

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>In re Navistar MaxxForce Engines</b>	)	<b>Case No. 1:14-cv-10318</b>
<b>Marketing, Sales Practices and Products</b>	)	
<b>Liability Litigation</b>	)	<b>This filing applies to:</b>
	)	<b>All Class Cases</b>
	)	
	)	<b>Judge Joan B. Gottschall</b>

**JURY TRIAL DEMANDED**

**FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

Dated: September 22, 2016

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. NATURE OF THE ACTION .....	1
A. Nature of the Defect.....	2
B. The Navistar Warranties .....	4
C. As a Result of the Defect, the Trucks Repeatedly Fail, Uniformly Injuring Proposed Class Members.....	6
II. PARTIES .....	8
A. Plaintiffs.....	8
B. Defendants .....	94
III. JURISDICTION AND VENUE .....	99
IV. CHOICE OF LAW .....	100
V. FACTUAL ALLEGATIONS .....	100
A. Background.....	100
B. Navistar’s Authorized Dealers.....	102
C. The Navistar Defendants Concealed the Defect. ....	103
D. The Navistar Defendants Knew About the Defect at Least as Early as 2004.....	104
E. Navistar’s Representations Regarding the MaxxForce Engines.....	107
F. The Defect Is Widespread and Harms the Class.....	111
VI. TOLLING OF STATUTES OF LIMITATIONS .....	114
VII. CLASS ALLEGATIONS .....	116
A. Class Definitions.....	116
B. The Prerequisites of Rule 23(a) Are Satisfied. ....	120
C. The Prerequisites of Rule 23(b)(1) and (b)(2) Are Satisfied. ....	125
D. The Prerequisites of Rule 23(b)(3) Are Satisfied. ....	125

VIII. CAUSES OF ACTION.....	126
A. Claims Brought on Behalf of the Nationwide Class.....	126
B. Claims Brought on Behalf of State Sub-Classes.....	132
C. Claims Brought on Behalf of the Arkansas Sub-Class.....	140
D. Claims Brought on Behalf of the California Sub-Class.....	141
E. Claims Brought on Behalf of the Florida Sub-Class.....	144
F. Claims Brought on Behalf of the Idaho Sub-Class.....	146
G. Claims Brought on Behalf of the Illinois Sub-Class.....	148
H. Claims Brought on Behalf of the Minnesota Sub-Class.....	150
I. Claims Brought on Behalf of the New Jersey Sub-Class.....	153
J. Claims Brought on Behalf of the North Carolina Sub-Class.....	155
K. Claims Brought on Behalf of the North Dakota Sub-Class.....	156
L. Claims Brought on Behalf of the Ohio Sub-Class.....	159
M. Claims Brought on Behalf of the Oklahoma Sub-Class.....	161
N. Claims Brought on Behalf of the South Carolina Sub-Class.....	162
O. Claims Brought on Behalf of the Texas Sub-Class.....	165
P. Claims Brought on Behalf of the Washington Sub-Class.....	167
Q. Claims Brought on Behalf of the Wisconsin Sub-Class.....	169

Plaintiffs Storey Trucking Company, Inc.; Lakeside Leasing, Inc.; Southern California Moving, Inc.; C & T Transport; Antioch Building Materials, Co.; Sloan Transport, Inc.; Trans Ex Enterprise, Inc.; Killer B Trucking LLC; Lance R. Edwards; Peninsular Transfer Inc.; Vera Transport LLC; William Wardlaw; Windy Hill Inc.; David A. Lord d/b/a Lord AG Transportation; Carmichael Leasing Co., Inc. d/b/a Carmichael National Lease; Robert Greiser; Randy Quick; Binder Trucking, Inc.; Joandnas Operations, Inc.; Fike Logistics, Inc.; Robert Constantine; Kenneth Reul; Wright Transportation, Inc.; A-Rapid Logistics; Alka Trucking, Inc.; Ferraro Foods, Inc.; Cape Fear Carriers & Transport, Inc.; Cape Fear Commercial Lawn Service & Landscaping; Jenkins Unlimited, Inc.; Phifer Trucking, Inc.; Richard Bellerud Trucking, Inc.; OMCO Enterprises, LLC; ALJEN Enterprises, LLC; A.T.T. Trucking, LLC; H.J. O'Malley Trucking, LLC; Traficanti Trucking, LLC; B&T Express, Inc.; Ronald L. Anderson; Victor Caballero; Gettysburg Auto Transport, LLC; Randy Klinger; The Cross Express; Reber Trucking Inc.; Leonard Butler; Steven A. Hamilton; Airborne Investments LLC; Denis Gray Trucking, Inc.; Par 4 Transport, LLP; Emerald Trucking LLC; G&G Specialized Carriers LLC; and Michael Jackson, Sr. ("Plaintiffs"), on behalf of themselves and all other similarly-situated persons and entities, by and through their designated attorneys, bring this class action complaint against Navistar International Corporation and its subsidiary Navistar, Inc.<sup>1</sup> (together, "Navistar") and allege as follows:

## **I. NATURE OF THE ACTION**

1. Plaintiffs bring this class action for declaratory judgment and/or injunctive relief, as well as money damages against Navistar for: unfair, unlawful, and fraudulent business

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<sup>1</sup> Navistar International Corporation and Navistar, Inc., as alter ego entities, and/or agents of one another, will be referred to hereinafter as "Navistar" or "the Navistar Defendants."

practices; breach of express and implied warranties; and related claims, on behalf of themselves and all persons or entities residing in the United States who purchased, not for resale, or leased a vehicle equipped with a 2010-2013 model year MaxxForce 11, 13, or 15 Advanced EGR diesel engine (the “MaxxForce Engines” or “Engines”) (the “Class” or “Classes”).

2. Navistar sold or leased the 2010-2013 model year Engines to Plaintiffs equipped with a defectively-designed integrated emissions system (the “Defect”). The emissions system Defect resulted from Navistar’s election to use “Exhaust Gas Recirculation” (or “EGR”) emissions technology with the MaxxForce Engines to comply with the Environmental Protection Agency (“EPA”) emissions standards for trucks manufactured with model years 2010 and later (“2010 EPA Standards”). Every major U.S. truck manufacturer *except Navistar* chose to meet the 2010 EPA Standards with “Selective Catalytic Reduction” (or “SCR”) technology, which treats engine exhaust with a urea-based chemical after it leaves the engine.

**A. Nature of the Defect**

3. Navistar’s engine strategy bet heavily on unproven EGR technology. EGR technology was designed to reduce emissions by subjecting engine exhaust to a “second burn” in the engine cylinders. The EGR system diverted some engine exhaust into an EGR cooler, which used ordinary engine coolant to reduce the exhaust temperature. The cooled exhaust air was then circulated back into the engine’s air intake through EGR valves.

4. Navistar’s emissions system was defective in that the EGR system that Navistar designed (the “Advanced EGR System”) recirculated a very large percentage of engine exhaust into the cylinders. Because of the additional recirculated exhaust, Navistar’s EGR system generated far more heat within the engine than in the SCR engines. This excessive heat and pressure, in turn, leads to broken EGR valves; exhaust leaks that melt and destroy other engine components; EGR cooler failures, which send uncooled exhaust gas back into the engine

(causing the computer to shut down the engine); and other types of sudden and accidental physical injury to the Engine. The defect also causes the EGR cooler to leak coolant through the EGR valves into the engine. The added stress of pushing non-flammable coolant out of the exhaust valves in the cylinder head destroys the head gasket, which joins the head to the cylinders. This results in the engine having to be rebuilt.

5. As a result of the Defect, Plaintiffs and Class members also experienced repeated instances of check engine lights illuminating, engine derating, bearing and belt failures, cooling failures, A/C blower and compressor failures, hose/connector clogging and failure, DPF clogging, and other issues that prevented the Navistar Trucks from functioning as warranted and represented and as reasonable purchasers and lessees would expect.

6. The Defect also rendered the MaxxForce Engines unreasonably dangerous at the time they were purchased or leased. The Defect can lead to and has led to sudden breakdowns, forcing Trucks, often heavily loaded with cargo, to attempt emergency maneuvers, such as pulling to the side of the road. The Defect also causes coolant and exhaust fumes to enter the passenger compartment of the Trucks, risking driver poisoning from the fumes.

7. Navistar sold trucks containing the defective MaxxForce Engines under its International brand name, including, but not limited to, the following models (collectively the “Trucks”):

- a. International ProStar and Lonestar, which are heavy duty, long haul tractor trailer trucks;
- b. International DuraStar, a heavy duty truck used for various applications, including pick-up and delivery, ambulance services, and construction;
- c. International Transtar, a heavy duty, regional haul truck;

- d. International Workstar and Paystar, severe duty trucks used for construction applications, for example as dump trucks; and
- e. International Loadstar, a severe duty cab forward truck used for various applications, including garbage trucks and airplane refueling trucks.

8. All of the Trucks are Class 7 and 8 “heavy-duty vehicles,” as defined by the Environmental Protection Agency (40 C.F.R. § 1037.801). The Trucks are among the largest, heaviest, and most powerful on the road.

**B. The Navistar Warranties**

9. The Navistar Engines are covered by a number of express written warranties, all of which were drafted by Navistar and all of which were non-negotiable and presented to purchasers and lessees on a take-it-or-leave-it basis in documents provided after the sale.

10. Those warranties include (1) the Navistar Standard Warranty (exemplar attached hereto as Exhibit A);<sup>2</sup> (2) the Navistar Federal Emission System Warranty (*see, e.g.*, “Engine Operation and Maintenance Manual,” pp. 7-9, exemplar attached hereto as Exhibit B); (3) the Navistar California Emission System Warranty (*see, e.g.*, “Engine Operation and Maintenance Manual,” pp.10-12); and (4) descriptions and affirmations of fact contained in Navistar’s “Maintenance Information Guide” (exemplar attached hereto as Exhibit C).

11. Purchasers and lessees of Navistar Trucks were generally aware that warranties came standard with the Trucks. Plaintiffs would not have purchased or leased the Trucks if Navistar had not warranted them. As such, these warranties formed part of the basis of the bargain.

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<sup>2</sup> The warranty attached as Exhibit A applies to specific models of Navistar trucks, but, on information and belief, the same terms apply to all Engines in the Class.



12. With respect to the Emission System Warranties, such emissions-related warranties are mandated by federal law and cannot be disclaimed.

13. Federal law sets forth the minimum requirements for an emissions-related warranty, but manufacturers can issue one that is more generous than what federal law requires.

14. Navistar's Emissions Warranties go beyond the federal standard by (1) issuing a federal emissions warranty that warrants against defects in design, in addition to warranting against defects in materials and workmanship; and (2) warranting nationwide, to all Plaintiffs and members of the Class, that the Trucks satisfy California's emissions-related warranty requirements, the most stringent emissions-related warranty requirements in the nation. California's emissions-related warranty requirements explicitly require manufacturers to warrant against design defects that cause damage to the engine or otherwise prevent the vehicle from operating.

15. In addition to the Standard Warranty, Federal Emission System Warranty, and California Emissions System Warranty, Navistar issued a "Maintenance Information Guide" that contained affirmations of fact and descriptions concerning MaxxFace Advanced EGR. Those affirmations of fact expressly warranted: (i) that the MaxxFace Advanced EGR had "lower operating costs" and "less hassle"; (ii) that the MaxxFace Advanced EGR resulted in "optimal performance and low cost of ownership"; (iii) that the design of MaxxFace Advanced EGR resulted in "better fuel efficiency," "more power to the wheels and less soot out the exhaust," and "improved combustion"; (iv) that the "Dual-path EGR cooling provides optimized cooled EGR ... [that] allows long-term system performance"; (v) that the MaxxFace Engine had "Premium Reliability"; (vi) that the "MaxxFace Engine can be counted on to show up for work every day"; and (vii) that the MaxxFace Engine was "Always Performing." These express affirmations of

material fact were woven into every purchase agreement and became part of the basis of the bargain.

16. Any attempt by Navistar to limit its warranty obligations with respect to the Defect is unconscionable and therefore unenforceable, and any attempt by Navistar to limit or exclude remedies fails of its essential purpose and is therefore unenforceable, in light of the fact that (i) the Defect in the MaxxFace Engines existed at the time of sale, and manifested both within and outside the warranty period; (ii) Navistar had actual knowledge of the Defect prior to sale, knowledge that Plaintiffs did not have and could not have discovered in the exercise of reasonable diligence prior to purchase or lease; (iii) Navistar unilaterally drafted the express warranties described herein and presented them on a take-it-or-leave-it basis post-sale; and (iv) when presented with Trucks for repair under warranty, Navistar was unable to and did not fix the problem, but merely replaced defective parts/systems with the same or similar defective parts/systems, thereby ensuring additional failures during and after expiration of the warranty period.

**C. As a Result of the Defect, the Trucks Repeatedly Fail, Uniformly Injuring Proposed Class Members.**

17. Many owners and lessees of Trucks containing the MaxxFace Engines have repeatedly repaired or replaced the EGR systems and/or other parts damaged by EGR system failure, often at their own expense, and often after Navistar failed to properly repair them during the warranty. Those that have not already failed—and those that have been “repaired” by Navistar under warranty by replacing defective parts/systems with defective parts/systems—are substantially certain to fail well before their intended and expected useful life.

18. The Defect has caused, and is substantially certain to continue to cause, the MaxxFace Engines to fail repeatedly within their intended and expected useful life. For this

reason, all Class members have been injured uniformly. Among other things, all Class members paid a higher price than the one that would have prevailed in the market had the Engines' Defect been known outside of Navistar. Damages as a result of this injury include:

- a. Payment of a higher price at the point of purchase or lease than would have prevailed in the market had the true nature of the Trucks been known.
- b. Receipt of a Truck worth less than a non-Defective truck.
- c. The cost of additional expenditures that Plaintiffs and Class members should not have had to make or pay for, such as repair costs, towing, and/or the purchase, rental and maintenance of other vehicles, because the Trucks were not in service as much as non-Defective trucks would have been.
- d. Loss of profits and revenue, as well as harm to commercial reputation because the Trucks were not in service as much as non-Defective Trucks would have been.
- e. Any other financial loss suffered as a result of the Defect.

19. This action arises from Navistar's knowledge that the emissions system designed into the MaxxForce Engines has an inherent Defect that leads to repeated failures, and its failure to disclose to, and active concealment from, Plaintiffs and all Class members, of that material fact. The action also arises from Navistar's failure to properly repair the Defect as required by Navistar's express and implied warranties. As a direct result, the Trucks equipped with the defective Engines are not as represented by Navistar. At the time of sale, the Trucks equipped with defective Engines were worth less than the price that Plaintiffs and Class members paid, and

worth less than what they would have been had the Engine been free of Defect. In other words, Plaintiffs and Class members did not get what they paid for.

20. On behalf of themselves and all Class members, Plaintiffs seek a) a declaratory judgment that Navistar's express warranties cover the Defect and related failures alleged here, and that any/all attempts to limit or exclude remedies or claims contained in those warranties are unconscionable and/or cause them to fail of their essential purpose, and/or b) injunctive relief compelling Navistar to cover this Defect under its express warranties and prohibiting it from enforcing any limitations of remedies or claims contained therein.

21. On behalf of themselves and all Class members, Plaintiffs also seek an award of compensatory damages against Navistar for intentional, willful, and/or negligent failure to disclose and/or concealment of the inherently defective and dangerous condition posed by the MaxxForce Engines, and Navistar's failure to honor its warranty obligation to properly repair the Defect.

## **II. PARTIES**

### **A. Plaintiffs**

#### **i. Alabama entities**

##### **1. Storey Trucking Company, Inc.**

22. Plaintiff Storey Trucking Company, Inc. ("Storey Trucking") is an Alabama corporation with its principal place of business in Alabama.

23. Storey Trucking leased five Navistar ProStar trucks ("Trucks"), one Model Year 2011 and four Model Year 2012, from Plaintiff Lakeside Leasing, Inc. The Trucks were equipped with MaxxForce 13 Advanced EGR Engines.

24. Plaintiff Lakeside Leasing, Inc. (see below) purchased the Trucks in 2011 in Tennessee.

25. At all relevant times, the Trucks and/or the MaxxFace Engines were covered by the Navistar warranties.

26. Storey Trucking complied with all of its obligations under the Navistar warranty.

27. The MaxxFace Engines in Storey Trucking's Trucks failed on numerous occasions due to the Defect. These failures included cooler failures and other engine failures and issues related to the faulty EGR technology.

28. Due to failure of the Engines, the trucks broke down in circumstances and locations that put the driver and the public at risk.

29. Within the express warranty period, Storey Trucking brought its Trucks to an authorized Navistar repair facility for repair or replacement. Specifically, within 1 year of purchase, the trucks had been taken to the dealer for repairs 31 times.

30. Despite attempts at repair or replacement by the authorized Navistar repair facility, the MaxxFace Engines in the Trucks continued to fail due to the Defect.

31. Neither Navistar, nor any of its dealers or representatives, informed Storey Trucking that the Engines were defective, or of Navistar's misrepresentations and omissions associated with the Defect. To the contrary, Navistar representatives told Plaintiff that the MaxxFace Engine did not have the Defect.

32. Had Storey Trucking been notified of the Defect, it would not have leased the five Navistar vehicles, or it would have paid less for the lease of the trucks.

## **2. Lakeside Leasing, Inc.**

33. Plaintiff Lakeside Leasing, Inc. ("Lakeside") is an Alabama corporation with its principal place of business in Alabama.

34. Lakeside purchased five Navistar ProStar Trucks, one Model Year 2011 and four Model Year 2012, and leased them to Plaintiff Storey Trucking. The Trucks were equipped with MaxxForce 13 Advanced EGR Engines.

35. The Trucks were purchased in 2011 in Tennessee.

36. At all relevant times, the trucks and/or the MaxxForce Engines were covered by the Navistar warranties.

37. Lakeside complied with all of its obligations under the Navistar warranties.

38. The MaxxForce Engines in Lakeside's Trucks failed on numerous occasions due to the Defect. These failures included cooler failures and other engine failures and issues related to the faulty EGR technology.

39. Due to failure of the Engines, the Trucks broke down in circumstances and locations that put the driver and the public at risk.

40. Within the express warranty period, Lakeside brought its Trucks to an authorized Navistar repair facility for repair or replacement. Specifically, within one year of purchasing the Trucks, they were taken to the dealer for repairs 31 times.

41. Despite attempts at repair or replacement by the authorized Navistar repair facility, the MaxxForce Engines in Lakeside's Trucks continued to fail due to the Defect. These failures included cooler failures and other engine failures and issues related to the faulty EGR technology.

42. Neither Navistar, nor any of its dealers or representatives, informed Lakeside that the Engines were defective, or of Navistar's misrepresentations and omissions associated with the Defect. To the contrary, Navistar's representatives told Lakeside that the Engines did not have the Defect.

43. Had Lakeside been advised of the Defect, it would not have purchased the Trucks, or it would have paid less for them.

44. As a result of Navistar, Inc. and Navistar International Corporation's misrepresentations and omissions associated with the Defect, both Storey Trucking and Lakeside suffered ascertainable losses. Storey Trucking and Lakeside seek recovery of all actual damages including, but not limited to direct, incidental and consequential damages such as the following:

- a. The payment of a higher price at the point of purchase or lease than would have prevailed in the market had the true nature of the Trucks been known.
- b. The receipt of Trucks that were worth less than the trucks expressly and impliedly promised by Navistar.
- c. The cost of additional expenditures that Storey Trucking and Lakeside should not have had to make or pay for, such as repair costs, towing, and/or the purchase, rental and maintenance of other vehicles, because the Trucks were not in service as much as the trucks expressly and impliedly promised by Navistar would have been.
- d. Loss of profits and revenue, as well as harm to commercial reputation because the Trucks were not in service as much as the Trucks expressly and impliedly promised by Navistar would have been.
- e. Any other financial loss suffered as a result of the fact that the Trucks were not as expressly and impliedly promised by Navistar.

45. Storey Trucking's and Lakeside's experiences mirror those of thousands of other owners and lessees of Trucks with the defective Engines.

**ii. Arizona entities**

**1. Southern California Moving, Inc.**

46. Plaintiff Southern California Moving, Inc. (“So. Cal. Moving”) is an Arizona corporation with its headquarters in California, and principal places of operation in California, Arizona, and Texas.

47. So. Cal. Moving purchased five Navistar Trucks in Oklahoma.

48. Each of these trucks was equipped with a MaxxFace 13 Engine.

49. At all relevant times, these trucks and/or the MaxxFace Engines were covered by a Navistar warranty.

50. So. Cal. Moving complied with all of its obligations under the Navistar warranties.

51. The MaxxFace Engines in So. Cal. Moving’s vehicles failed on numerous occasions due to the Defect.

52. Due to failure of the Engines, the trucks broke down in circumstances and locations that put the driver and the public at risk.

53. Within the express warranty period, So. Cal. Moving’s trucks were brought to an authorized Navistar repair facility for repair or replacement.

54. Despite attempts at repair or replacement by the authorized Navistar repair facility, the MaxxFace Engines in So. Cal. Moving’s trucks continued to fail due to the Defect.

55. Neither Navistar, nor any of its dealers or representatives, informed So. Cal. Moving that the Engines were defective, or of Navistar’s misrepresentations and omissions associated with the Defect. To the contrary, Navistar representatives told So. Cal. Moving that the MaxxFace Engine did not have the Defect.



56. So. Cal. Moving has suffered (and continues to suffer) ascertainable losses as a result of the Navistar Defendants' misrepresentations and omissions associated with the Defect. So. Cal. Moving seeks recovery of all actual damages (including direct, incidental, and consequential damages), including but not limited to:

- a. The payment of a higher price at the point of purchase than would have prevailed in the market had the true nature of the Trucks been known.
- b. The receipt of a Truck that was worth less than the truck expressly and impliedly promised by Navistar.
- c. The cost of additional expenditures that So. Cal. Moving should have not have had to make or pay for, such as repair costs, towing, and/or the purchase, rental and maintenance of other vehicles, because the Trucks broke down and were not in service as much as the truck expressly and impliedly promised by Navistar would have been.
- d. Loss of profits and revenue, as well as harm to commercial reputation because the Trucks were not in service as much as the truck expressly and impliedly promised by Navistar would have been.
- e. Any other financial loss suffered as a result of the fact that the Trucks were not as expressly and impliedly promised by Navistar.

57. Had So. Cal. Moving been notified of the Defect, it would not have purchased the trucks or, at the very least, paid less for the trucks than it otherwise paid.

58. So. Cal. Moving's experiences mirror that of thousands of other owners and lessees of Trucks with the defective Engines.

**iii. Arkansas entities**

**1. C & T Transport**

59. Plaintiff C & T Transport (“C & T Transport”) is an Arkansas corporation with its principal place of business in Rogers, Arkansas. C & T Transport is a trucking industry company that offers specialized custom logistics. It transports and warehouses food products and provides logistical support on behalf of its customers.

60. C & T Transport purchased one used Navistar International Prostar truck with a MaxxForce 13 Engine, which it uses in the operation of its business. It purchased the truck from Sonic Truck Group, a dealership in Lowell, Arkansas.

61. At all relevant times, the Truck and/or the MaxxForce Engine was covered by the Navistar warranty.

62. The MaxxForce Engine in C & T Transport’s Truck failed on numerous occasions due to the Defect. These failures included numerous operational warnings and breakdowns necessitating repair.

63. Within the express warranty period, C & T Transport brought the Truck to an authorized Navistar repair facility for repair or replacement.

64. Despite attempts at repair or replacement by the authorized Navistar repair facility, the MaxxForce Engine in C & T Transport’s Truck continued to fail due to the Defect.

65. Neither Navistar, nor any of its dealers or representatives, informed C & T Transport that the Engine was defective, or of Navistar’s misrepresentations and omissions associated with the Defect.

66. Had C & T Transport been notified of the Defect, it would not have purchased the Truck, or it would have paid less for it.

67. C & T Transport suffered ascertainable losses as a result of Navistar's misrepresentations and omissions associated with the Defect. C & T Transport seeks recovery of all actual damages (including direct, incidental, and consequential damages), including but not limited to:

- a. The payment of a higher price at the point of purchase than would have prevailed in the market had the true nature of the Truck been known.
- b. The receipt of a Truck that was worth less than the truck expressly and impliedly promised by Navistar.
- c. The cost of additional expenditures that Plaintiff should have not have had to make or pay for, such as repair costs, towing, and/or the purchase, rental and maintenance of other vehicles, because the Truck broke down and was not in service as much as the truck expressly and impliedly promised by Navistar would have been.
- d. Loss of profits and revenue, as well as harm to commercial reputation because the Truck was not in service as much as the truck expressly and impliedly promised by Navistar would have been.
- e. Any other financial loss suffered as a result of the fact that the Truck was not as expressly and impliedly promised by Navistar.

68. C & T Transport's experience mirrors that of thousands of other owners and lessees of Trucks with the defective Engine.

#### **iv. California entities**

##### **1. Antioch Building Materials, Co.**

69. Plaintiff Antioch Building Materials, Co. ("Antioch") is a California corporation headquartered in Antioch, California.

70. On or about June 27, 2012, Antioch bought a used 2011 Navistar ProStar Truck with a MaxxForce 13 Advanced EGR Engine for \$83,022.00 from Navistar through Fitzgerald Truck Sales, Inc., an authorized agent or broker for Navistar located in Oakland, California.

71. At all relevant times, the Truck and/or the MaxxForce Engine was covered by the Navistar warranties.

72. Antioch complied with all of its obligations under the Navistar warranties.

73. The MaxxForce Engine in Antioch's Truck failed on numerous occasions due to the Defect. Between June 2012 and the present, Antioch complained to Navistar about the repeated failures of the truck.

74. Due to failure of the Engine, drivers of the Truck and the public were placed at risk due to the toxic coolant fumes entering the cabin and the constant stress and persistent distraction placed upon drivers when the check engine light came on while travelling with heavy loads.

75. Within the express warranty period, Antioch brought the Truck to an authorized Navistar repair facility for repair or replacement.

76. Despite attempts at repair or replacement by the authorized Navistar repair facility, the MaxxForce Engines in Antioch's Truck continued to fail due to the Defect. These failures included persistent leaking of the coolant system and check engine lights would activate and reveal error codes. Neither Navistar, nor any of its dealers or representatives, informed Antioch that the Engines were defective, or of Navistar's misrepresentations and omissions associated with the Defect. To the contrary, Navistar representatives told Antioch that the MaxxForce Engine did not have the Defect and the issues would be resolved with an updated EGR campaign or release.

































































































































































































































































































































































