As a result of Defendants’ unfair, deceptive, and/or fraudulent business practices,
15 owners and/or lessees of the Vehicles, including Plaintiffs, have suffered an ascertainable loss of
16 money and/or property and/or loss in value.

17 9. Plaintiffs bring this action to redress Defendants’ violations of the Washington
18 Consumer Protection laws, and, in the alternative, the California Unfair Competition Law and
19 the Florida Unfair and Deceptive Trade Practices Act, and seek recovery for Defendants’ breach
20 of express warranty.

21 II. JURISDICTION AND VENUE

22 10. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C.
23 § 1332(d)(2) because the matter in controversy, upon information and belief, exceeds
24 \$5,000,000, exclusive of interest and costs, and this is a class action in which Class members and
25 Defendants are citizens of different states. This Court has supplemental jurisdiction over the
26 state law claims pursuant to 28 U.S.C. § 1367.

27 11. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1391 because
28 certain Defendants are located in this district, transact business in this District and are subject to

1 personal jurisdiction in this District. Additionally, Defendants have advertised in this District,
2 have headquarters, authorized repair, and other facilities within this District, and have received
3 substantial revenue and profits from the sale and/or leasing of Engines or Vehicles in this
4 District; therefore, a substantial part of the events and/or omissions giving rise to the claims
5 occurred within this District.

6 12. This Court has personal jurisdiction over Defendants. Defendants intentionally
7 and purposefully placed Vehicles with the Engines into the stream of commerce within
8 Washington and throughout the United States. As such, Defendants have conducted substantial
9 business in this judicial District.

10 III. THE PARTIES

11 13. Tom Santoro Transportation Corporation is a California corporation with its
12 principal place of business at 12931 Arthur Street, Salinas, California, and is therefore a citizen
13 and resident of California, having also purchased most if not all of its subject vehicles from
14 Coast Counties Truck & Equipment Company at 1740 N. 4th Street, San Jose, California.

15 14. Beacon Hardwood is a Florida corporation with its principal place of business at
16 2200 Northwest 110th Ave., Miami, Florida. Beacon purchased most if not all of its subject
17 vehicles from Kenworth of South Florida located at 2909 S. Andrews Ave., Fort Lauderdale,
18 Florida, and is therefore a citizen and resident of Florida.

19 15. S.L. Anderson & Sons Corporation is a Wisconsin corporation with its principal
20 place of business at W. 10286 Cumberland Rd., Wautoma, Wisconsin, and therefore a citizen
21 and resident of Wisconsin. Anderson purchased most if not all of its subject vehicles from JX
22 Truck Center located at 1039 Kronenwetter Dr., Kronenwetter, Wisconsin.

23 16. Defendant PACCAR, Inc. ("PACCAR") is a Delaware corporation headquartered
24 in Bellevue, Washington, and, therefore, is a citizen of Delaware and Washington. PACCAR is
25 the third-largest manufacturer of medium- and heavy-duty trucks in the world and sells tractor-
26 trailer and vocational trucks in the United States and within the state of Washington, under the
27 names of its subsidiaries, Kenworth and Peterbilt.

1 17. Defendant PACCAR Engine Company (“PEC”) is a Mississippi corporation with
2 its principal address in Bellevue, Washington, and therefore, is a citizen of Washington and
3 Mississippi. PEC is a subsidiary of PACCAR, which manufactures the Engine.

4 18. Defendant Kenworth Truck Company (“Kenworth”) is a division/subsidiary of
5 PACCAR, headquartered in Bellevue, Washington, that markets and sells Kenworth vehicles,
6 many of which utilize the Engine. Kenworth, therefore, is a citizen of Washington.

7 19. Defendant Peterbilt Motors Company (“Peterbilt”) is a division/subsidiary of
8 PACCAR, headquartered in Bellevue, Washington, that markets and sells Peterbilt vehicles,
9 many of which utilize the Engine. Peterbilt, therefore, is a citizen of Washington.

10 **IV. FACTUAL ALLEGATIONS**

11 **A. The Engine and the Emissions Aftertreatment System**

12 20. PACCAR is an international manufacturer of heavy-duty commercial vehicles
13 sold through its divisions/subsidiaries, Kenworth and Peterbilt. Prior to 2010, Kenworth and
14 Peterbilt Class 8 (vehicles with a gross vehicle weight rating above 33,000 lbs.) heavy-duty
15 vehicles were powered by diesel engines purchased from third parties, such as Caterpillar, Inc.

16 21. Beginning in 2010, PACCAR began manufacturing the Engine. The Engine was
17 adapted in large part from an existing PACCAR engine that was offered internationally and
18 Defendants represent that its ATS, utilizing the Selective Catalyst Reduction (“SCR”)
19 technology, has been successfully used for many years and provides a reliable, economical and
20 effective technology. *See PACCAR, PACCAR Launches PACCAR MX Engine, supra* ¶ 4.

21 22. In order to meet the EPA 2010 Emission Standard applicable to heavy-duty, on-
22 highway diesel engines, PACCAR jointly designed, manufactured, sold for profit, and warranted
23 the Engines with an EAS emission control unit.¹

24 23. PACCAR’s various development, design, engineering, manufacturing, and
25 business units participated in approval of the EAS ultimately used in the Engines. This system
26 includes engine components including an exhaust gas recirculation (“EGR”) that would run
27

28 ¹ As set forth above, the defect alleged herein only affects the use, operation, and movement of the Vehicles and does not implicate any violation or enforcement of the Clean Air Act or EPA Emissions Standards.

1 exhaust gas through the combustion chamber to affect the temperature of exhaust and alter its
2 components. Exhaust would also go through the ATS. The ATS was designed to perform both
3 passively and actively, and includes two primary elements: 1) a Diesel Particulate Filter (“DPF”)
4 System; and 2) a SCR System.

5 24. The DPF System includes the hydrocarbon doser, Diesel Oxidation Catalyst
6 (“DOC”), and DPF, and is intended to participate in the reduction of engine soot and particulate
7 matter.

8 25. The components of the DPF System perform the following functions: 1) the ATS
9 inlet and outlet adapt the Vehicle exhaust piping to the ATS, and also provide a mounting
10 location for the aftertreatment gas temperature sensors; 2) the DPF differential pressure sensor
11 measures the restriction across the DPF; 3) the DPF filters soot out of the exhaust; and 4) when
12 activated, the HC Doser sprays a small amount of diesel fuel (the HC) into the exhaust. The
13 catalyst in the DOC reacts with the HC to generate heat. The heat is used to clean (regenerate)
14 the DPF by reducing the trapped soot to ash. Soot is composed of the partially burned particles
15 of fuel that occur during normal engine operation (black smoke). Over time, both soot and ash
16 accumulate in the DPF and must be removed. Soot is removed by the regeneration process,
17 while ash is removed by removing the DPF and cleaning it at specified intervals.

18 26. The SCR System is composed of several main components: 1) Diesel Emissions
19 Fluid (“DEF”) Controller; 2) DEF Dosing Unit (“DEF Module”); 3) DEF Dosing Valve; and 4)
20 SCR Catalyst. The SCR System is intended to convert harmful NO_x emissions to harmless
21 matter. The SCR System works by injecting small amounts of a non-toxic, urea-based DEF into
22 the Vehicle’s exhaust stream after it exits the DPF. The exhaust then enters the SCR, where a
23 catalyst reacts with the DEF and NO_x, producing nitrogen gas and water vapor, which is
24 expelled from the exhaust.

25 27. The EAS and integrated systems and their parts and components are materially
26 identical in all Engines. A schematic of the ATS, from the PACCAR manual, is attached as
27 Exhibit A.

28

1 28. Plaintiffs assert that the defect, which was and is known to Defendants, causes a
2 Vehicle to not function as required under all operating conditions, on a consistent and reliable
3 basis, even after repeated warranty repairs and replacements. These repeated warranty repairs
4 and replacements fail to repair or correct the defect resulting in damages, including, *inter alia*,
5 diminished value of the Vehicles, and the costs to re-power the Vehicles with diesel engines that
6 are consistently reliable and functioning and are compliant with the EPA Emission Standards.

7 **B. Defendants' representations and the defective nature of the Engines**

8 29. Defendants made the business decision to investigate, design, manufacture, and
9 sell, for profit, heavy-duty diesel engines that complied with all of the requirements of the EPA
10 2010 Emission Standard. The Engines are manufactured by Defendant PEC.

11 30. In its 2010 Annual Report, PACCAR reported, *inter alia*, that the Engine
12 achieved certification by the EPA and the California Air Resources Board to their stringent 2010
13 emission standards. PACCAR also reported that the 400,000-square-foot diesel engine
14 production facility opened in Columbus, Mississippi, during 2010, producing the Engine for the
15 Kenworth and Peterbilt vehicles. PACCAR further stated that its Engine incorporates precision
16 manufacturing, advanced design, and premium materials to deliver best-in-class performance,
17 durability, and operating efficiency, and that, in addition to the superior performance and fuel
18 efficiency, the PACCAR Engine reinforces PACCAR's legacy of environmental leadership.

19 31. According to its 2014 Annual Report, PACCAR's Mississippi engine factory
20 produced a record number of Engines in 2014. PACCAR reportedly installed the Engines in
21 over 75,000 Kenworth and Peterbilt trucks since production began in 2010 and, according to
22 Defendants' 2014 Annual Report, customers benefit from the Vehicle's excellent fuel economy,
23 light weight, and reliability.

24 32. With respect to its Kenworth trucks, PACCAR reports that Kenworth installs the
25 Engine in over 35 percent of its vehicles due to the Engine's excellent performance, fuel
26 economy, and reliability.

27 33. Defendants have consistently asserted in their marketing material that the Engine
28 has a B10 design life of 1,000,000 miles (*See PACCAR, PACCAR MX-13 Overview*, available at

1 <https://PACCARpowertrain.com/products/engines/PACCAR-mx-13/> (last visited May 18,
2 2018).)

3 34. PACCAR also capitalized on its reputation and promised that the Engines had
4 been properly tested and tried for reliability and durability, in all climates and operating
5 conditions, and that the Engines had undergone over 300,000 hours of lab testing and 50 million
6 miles of real-world work in North America. “PACCAR engines have been tested in all types of
7 applications, climate conditions, and operations” (PACCAR, *Manufacturing & Testing*,
8 <https://paccarpowertrain.com/Products/Engines/technology/manufacturing-testing/> (last visited
9 May 22, 2018)). PACCAR also touted its excellent aftermarket support, low cost of ownership,
10 and its industry leading resale value of its trucks.

11 35. But PACCAR’s promises did not materialize. Defendants omitted material
12 information and/or made other materially false and misleading statements concerning the
13 reliability, durability, endurance, and other characteristics of the Engines in the Vehicles, as well
14 as about the warranty coverage and promises to repair the Vehicles. Instead, the Vehicles are
15 defective, causing them to persistently be disabled and inoperable, among other problems.

16 36. The Vehicle’s defect and deficiencies stem from the EAS technology that renders
17 the Vehicles unreliable transportation and unsuitable for ordinary commercial use. The EAS and
18 its integrated systems and their parts and components include computers and sensors that
19 continuously monitor the operation of the Vehicle, including the EAS. Once a malfunction is
20 detected, a malfunction indicator lamp illuminates to inform the driver of the malfunction and
21 exhibit a fault code. In addition, the fault code, which identifies the likely malfunction, is stored
22 in the Engine control module (“ECM”). The system stores fault codes and also derates or
23 reduces the Vehicle’s engine power, when required to protect the Engine and ATS. These fault
24 codes are used by the Defendants for troubleshooting and repair.

25 37. PACCAR requires that all engine work be done at its authorized dealers.
26 PACCAR states that “factory trained service technicians at over 670 locations in North America
27 are equipped with the proper tools and expertise to keep PACCAR engines running in your
28 trucks. Skilled technicians will provide all routine engine maintenance and quickly troubleshoot

1 and repair all engine issues. Modern, electronic diagnostic tools help the technician accurately
2 diagnose every engine problem by quickly tapping into the engine ECM and pinpointing the
3 problem. PACCAR has the service network that will keep your engines running every day.”
4 (PACCAR, *Parts & Services*, <https://paccarpowertrain.com/parts-services/> (last visited May 22,
5 2018).)

6 38. Plaintiffs and the members of the Class have repeatedly experienced performance
7 and reliability problems. Due to inherent deficiencies in the materials, factory workmanship,
8 design, testing, fabrication, and/or manufacture of the ATS, the Vehicles regularly experience
9 numerous fault codes which require servicing. For example, the Engines often manifest
10 problems with their DEF dosers and related systems, sensors, injectors, software, EGR valves,
11 and other critical EAS components. These repairs, which are continuously performed, must be
12 done at one of Defendants’ authorized service facilities, which necessitates that the Vehicle be
13 off the road for a period of several days or longer, which is costly for Plaintiffs and Class
14 members.

15 **C. Defendants’ knowledge of the defective nature of the Vehicles**

16 39. Since first bringing the Vehicles to market, the warranty claims for the defects in
17 the parts and components of the EAS have been substantial, making Defendants fully aware of
18 the significant costs to owners and lessees of the Vehicles.

19 40. This was not a surprise to PACCAR, as it has known and/or should have known
20 since at least 2009, prior to the sales of the Engines, that the EAS and its integrated systems and
21 their parts and components were not sufficiently robust to achieve the represented levels of
22 reliability and durability, that the Engines and EAS were experiencing failures, and that repeated
23 repairs would be required, but PACCAR did not provide this material information to purchasers.

24 41. Defendants boasted that the Engines were tested for over 300,000 hours of lab
25 testing and 50 million miles of real-world work for reliability and durability, in all climates and
26 operating conditions. However, given the widespread problems with the Vehicles soon after
27 their sale, Defendants knew or should have known well before the sale of the Vehicles about the
28 scope of the defects.

1 42. After the 2010 launch of the Engines, Defendants tracked emission-related
2 warranty claims and ECM data from the on-board diagnostics installed in the Vehicles, and
3 recognized—or should have recognized—that attempts to correct the defect failed. Indeed,
4 Defendants received complaints about the Engines shortly after releasing them to the market and
5 issued numerous Technical Service Bulletins and warranty campaigns relating to, *inter alia*, the
6 EAS, beginning in October 2010.

7 43. Despite knowing that Plaintiffs and the members of the Class bought Vehicles
8 with Engines that failed to perform wholly, or in substantial part, Defendants responded by
9 authorizing minor adjustments and/or replacement of failed components with the same defective
10 components, despite Defendants’ knowledge that such work would not correct the underlying
11 problems and continued to sell later model years of the Vehicles with the known defects.

12 44. Defendants have exclusive knowledge or access to material facts about the
13 Vehicles and their Engines that were not and are not known or reasonably discoverable by
14 Plaintiffs and Class members. Plaintiffs and Class members expect and assume that Defendants
15 will not sell or lease Vehicles with known defects, fail to disclose the defective nature of the
16 Vehicles, or deny the existence of problems.

17 **D. Defendants’ failure to honor warranties covering the Defective Vehicles and**
18 **defective ATS**

19 45. Defendants warrant the user of every Engine through, *inter alia*, the base Engine
20 warranty.

21 46. PACCAR provides a “Base Warranty,” which is attached hereto as Exhibit B, for
22 24 months, 250,000 miles, or 6,250 hours against defects in material and factory workmanship,
23 which is referred to as a “Warrantable Failure,” pursuant to which it will provide parts,
24 components, or labor necessary to “repair the damage to the Engine.”² (PACCAR, *PACCAR*
25 *MX-13 Operator’s Manual* (2013), available at [http://www.peterbilt.com/resources/PACCAR](http://www.peterbilt.com/resources/PACCAR%20Engine%20Manuals/PACCAR%20Engine%20Manuals_PACCAR_MX-13_Engine_)
26 [%20Engine%20Manuals/PACCAR%20Engine%20Manuals_PACCAR_MX-13_Engine_](http://www.peterbilt.com/resources/PACCAR%20Engine%20Manuals_PACCAR_MX-13_Engine_)

27 _____
28 ² The warranty is non-negotiable and states it covers only defects in “material or factory workmanship.” PACCAR also sells, for additional consideration, warranty extension contracts, which contain the same coverage limitation.

1 Operator_Manual-English.pdf.)The base warranty is part of the price of the Vehicles that
2 Plaintiffs and the Class purchased and there is no additional consideration received for the base
3 warranty, nor could it be refused, as it is part of the purchase of the Vehicle, and Plaintiffs and all
4 Class members rely on the existence of a warranty.

5 47. The base warranty is part of the operations manual, which is located in each
6 Defective Vehicle. Accordingly, the relevant warranties are provided to the purchasers,
7 including Plaintiffs, without providing them with any opportunity to negotiate their terms.

8 48. Defendants did not provide disclosure about the problems and defects set forth
9 herein, which were known to Defendants at the time of sale to Plaintiffs. Defendants' warranties
10 are unenforceable and unconscionable for this reason. As a result, Plaintiffs did not receive the
11 Vehicles as expressly warranted by Defendants.

12 49. Given the Defendants' knowledge of the problems and defects, the warranty
13 disclaimers and durational and damage limitations contained in Defendants' warranty are also
14 unconscionable because the Plaintiffs had no meaningful choice in determining those time
15 limitations or disclaimers, there was a gross disparity in bargaining power and knowledge
16 between Defendants and Plaintiffs, and the terms of the warranties unreasonably favored
17 Defendants.

18 50. In performing warranty repairs, PACCAR has never rejected repairing an
19 emission-related defect because it was not one of "material or workmanship" and the warranty
20 repairs are performed time and time again, without objection and pursuant to the warranty terms.

21 51. However, the Vehicles repeatedly experience Engine failures that are not
22 corrected by the repeated warranty work performed. These repeated and frequent failures cause
23 the Vehicles to be unreliable, and in spite of numerous attempts, the failures have not and cannot
24 be corrected. The numerous and frequent failures cause warning lights to come on and the
25 Vehicles to derate and shutdown, necessitating costly and time-consuming emissions and
26 standard warranty repairs. The derates and shutdowns force the Vehicles to pull off the road
27 and/or immediately proceed to a PACCAR repair facility. These failures render the Vehicles
28

1 unreliable and unsafe for transportation because the Vehicles do not and cannot work properly or
2 run reliably or effectively.

3 52. By failing to correct the defect in the Vehicle, and in spite of repeated, frequent
4 attempts, Defendants have breached the express written base warranty and any extended
5 warranties. By their conduct, Defendants have also violated their statutory obligations.

6 **E. The warranty terms are unconscionable.**

7 53. The warranty was unilaterally drafted by Defendants without any negotiation or
8 opportunity for input from Plaintiff or any Class member. All terms of the express warranty,
9 including the unilaterally imposed durational and damage limits, were offered by Defendants on
10 a “take it or leave it” basis and without affording any of the Plaintiffs or Class members any
11 meaningful choice in bargaining for the terms of warranty coverage.

12 54. Defendants, as the manufacturer and retailers of the Vehicles, knew and
13 concealed at the time that they unilaterally imposed the terms of their express warranty
14 (including the warranty’s durational and damage limits), that their Engines were defective and
15 would fail repeatedly, initially during and then subsequently beyond the warranty repair period.
16 Defendants also knew and concealed, at the time that it unilaterally imposed the limits on its
17 express warranty, they were not able to properly perform the warranty service that they had
18 contracted to offer, thereby leaving the Vehicles defective both within and outside the warranty
19 durational limits unilaterally imposed by Defendants. Defendants also concealed and failed to
20 disclose this knowledge to any Class member and took affirmative steps to conceal this
21 knowledge by continuing to tout the supposed superior attributes and qualities of the Engine and
22 their repairs/alterations thereof.

23 55. Because (1) there was no opportunity for bargaining the terms of the warranties
24 (including their durational limits); (2) Defendants concealed, during the transactions giving rise
25 to the offering of the express warranties, Defendants’ unique and superior knowledge as to the
26 defective nature of the Vehicles, the propensity of the Engines to malfunction during and after
27 the durational limits, and Defendants’ inability to offer adequate warranty repair service; and (3)
28 Plaintiffs and Class members had no meaningful choice but to accept Defendants’ unilaterally

1 imposed warranty terms, the durational and damage limits imposed unilaterally by Defendants as
2 part of their warranties are procedurally and substantively unconscionable and hence
3 unenforceable.

4 **F. The limited remedies fail of their essential purpose.**

5 56. Given the inherently defective nature of the Vehicles, and their propensity to
6 malfunction (or continue to malfunction) and require inordinately expensive repairs shortly after
7 the expiration of the warranty's durational limits unilaterally imposed by Defendants, and given
8 Defendants' non-disclosure and affirmative concealment of these facts, enforcement of the
9 unilaterally imposed durational and damage limits of the express warranty would so oppress and
10 surprise the innocent Plaintiffs and Class members as to render these durational and damage
11 limits unconscionable and hence unenforceable.

12 57. Under Defendants' warranty, Plaintiffs and members of the Class are entitled to
13 repair and replacement of defective parts. However, because the defects persist after the repairs
14 and replacements authorized by Defendants, and because Defendants knew that these actions
15 were insufficient to cure the numerous issues with the Defective Vehicles, Plaintiffs and
16 members of the Class are left without any remedy under a warranty to correct the Defective
17 Vehicles. Indeed, Plaintiffs have offered Defendants numerous opportunities to correct the
18 Defective Vehicles, to no avail. Simply put, Defendants' express warranty fails its essential
19 purpose so that Class members are without the benefit of their primary bargain—a reliable and
20 operational Vehicle.

21 58. Neither the warranty service provided nor the EAS repairs paid for after a
22 warranty by Plaintiffs at Defendants' facilities fixed the problems with the Vehicles. As a result
23 of Defendants' failure to properly or adequately repair Plaintiffs' Engines during the warranty
24 period or when otherwise obligated by law, Plaintiffs reasonably incurred repair expenses
25 responsive to these issues, and expenses due to the unavailability of the Vehicles, and/or suffered
26 other direct and reasonably foreseeable incidental damages.

1 **G. Plaintiffs' and the Class's experience**

2 59. Upon information and belief, the design, modification, installation, and decisions
3 regarding the Plaintiffs' and Class members' Vehicles were performed exclusively by
4 Defendants. The EAS is materially identical in all Vehicles, and Defendants created the EAS so
5 that it could not be disabled or bypassed in any way by anyone other than a PACCAR-
6 authorized technician.

7 60. Defendants developed the owner's manuals, warranty booklets, and information
8 included in maintenance and repair recommendations and/or schedules for the Engines and the
9 Vehicles.

10 61. Not long after Plaintiffs and Class members purchased or leased Vehicles, and
11 within the period of their warranty, they began to experience numerous failures of the Vehicles
12 to operate effectively and reliably. The defective EAS resulted in Plaintiffs and Class members
13 overpaying for their truck engines and in significant damages related to down time while the
14 trucks were being serviced. In addition, the defective EAS resulted in a diminution of the resale
15 value of their Vehicles; Defendants' own estimate was a reduction of \$4,000 to \$6,000 per
16 engine.

17 62. Plaintiffs' Vehicles had continued breakdowns and shutdowns necessitating
18 delivery of the Vehicles to an authorized PACCAR repair facility for emissions warranty work.
19 Indeed, Defendants did not release explanations of fault codes, so Plaintiffs and Class members
20 cannot identify the reason for the problems and are forced to bring the Vehicles to Defendants
21 for repairs.

22 63. In spite of repeated warranty work on the Vehicles, Plaintiffs and members of the
23 Class experienced repeated instances of warning lights illuminating, Engines de-rating and
24 shutting down, sensor, injector, and doser problems, as well as a myriad of system failures that
25 prevented the Vehicles from properly operating under all conditions.

26 64. Defendants represented to Plaintiffs and Class members that each warranty repair
27 would correct the Vehicle; but after repair, Plaintiffs and Class members continue to experience
28 failures, when PACCAR knew, or should have known, that the failures would continue and the

1 defects on the Vehicle could not be corrected, leading to further shutdowns and continued
2 repairs.

3 65. Many authorized service centers are unable to obtain the necessary parts, despite
4 warranty obligations, such that some authorized service centers are unable to service the
5 Vehicles or are subject to extensive wait times, during which the Vehicles are out of service.

6 66. As a result of the parties' unequal bargaining power, PACCAR's superior
7 knowledge of the Defective Vehicle and ineffectual measures, any warranty limitations,
8 including but not limited to, the durational limits and the limits as to how Defendants may
9 remedy defects that are contained in the express warranties, are unconscionable and the
10 warranties fail of their essential purpose; *i.e.*, to provide non defective, emission related parts and
11 components so that the Vehicle would operate reliably under all operating conditions and all
12 applications.

13 67. Knowledge of the defect has now permeated the market, leaving Plaintiffs (and all
14 other class members) unable to sell their Vehicles without incurring substantial losses. On
15 information and belief, even Defendants' own affiliates and/or dealers have recognized the
16 diminished value of these Vehicles.

17 **1. Plaintiffs' experiences**

18 68. On or about August 2011, Santoro purchased five Kenworth Vehicles for
19 approximately \$138,475 each. On or about September 2011, Santoro purchased four Peterbilt
20 Vehicles for approximately \$139,432 each.

21 69. Santoro experienced numerous substantial and identical breakdowns of the
22 Vehicles, specifically with the EAS and integrated systems and their parts and components. On
23 each Vehicle, problems began shortly after the Vehicle was purchased. To date, Santoro
24 experiences the same problems repeatedly. Despite bringing the Vehicles to Defendants' repair
25 facilities within the express warranty provisions, the Vehicles have experienced repeated
26 instances of check engine lights, excessive fault code, Engine de-rating and shutting down,
27 sensor, injector, and doser problems, as well as other issues resulting from the defects that
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1 prevent the Vehicles from working properly. Defendants' authorized technician performed the
2 warranty work, but failed to correct the defect despite Defendants' representations that it was.

3 70. As a result, Santoro has suffered substantial out-of-pocket damages, as well as
4 damages of at least several thousand dollars at the time of sale resulting from the difference
5 between what Plaintiff (and the market) understood it would be receiving versus what it received
6 as a result of the existence of the defect. Santoro has also been damaged by virtue of the
7 diminution in the value on the secondary market of the Vehicles due to the defect.

8 71. Had Santoro been told of the Vehicle defect it would not have purchased the
9 Vehicles or would have paid less for the Vehicles.

10 72. Neither Defendants nor any of their representatives informed Santoro of
11 Defendants' omissions and/or misrepresentations related to the Vehicles.

12 73. Beacon purchased a new Peterbilt Vehicle in 2012 with the Engine.

13 74. Beacon experienced numerous substantial and identical breakdowns of the
14 Vehicle, specifically with the EAS and integrated systems and their parts and components. On
15 the Vehicle, problems began shortly after the Vehicle was purchased. To date, Beacon
16 experiences the same problems repeatedly. Despite bringing the Vehicle to Defendants' repair
17 facilities within the express warranty provisions, the Vehicles have experienced repeated
18 instances of check engine lights, excessive fault code, Engine de-rating and shutting down,
19 sensor, injector, and doser problems, as well as other issues resulting from the defects that
20 prevent the Vehicles from working properly. Defendants' authorized technician performed the
21 warranty work, but failed to correct the defect despite Defendants' representations that it was.

22 75. As a result, Beacon has suffered substantial out-of-pocket damages, as well as
23 damages of at least several thousand dollars at the time of sale resulting from the difference
24 between what Plaintiff (and the market) understood it would be receiving versus what it received
25 as a result of the existence of the defect. Beacon has also been damaged by virtue of the
26 diminution in the value on the secondary market of the Vehicles due to the defect.

27 76. Had Beacon been told of the Vehicle defect it would not have purchased the
28 Vehicles or would have paid less for the Vehicle.

1 77. Neither Defendants nor any of their representatives informed Beacon of
2 Defendants' omissions and/or misrepresentations related to the Vehicles.

3 78. Anderson purchased a new Peterbilt Vehicle with the Engine in 2012.

4 79. Anderson experienced numerous substantial and identical breakdowns of the
5 Vehicle, specifically with the EAS and integrated systems and their parts and components. On
6 the Vehicle, problems began shortly after the Vehicle was purchased. To date, Anderson
7 experiences the same problems repeatedly. Despite bringing the Vehicle to Defendants' repair
8 facilities within the express warranty provisions, the Vehicles have experienced repeated
9 instances of check engine lights, excessive fault code, Engine de-rating and shutting down,
10 sensor, injector, and doser problems, as well as other issues resulting from the defects that
11 prevent the Vehicle from working properly. Defendants' authorized technician performed the
12 warranty work, but failed to correct the defect despite Defendants' representations that it was.

13 80. As a result, Anderson has suffered substantial out-of-pocket damages, as well as
14 damages of at least several thousand dollars at the time of sale resulting from the difference
15 between what Plaintiff (and the market) understood it would be receiving versus what it received
16 as a result of the existence of the defect. Anderson has also been damaged by virtue of the
17 diminution in the value on the secondary market of the Vehicles due to the defect.

18 81. Had Anderson been told of the Vehicle defect it would not have purchased the
19 Vehicle or would have paid less for the Vehicle.

20 82. Neither Defendants nor any of their representatives informed Anderson of
21 Defendants' omissions and/or misrepresentations related to the Vehicles.

22 83. At all times, Plaintiffs, like all Class members, used their Vehicles in a
23 foreseeable manner and in the manner in which the Vehicle's use was intended.

24 84. Plaintiffs and Class members have suffered substantial financial losses and other
25 damages as a result of Defendants' actions and the purchase of the Vehicles.

26 85. Plaintiffs suffered ascertainable loss as a result of Defendants' omissions and/or
27 misrepresentations associated with the Vehicles, including, but not limited to, out-of-pocket loss
28 associated with multiple catastrophic Vehicle failures and attempted repairs to the Vehicle,

1 failure to receive the value bargained for when it purchased the Vehicles, and substantially lower
2 re-sale values associated with the Vehicles.

3 **V. TOLLING AND ESTOPPEL**

4 86. Plaintiffs' causes of action did not arise until Plaintiffs discovered, or by the
5 exercise of reasonable diligence should have discovered, that they were injured by Defendants'
6 wrongful conduct as alleged herein. Because Defendants concealed and failed to disclose the
7 defects with its Engines and its EAS, and because Defendants affirmatively warranted and
8 misrepresented that the EAS was free of defects, Plaintiffs did not and could not have discovered
9 the defect through reasonable diligence.

10 87. The applicable statutes of limitations have been tolled by Defendants' knowing
11 and active concealment of the material facts regarding the defective Engine, in particular its
12 EAS, and by Defendants' affirmative warranties and misrepresentations that the emissions
13 system was free of defects. Defendants kept Plaintiffs and the members of the Class ignorant of
14 vital information essential to pursue their claims, without any fault or lack of diligence on the
15 part of Plaintiffs and Class members.

16 88. Defendants were/are under a continuous duty to disclose to Plaintiffs and the
17 members of the Class the true character, quality, and nature of the Engine. At all relevant times,
18 and continuing to this day, Defendants knowingly, affirmatively, and actively misrepresented
19 and concealed the true character, quality, and nature of the Engine, including the defective nature
20 of its EAS and the fact that the defect could not be effectively corrected.

21 89. Plaintiffs and the Class repeatedly presented their Engines to Defendants'
22 authorized dealerships and repair facilities for failure of the emission-related parts and
23 components. Ineffectual repairs and replacements were performed only to have the emission-
24 related parts and components subsequently fail. In each instance Defendants affirmed:

- 25 a. That the emission related parts and component failures were not the result
26 of any application or installation that Defendants deemed improper;
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- 1 b. That the emission related parts and component failures did not involve
2 attachments, accessory items or parts not sold or approved by Defendants;
3 c. That the emission related parts and component failures were not the result
4 of any improper engine maintenance, repair, wear and tear, neglect, or
5 abuse;
6 d. That the emission related parts and component failures were not the result
7 of improper fuel, lubricants or liquids;
8 e. That the emission related parts and component failures were not the result
9 of any unreasonable delay in making the Vehicle available after
10 notification of the problem;
11 f. That the EAS failures were warrantable; and
12 g. That the EAS defects were corrected following repair and replacement.
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15 90. As such, Defendants are estopped from denying any warranty claims as a result of
16 any limitations in the warranty.

17 91. Based on the foregoing, Defendants are also estopped from relying on any statutes
18 of limitation in defense of this action because it did not repair these known defects prior to
19 selling or leasing these Vehicles.

20 92. Pursuant to the doctrines of equitable tolling, equitable estoppel, and fraudulent
21 concealment, the period for bringing claims shall not be barred due to any statute of limitations
22 or statute of repose. With respect to each and every cause of action and count asserted herein,
23 Plaintiffs expressly plead equitable tolling, equitable estoppel, and fraudulent concealment and
24 its application thereto.

25 93. Defendants knew that they were performing repeated authorized warranty repairs
26 of the EAS, inducing the operators of the Engines to believe that the defect was warrantable
27 when they knew or should have known that the failures were the direct result of defects in design
28 and/or workmanship, and advising those operators after authorized repairs that the defect causing

1 the failures had been corrected when, in fact, Defendants knew or should have known that the
2 defect was not and could not be corrected.

3 94. Defendants knew, or should have known:

- 4 a. That its Engines would require Defendants' authorized diesel technicians,
5 and licensed software to repair;
- 6 b. That commercial Vehicle purchasers and lessees would need to specify the
7 diesel engine for OEM installation and that Defendants' representations of
8 performance, reliability, and durability, especially of the emissions
9 controls, were material to purchasers and lessees of the Engines;
- 10 c. That commercial vehicle purchasers and lessees, like Plaintiffs and the
11 Class, would only specify the Engine provided that it was fully warranted
12 for all defects, including failures of performance of the ATS;
- 13 d. That commercial vehicle purchasers and lessees of Defendants' Engines
14 could not specify alternative emission controls to Defendants';
- 15 e. That the commercial purchasers and lessees would not have the capacity
16 to repair or replace the Engine emissions controls and would rely upon
17 Defendants to determine, through pre-sale testing, which Defendants
18 touted, that the EAS would reliably regenerate under all conditions, in all
19 applications, for the expected operational life, and would correct any
20 defects; and
- 21 f. That Defendants designed the Engine EAS, drafted the express warranty,
22 accepted repairs to the EAS as warrantable during the warranty period,
23 and knew or should have known that the problems would and did continue
24 because of the defective design.
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1 95. All conditions precedent to the filing of this Complaint have been satisfied. This
2 Complaint has been filed prior to the expiration of any applicable statute of limitations or statute
3 of repose.

4 96. Defendants are also estopped from relying upon any and all limitations on time,
5 mileage, and type of defect or damages contained in any and all of its warranties because (1)
6 Defendants knew prior to sale that its Engines were defectively designed and unlikely to reliably
7 perform in the real world; and (2) deliberately withheld this information from prospective
8 purchasers.

9 VI. CLASS ACTION ALLEGATIONS

10 97. Plaintiffs bring this action on behalf of themselves and all other persons similarly
11 situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

12 98. Plaintiffs bring this action on behalf of the following Classes:

13 **Nationwide Class:** All individuals or entities in the United States,
14 except in New Jersey and Texas, who leased or purchased, not for
resale, the Vehicles.³

15 In the alternative to a Nationwide Class under the laws of
16 Washington, Plaintiffs bring this action on behalf of the following
Classes:

17 **California Class:** All individuals or entities in California who
18 leased or purchased, not for resale, the Vehicles.

19 **Florida Class:** All individuals or entities in Florida who leased or
purchased, not for resale, the Vehicles.

20 **Wisconsin Class:** All individuals or entities in Wisconsin who
21 leased or purchased, not for resale, the Vehicles.

22 99. Excluded from the Classes are: (a) Defendants, including any entity in which
23 Defendants have a controlling interest, and their representatives, officers, directors, employees,
24 assigns and successors; (b) any person who has suffered personal injury or is alleged to have
25 suffered personal injury as a result of using the Engine; and (c) the Judge to whom this case is
26 assigned.

27
28 ³ Also excluded are BK Trucking Co. ("BK"), Santelli Trucking, Inc. ("Santelli"), and Rusty Daniel Trucking, Inc. ("Daniel"), who are plaintiffs in an action pending in the District of New Jersey, captioned *BK Trucking Co. v. PACCAR, Inc.*, No. 1:15-cv-02282-JBS-AMD (D.N.J.).

1 100. **Numerosity/Impracticability of Joinder**: The members of the Class are so
2 numerous that joinder of all members would be impracticable. The proposed Class include, at a
3 minimum, thousands of members. The precise number of Class members can be ascertained by
4 reviewing documents in Defendants' possession, custody and control or otherwise obtained
5 through reasonable means.

6 101. **Commonality and Predominance**: There are common questions of law and fact
7 which predominate over any questions affecting only individual members of the Class. These
8 common legal and factual questions, include, but are not limited to the following:

- 9 a. whether Defendants engaged in a pattern of fraudulent, deceptive and
10 misleading conduct;
- 11 b. whether Defendants' acts and omissions violated the state consumer fraud
12 acts;
- 13 c. whether Defendants made material misrepresentations of fact or omitted
14 stating material facts to Plaintiffs and the Class regarding the Vehicles;
- 15 d. whether Defendants' false and misleading statements of fact and
16 concealment of material facts regarding the Vehicles were intended to
17 deceive the public;
- 18 e. whether Defendants breached express warranties;
- 19 f. whether, as a result of Defendants' misconduct, Plaintiffs and the Class
20 are entitled to equitable relief and other relief, and, if so, the nature of such
21 relief; and
- 22 g. whether the members of the Class have sustained ascertainable loss and
23 damages as a result of Defendants' acts and omissions, and the proper
24 measure thereof.

25 102. **Typicality**: The representative Plaintiffs' claims are typical of the claims of the
26 members of the Class they seek to represent. Plaintiffs and members of the Class have been
27 injured by the same wrongful practices in which Defendants have engaged. Plaintiffs' claims
28 arise from the same practices and course of conduct that give rise to the claims of the members
of the Class and are based on the same legal theories.

 103. **Adequacy**: Plaintiffs are representatives who will fully and adequately assert and
protect the interests of the Class, and have retained class counsel who are experienced and

1 qualified in prosecuting class actions. Neither Plaintiffs nor their attorneys have any interests
2 which are contrary to or conflicting with the Class.

3 104. **Superiority:** A class action is superior to all other available methods for the fair
4 and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class
5 members is economically unfeasible and procedurally impracticable. While the aggregate
6 damages sustained by the Class are likely in the millions of dollars, the individual damages
7 incurred by each Class member resulting from Defendants' wrongful conduct are too small to
8 warrant the expense of individual suits. The likelihood of individual Class members prosecuting
9 their own separate claims is remote, and, even if every Class member could afford individual
10 litigation, the court system would be unduly burdened by individual litigation of such cases.
11 Individual members of the Class do not have a significant interest in individually controlling the
12 prosecution of separate actions, and individualized litigation would also present the potential for
13 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to
14 all of the parties and to the court system because of multiple trials of the same factual and legal
15 issues. Plaintiffs know of no difficulty to be encountered in the management of this action that
16 would preclude its maintenance as a class action. In addition, Defendants have acted or refused
17 to act on grounds generally applicable to the Class and, as such, final injunctive relief or
18 corresponding declaratory relief with regard to the members of the Class as a whole is
19 appropriate.

20 105. Plaintiffs will not have any difficulty in managing this litigation as a class action.

21 COUNT I

22 VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT 23 (ON BEHALF OF THE NATIONWIDE CLASS) (WASH. REV. CODE ANN. § 19.86.010 ET SEQ.)

24 106. Plaintiffs incorporate the allegations set forth above as if fully set forth herein.

25 107. Plaintiffs and Defendants are "persons" within the meaning of the Washington
26 Consumer Protection Act ("WCPA").

27 108. At all relevant times material hereto, Defendants conducted trade and commerce
28 in within the meaning of the WCPA.

1 109. Defendant's actions as set forth above constitute unfair acts or practices
2 committed in the conduct of trade or commerce directed at Plaintiffs and the Class.

3 110. Defendant's actions as set forth above constitute deceptive acts or practices
4 committed in the conduct of trade or commerce directed at Plaintiffs and the Class.

5 111. Defendants' actions are injurious to the public and impact the public interest
6 because Plaintiff and the Class were injured in exactly the same way as millions of others
7 purchasing and/or leasing PACCAR vehicles as a result of Defendants' generalized course of
8 deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
9 conduct of Defendants' business.

10 112. The WCPA is, by its terms, a cumulative remedy, such that remedies under its
11 provisions can be awarded in addition to those provided under separate statutory schemes.

12 113. Defendants' practices violated the WCPA for, *inter alia*, one or more of the
13 following reasons:

14 114. Defendants concealed from Plaintiffs and the Class the material facts that the
15 Vehicles were defective and, as such, the Vehicles were not of merchantable quality; and

16 115. Defendants engaged in unconscionable commercial practices in failing to disclose
17 material information discussed above about the Vehicles.

18 116. Defendants consciously omitted or failed to disclose material facts to Plaintiffs
19 and the Class with respect to the Defective Vehicles.

20 117. Defendants' unconscionable conduct described herein included the omission and
21 concealment of material facts concerning the Defective Vehicles.

22 118. Defendants intended that Plaintiffs and the Class rely on its acts of concealment
23 and omissions and misrepresentations, so that Plaintiffs and the Class would purchase and/or
24 lease the Vehicles.

25 119. Had Defendants disclosed all material information regarding the Defective
26 Vehicles to Plaintiffs and the Class, they would not have purchased and/or leased the Vehicles,
27 or would have paid less for them.

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1 128. Pursuant to the express warranties, Defendants also were obligated to properly
2 repair the Vehicles, but were not able to cure the defect.

3 129. Defendants have utterly failed and refused to conform the Vehicles to the express
4 warranties, and Defendants' conduct and their knowing concealment of the defects, as discussed
5 throughout this Complaint, has voided any attempt on their part to disclaim liability for their
6 actions.

7 130. Plaintiffs used the Engines in a manner consistent with their intended use and
8 have performed each and every duty required under the terms of the warranties, except as may
9 have been excused or prevented by the conduct of Defendants or by operation of law in light of
10 Defendants' unconscionable conduct described throughout this Complaint.

11 131. Following repeated failed attempts to have the Vehicles repaired, Plaintiffs placed
12 Defendants on notice each time they brought their Vehicles for ineffective repairs.

13 132. Defendants received timely notice regarding the problems at issue in this
14 litigation and, notwithstanding such notice, have failed and refused to offer an effective remedy.

15 133. In addition, Defendants have received, on information and belief, thousands of
16 complaints and other notices from customers advising them of the Defective Vehicles at issue in
17 this litigation.

18 134. In their capacity as a designer, manufacturer, supplier, and/or warrantor, and by
19 the conduct described herein, any attempt by Defendants to limit the express warranty in a
20 manner that would exclude or limit coverage for the Vehicles, for defects present as of the time
21 of sale or lease, which Defendants knew about prior to offering the Vehicles for sale or lease,
22 concealed and did not disclose, and did not remedy prior to sale or lease (or afterward), is
23 unconscionable and causes the warranty to fail of its essential purpose, and any such effort to
24 disclaim or otherwise limit liability for the defects at issue is null and void.

25 135. Accordingly, Plaintiffs and the Class members suffered damages caused by
26 Defendants' breach of the express warranty and are entitled to recover damages as set forth
27 herein.
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COUNT III

**BREACH OF EXPRESS WARRANTY
(IN THE ALTERNATIVE, ON BEHALF OF THE CALIFORNIA CLASS)**

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136. Plaintiff Santoro and the California Class incorporate the allegations set forth above as if fully set forth herein.

137. As an express warrantor and manufacturer and merchant, Defendants had certain obligations under California Commercial Code § 2313 to conform the Subject Engines and Aftertreatment System to the express warranties.

138. When Plaintiff and the members of the Class purchased and/or leased the Vehicles, Defendants expressly warranted under the base warranty that they would repair Defects in the Engines, which were supposed to be reliable, durable, and economical.

139. The defects at issue in this litigation were present at the time of sale and lease of the Vehicles to Plaintiff and members of the Class.

140. Defendants breached the express warranties (and continues to breach these express warranties) because they did not (and do not) cover the expenses associated with repairing the Vehicles. Defendants further breached these express warranties because the same Engines and the same defective EAS and integrated systems and their parts and components were placed in Vehicles during purported repairs.

141. Pursuant to the express warranties, Defendants were obligated to pay for or reimburse Plaintiff and the Class members for costs incurred in repairing the defects in the Vehicle.

142. Pursuant to the express warranties, Defendants also were obligated to properly repair the Vehicles, but were not able to cure the defect.

143. Defendants have utterly failed and refused to conform the Vehicles to the express warranties and Defendants' conduct and their knowing concealment of the defects, as discussed throughout this Complaint, has voided any attempt on their part to disclaim liability for their actions.

1 144. Plaintiff used the Engines in a manner consistent with their intended use and have
2 performed each and every duty required under the terms of the warranties, except as may have
3 been excused or prevented by the conduct of Defendants or by operation of law in light of
4 Defendants' unconscionable conduct described throughout this Complaint.

5 145. Following repeated failed attempts to have the Vehicles repaired, Plaintiff placed
6 Defendants on notice each time it brought its Vehicles for ineffective repairs.

7 146. Defendants received timely notice regarding the problems at issue in this
8 litigation and, notwithstanding such notice, have failed and refused to offer an effective remedy.

9 147. In addition, Defendants have received, on information and belief, thousands of
10 complaints and other notices from customers advising them of the Defective Vehicles at issue in
11 this litigation.

12 148. In their capacity as a designer, manufacturer, supplier, and/or warrantor, and by
13 the conduct described herein, any attempt by Defendants to limit the express warranty in a
14 manner that would exclude or limit coverage for the Vehicles, for defects present as of the time
15 of sale or lease, which Defendants knew about prior to offering the Vehicles for sale or lease,
16 concealed and did not disclose, and did not remedy prior to sale or lease (or afterward), is
17 unconscionable and causes the warranty to fail of its essential purpose, and any such effort to
18 disclaim or otherwise limit liability for the defects at issue is null and void.

19 149. Accordingly, Plaintiff and the Class members suffered damages caused by
20 Defendants' breach of the express warranty and are entitled to recover damages as set forth
21 herein.

22 **COUNT IV**

23 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**
24 **(IN THE ALTERNATIVE, ON BEHALF OF THE CALIFORNIA CLASS)**

25 150. Plaintiff Santoro and the California Class incorporate the allegations set forth above
26 as if fully set forth herein.
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1 151. California Business and Professions Code § 17200, the Unfair Competition Law,
2 prohibits any “unlawful, unfair, or fraudulent business act or practices.” Defendants engaged in
3 unlawful, fraudulent, and unfair business acts and practices in violation of this Law.

4 152. Defendants have violated the unlawful prong of § 17200 by its violations as set
5 forth below.

6 153. Defendants have violated the fraudulent prong of § 17200 because the omissions
7 regarding the defective nature of the Subject Engines and its Aftertreatment System, as set forth in
8 this Complaint, were likely to deceive a reasonable consumer, and the information would be
9 material to a reasonable consumer.

10 154. Defendants have violated the unfair prong of § 17200 because the acts and practices
11 set forth in the Complaint, including the manufacture and sale of the defective Subject Engine and
12 its defective Aftertreatment System, Defendants’ failure to adequately disclose and remedy that
13 defect, and Defendants’ misrepresentations regarding the defective nature of the Subject Engine and
14 its Aftertreatment System, offend established public policy, and because the harm these acts and
15 practices cause to consumers greatly outweighs any benefits associated with those practices.

16 155. Defendants’ conduct has also impaired competition within the heavy-duty on-
17 highway vehicles market and has prevented Plaintiff Santoro and the California Class from making
18 fully informed decisions about whether to purchase or lease vehicles equipped with the Subject
19 Engines and/or the price to be paid to purchase or lease those vehicles.

20 156. Santoro has standing to pursue this claim on behalf of the California Class because
21 he has suffered an injury-in-fact, including the loss of money or property, as a result of and in
22 reliance on Defendants’ unfair, unlawful, and deceptive practices. As set forth above, had
23 Defendants disclosed the defect with the Subject Engine and its Aftertreatment System prior to
24 his purchase, Plaintiff Santoro would not have purchased the Subject Vehicle equipped with the
25 Subject Engine or not have paid as much for the Subject Vehicle. In addition, Plaintiff Santoro has
26 expended money related to the Engine defect and has suffered a diminution in value of his
27 Subject Vehicle.

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1 157. All of the wrongful conduct alleged herein occurred, and continues to occur, in
2 the conduct of Defendants' business. Defendants' wrongful conduct is part of a pattern or
3 generalized course of conduct that is still perpetuated and repeated in the State of California.

4 158. Plaintiff Santoro and the California Class request that this Court enter such orders or
5 judgments as may be necessary to enjoin Defendants from continuing their unfair, unlawful,
6 and/or deceptive practices and to restore to Plaintiff Santoro and the California Class any money
7 Defendants acquired by unfair competition, including restitution and/or restitutionary disgorgement,
8 as provided in California Business and Professions Code § 17203 and California Civil Code
9 § 3345, and for such other relief set forth below.

10 **COUNT V**

11 **BREACH OF EXPRESS WARRANTY**
12 **(IN THE ALTERNATIVE, ON BEHALF OF THE FLORIDA CLASS)**

13 159. Plaintiff Beacon and the Florida Class incorporate the allegations set forth above
14 as if fully set forth herein.

15 160. As an express warrantor and manufacturer and merchant, Cummins had certain
16 obligations under § 672.313, Florida Statutes, to conform the Subject Engines and their
17 Aftertreatment Systems to the express warranties.

18 161. When Plaintiffs and the members of the Class purchased and/or leased the
19 Vehicles, Defendants expressly warranted under the base warranty that they would repair
20 Defects in the Engines, which were supposed to be reliable, durable, and economical.

21 162. The defects at issue in this litigation were present at the time of sale and lease of
22 the Vehicles to Plaintiffs and members of the Class.

23 163. Defendants breached the express warranties (and continues to breach these
24 express warranties) because they did not (and do not) cover the expenses associated with
25 repairing the Vehicles. Defendants further breached these express warranties because the same
26 Engines and the same defective EAS and integrated systems and their parts and components
27 were placed in Vehicles during purported repairs.
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1 164. Pursuant to the express warranties, Defendants were obligated to pay for or
2 reimburse Plaintiffs and the Class members for costs incurred in repairing the defects in the
3 Vehicle.

4 165. Pursuant to the express warranties, Defendants also were obligated to properly
5 repair the Vehicles, but were not able to cure the defect.

6 166. Defendants have utterly failed and refused to conform the Vehicles to the express
7 warranties and Defendants' conduct and their knowing concealment of the defects, as discussed
8 throughout this Complaint, has voided any attempt on their part to disclaim liability for their
9 actions.

10 167. Plaintiffs used the Engines in a manner consistent with their intended use and
11 have performed each and every duty required under the terms of the warranties, except as may
12 have been excused or prevented by the conduct of Defendants or by operation of law in light of
13 Defendants' unconscionable conduct described throughout this Complaint.

14 168. Following repeated failed attempts to have the Vehicles repaired, Plaintiffs placed
15 Defendants on notice each time they brought their Vehicles for ineffective repairs.

16 169. Defendants received timely notice regarding the problems at issue in this
17 litigation and, notwithstanding such notice, have failed and refused to offer an effective remedy.

18 170. In addition, Defendants have received, on information and belief, thousands of
19 complaints and other notices from customers advising them of the Defective Vehicles at issue in
20 this litigation.

21 171. In their capacity as a designer, manufacturer, supplier, and/or warrantor, and by
22 the conduct described herein, any attempt by Defendants to limit the express warranty in a
23 manner that would exclude or limit coverage for the Vehicles, for defects present as of the time
24 of sale or lease, which Defendants knew about prior to offering the Vehicles for sale or lease,
25 concealed and did not disclose, and did not remedy prior to sale or lease (or afterward), is
26 unconscionable and causes the warranty to fail of its essential purpose, and any such effort to
27 disclaim or otherwise limit liability for the defects at issue is null and void.

28

1 172. Accordingly, Plaintiffs and the Class members suffered damages caused by
2 Defendants' breach of the express warranty and are entitled to recover damages as set forth
3 herein.

4 **COUNT VI**

5 **VIOLATION OF FLORIDA'S UNFAIR**
6 **AND DECEPTIVE TRADE PRACTICES ACT**
7 **(IN THE ALTERNATIVE, ON BEHALF OF THE FLORIDA CLASS)**

8 173. Plaintiff Beacon and the Florida Class incorporate the allegations set forth above
9 as if fully set forth herein.

10 174. Defendants' business acts and practices alleged herein constitute unfair,
11 unconscionable and/or deceptive methods, acts or practices under the Florida Unfair and
12 Deceptive Trade Practices Act, § 501.201, *et seq.*, Florida Statutes ("FUDTPA").

13 175. At all relevant times, Plaintiff Beacon and the Florida Class were "consumers"
14 within the meaning of the FUDTPA. Fla. Stat. § 501.203(7).

15 176. Defendants' conduct, as set forth herein, occurred in the conduct of "trade or
16 commerce" in the state of Florida, within the meaning of the FUDTPA. Fla. Stat. § 501.203(8).
17 Beacon's decision to purchase the Subject Vehicles and the actual purchase of the Subject Vehicles
18 was made in Florida.

19 177. The practices of Defendants, described above, violate the FUDTPA for, *inter alia*,
20 one or more of the following reasons:

- 21 a. Defendants represented that goods or services have
22 sponsorship, approval, characteristics, uses, and benefits
23 that they do not have;
- 24 b. Defendants provided, disseminated, marketed, and
25 otherwise distributed uniform false and misleading
26 advertisements, technical data and other information to
27 consumers regarding the performance, reliability, quality,
28 and nature of the Subject Engines and their Aftertreatment
Systems;
- c. Defendants represented that goods or services were of a
particular standard, quality, or grade, when they were of
another;
- d. Defendants engaged in unconscionable commercial
practices in failing to reveal material facts and information

1 about the Subject Engine, which did, or tended to, mislead
2 Plaintiff Beacon and the Florida Class about facts that
could not reasonably be known by the consumer;

- 3 e. Defendants failed to reveal facts that were material to the
4 transactions in light of representations of fact made in a
positive manner;
- 5 f. Defendants caused Plaintiff Beacon and the Florida Class
6 to suffer a probability of confusion and a
7 misunderstanding of legal rights, obligations, and/or
remedies by and through its conduct;
- 8 g. Defendants failed to reveal material facts to Plaintiff
9 Beacon and the Florida Class with the intent that Plaintiff
Beacon and the Florida Class members rely upon the
omission;
- 10 h. Defendants made material representations and statements
11 of fact to Plaintiff Beacon and the Florida Class
12 members that resulted in Plaintiff Beacon and the Florida
Class reasonably believing the represented or suggested state
of affairs to be other than what they actually were;
- 13 i. Defendants intended that Plaintiff Beacon and the Florida
14 Class rely on their misrepresentations and omissions, so that
15 Plaintiff Beacon and the Florida Class would purchase
vehicles equipped with the Subject Engines.

16 178. Defendants' actions impact the public interest because Plaintiff Beacon and the
17 Florida Class were injured in exactly the same way as thousands of others purchasing and/or leasing
18 the vehicles with Subject Engines as a result of and pursuant to Defendants' generalized course of
19 deception had Plaintiff Beacon and the Florida Class known of the defective nature of the
20 Subject Engines, they would not have purchased or leased vehicles equipped with the Subject
21 Engines or would have paid less for them.

22 179. The foregoing acts, omissions, and practices took place in the state of Florida, and
23 proximately caused Plaintiff Beacon and the Florida Class to suffer actual damages in the form of,
24 *inter alia*, diminution in value of the vehicles equipped with Subject Engines, and are entitled to
25 recover such damages, together with all other appropriate damages, attorneys' fees and costs of suit.
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COUNT VII

**BREACH OF EXPRESS WARRANTY
(IN THE ALTERNATIVE, ON BEHALF OF THE WISCONSIN CLASS)**

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180. Plaintiff Anderson and the Wisconsin Class incorporate the allegations set forth above as if fully set forth herein.

181. As an express warrantor and manufacturer and merchant, Defendants had certain obligations under Wisc. Stat. § 402.313 to conform the MY 2010 CAT Engine and its CRS emission control system to the express warranties.

182. When Plaintiffs and the members of the Class purchased and/or leased the Vehicles, Defendants expressly warranted under the base warranty that they would repair Defects in the Engines, which were supposed to be reliable, durable, and economical.

183. The defects at issue in this litigation were present at the time of sale and lease of the Vehicles to Plaintiffs and members of the Class.

184. Defendants breached the express warranties (and continues to breach these express warranties) because they did not (and do not) cover the expenses associated with repairing the Vehicles. Defendants further breached these express warranties because the same Engines and the same defective EAS and integrated systems and their parts and components were placed in Vehicles during purported repairs.

185. Pursuant to the express warranties, Defendants were obligated to pay for or reimburse Plaintiffs and the Class members for costs incurred in repairing the defects in the Vehicle.

186. Pursuant to the express warranties, Defendants also were obligated to properly repair the Vehicles, but were not able to cure the defect.

187. Defendants have utterly failed and refused to conform the Vehicles to the express warranties and Defendants' conduct and their knowing concealment of the defects, as discussed

1 throughout this Complaint, has voided any attempt on their part to disclaim liability for their
2 actions.

3 188. Plaintiffs used the Engines in a manner consistent with their intended use and
4 have performed each and every duty required under the terms of the warranties, except as may
5 have been excused or prevented by the conduct of Defendants or by operation of law in light of
6 Defendants' unconscionable conduct described throughout this Complaint.

7
8 189. Following repeated failed attempts to have the Vehicles repaired, Plaintiffs placed
9 Defendants on notice each time they brought their Vehicles for ineffective repairs.

10 190. Defendants received timely notice regarding the problems at issue in this
11 litigation and, notwithstanding such notice, have failed and refused to offer an effective remedy.

12 191. In addition, Defendants have received, on information and belief, thousands of
13 complaints and other notices from customers advising them of the Defective Vehicles at issue in
14 this litigation.

15
16 192. In their capacity as a designer, manufacturer, supplier, and/or warrantor, and by
17 the conduct described herein, any attempt by Defendants to limit the express warranty in a
18 manner that would exclude or limit coverage for the Vehicles, for defects present as of the time
19 of sale or lease, which Defendants knew about prior to offering the Vehicles for sale or lease,
20 concealed and did not disclose, and did not remedy prior to sale or lease (or afterward), is
21 unconscionable and causes the warranty to fail of its essential purpose, and any such effort to
22 disclaim or otherwise limit liability for the defects at issue is null and void.

23
24 193. Accordingly, Plaintiffs and the Class members suffered damages caused by
25 Defendants' breach of the express warranty and are entitled to recover damages as set forth
26 herein.

DEMAND

178. WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, respectfully request judgment against each of the Defendants:

- A. Certifying the Class and appointing Plaintiffs and their counsel to represent the Class;
- B. Ordering PACCAR to provide notice to the Class of the Vehicle defects;
- C. Ordering PACCAR to promptly repair and/or replace all Vehicle defects free of charge;
- D. Awarding all permissible damages;
- E. Awarding pre-judgment and post-judgment interest;
- F. Awarding statutory damages as permitted by law;
- G. Awarding attorneys' fees and costs; and
- H. Awarding such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all issues so triable.

1 Dated: May 22, 2018

Respectfully submitted,

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