UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
U.S. DOJ-ENRD
Office of the AAG
Ben Franklin Station, P.O. Box 7415
Washington, DC 20044-7415

Plaintiff,

v.

FAYAT S.A.S.,
137 Rue du Palais Gallien
33000 Bordeaux
France

and

BOMAG GMBH,
Hellerwald
56154 Boppard
Germany

and

BOMAG AMERICAS, INC.,
125 Blue Granite Parkway
Ridgeway, SC 29130

and

BOMAG (CHINA) CONSTRUCTION MACHINERY CO., LTD.,
No. 2808 West Huancheng Road
Shanghai Comprehensive Industrial Zone
Fengxian, Shanghai 201401
China

and

MARINI S.P.A.,
via Roma, 50
48011 Alfonsine (Ravenna)
Italy

Civil Action No. 1:25-cv-120

and

RAVO B.V.,
Otterkoog 1
1822 BW Alkmaar
The Netherlands

and

CHARLATTE OF AMERICA, INC.,
600 Mountain Lane
Bluefield, VA 24605

and

PTC S.A.S.,
56 Rue de Neuilly
93136 Noisy-le-Sec Cedex
France

and

SECMAIR S.A.S.,
Rue Auguste et Louis Lumière
53230 Cossé-Le-Vivien
France

and

MATHIEU S.A.
85 Rue Sébastien Choulette – BP 32
54202 Toul Cedex
France

Defendants.

COMPLAINT

The United States of America, by authority of the Attorney General and at the request of the Administrator of the United States Environmental Protection Agency (EPA), files this Complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Sections 203, 204, and 205 of the Clean Air Act, 42 U.S.C. §§ 7522, 7523, and 7524, and the regulations promulgated pursuant to Section 213 of the Clean Air Act, 42 U.S.C. § 7547, and codified at 40 C.F.R. Parts 1039 and 1068.

2. This action seeks (1) the assessment of civil penalties and (2) injunctive relief, including mitigation of the harmful effects of excess emissions of nitrogen oxides and particulate matter, against Defendants Fayat S.A.S., BOMAG GmbH, BOMAG Americas, Inc., BOMAG (China) Construction Machinery Co., Ltd., MARINI S.p.A., RAVO B.V., Charlatte of America, Inc., PTC S.A.S., Secmair S.A.S., and MATHIEU S.A. (collectively, "Defendants"), for violations of the Clean Air Act and the regulations promulgated thereunder.

3. Certification Violations: Defendants manufactured and illegally imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce nonroad units of equipment (such as rollers and compactors) containing 830 engines that were neither covered by the certificates of conformity required under Sections 203(a)(1) and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7522(a)(1) and 7547(d), and 40 C.F.R. § 1068.101, nor exempt from that certification requirement. These certification violations comprise both (1) equipment with uncertified engines that were not labeled as exempt under the Transition Program for Equipment Manufacturers and (2) equipment with engines that were labeled as exempt under the Transition Program for Equipment Manufacturers, but which did not meet the program requirements.

4. Manufacturers of nonroad compression engines, or nonroad vehicles utilizing such engines, must obtain a certificate of conformity valid for the model year of an engine that demonstrates the engine complies with applicable emission standards for that model year.

40 C.F.R. § 1039.255(a). Equipment manufactured for introduction into United States commerce in the calendar year (or after) in which new emissions standards become effective must contain engines covered by a valid certificate of conformity or that are otherwise exempt from the certification requirements. 40 C.F.R. § 1068.101.

5. The Transition Program for Equipment Manufacturers ("TPEM") regulations provide a conditional allowance for equipment manufacturers, who voluntarily choose to participate in the program, to produce equipment with a limited number of uncertified engines (meeting outdated emissions standards) to be introduced into United States commerce during a transition period, provided TPEM requirements are met. 40 C.F.R. § 1039.625.

6. Defendants manufactured and then imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce equipment containing 691 uncertified engines not part of the TPEM or otherwise exempt from certification requirements in violation of the Clean Air Act.

7. Defendants also produced and then imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce equipment containing 139 engines meeting outdated emissions standards that failed to meet the requirements of the TPEM regulations, 40 C.F.R. § 1039.625, in violation of the Clean Air Act.

8. TPEM Annual Reporting Violations: Defendants failed to meet annual reporting requirements under EPA's TPEM for at least four years (2014, 2015, 2016, and 2017) in violation of Section 203(a)(2) of the Clean Air Act, 42 U.S.C. § 7522(a)(2), and 40 C.F.R. § 1068.101.

9. Labeling Violations: Defendants failed to comply with the "Ultra Low Sulfur Fuel Only" fuel inlet label requirement under 40 C.F.R. § 1039.135(e) for 8,735 units of equipment, in

violation of Section 203(a)(4) of the Clean Air Act, 42 U.S.C. § 7522(a)(4), and 40 C.F.R. § 1068.101.

10. Import Declaration Form Reporting Violations: Defendants failed to comply with the import declaration form requirement under 40 C.F.R. § 1068.301(d) for entries into the United States of units of equipment containing 2,766 nonroad engines, in violation of Section 203(a)(2) of the Clean Air Act, 42 U.S.C. § 7522(a)(2), and 40 C.F.R. § 1068.101(a)(2).

JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Sections 204, 205, and 213(d) of the Clean Air Act, 42 U.S.C. §§ 7523, 7524, and 7547(d).

12. Fayat S.A.S., BOMAG GmbH, BOMAG (China) Construction Machinery Co., Ltd., MARINI S.p.A., RAVO B.V., PTC S.A.S., Secmair S.A.S., and MATHIEU S.A. (the international Defendants) are subject to the jurisdiction of the United States' federal courts for this action because of their voluntary participation in the TPEM pursuant to 40 C.F.R. § 1039.626(a).

13. This Court has personal jurisdiction over Defendants as they named an agent in the District of Columbia for matters related to the TPEM, consented to enforcement of the Clean Air Act and regulations promulgated thereunder as governed by the Clean Air Act, and do business in the District of Columbia by, without limitation, their engine certification requests to EPA, their participation in the TPEM administered by EPA, and their distribution of equipment into commerce through an authorized dealer in the District of Columbia. This Court's exercise of jurisdiction over Defendants is consistent with due process.

14. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1395 and Section 205 of the Clean Air Act, 42 U.S.C. § 7524, because this is the principal place of business of the

EPA Administrator, under whose authority the TPEM and engine certification program are administered, and Fayat's agent for matters related to the TPEM is also located in the District of Columbia.

DEFENDANTS

15. Fayat S.A.S. is incorporated under the laws of France.

16. Fayat S.A.S is headquartered in Bordeaux, France.

17. Fayat S.A.S. is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

18. Fayat S.A.S. is a "manufacturer" within the meaning of Section 216(1) of the Clean Air Act, 42 U.S.C. § 7550(1).

19. The Road Equipment Division of Fayat S.A.S. comprises: BOMAG GmbH, Bomag Americas, Inc., BOMAG (China) Construction Machinery Co., Ltd., MARINI S.p.A., RAVO B.V., Charlatte of America, Inc., PTC S.A.S., Secmair S.A.S., and MATHIEU S.A.

20. At all times relevant to this action, Fayat S.A.S., through its Road Equipment Division, was engaged in the business of manufacturing, importing, offering for sale, selling, and/or introducing or delivering for introduction into United States commerce nonroad units of equipment powered by nonroad compression-ignition engines.

21. BOMAG GmbH is incorporated under the laws of Germany.

22. BOMAG GmbH is headquartered in Boppard, Germany.

23. BOMAG GmbH is a subsidiary of Fayat S.A.S.

24. BOMAG GmbH is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

25. BOMAG GmbH is a "manufacturer" within the meaning of Section 216(1) of the Clean Air Act, 42 U.S.C. § 7550(1).

26. At all times relevant to this action, BOMAG GmbH was engaged in the business of manufacturing, importing, offering for sale, selling, and/or introducing or delivering for introduction into United States commerce nonroad units of equipment powered by nonroad compression-ignition engines.

27. Bomag Americas, Inc. is incorporated under Delaware law.

28. Bomag Americas, Inc. is also registered to do business under South Carolina law, Illinois law, and Oklahoma law.

29. Bomag Americas, Inc. has its principal place of business in Ridgeway, South Carolina.

30. Bomag Americas, Inc. is a subsidiary of Fayat S.A.S.

31. Bomag Americas, Inc. is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

32. Bomag Americas, Inc. is a "manufacturer" within the meaning of Section 216(1) of the Clean Air Act, 42 U.S.C. § 7550(1).

33. At all times relevant to this action, Bomag Americas, Inc. was engaged in the business of manufacturing, importing, offering for sale, selling, and/or introducing or delivering for introduction into United States commerce nonroad units of equipment powered by nonroad compression-ignition engines.

34. BOMAG (China) Construction Machinery Co., Ltd. is incorporated under the laws of China.

35. BOMAG (China) Construction Machinery Co., Ltd. is headquartered in Shanghai, China.

36. BOMAG (China) Construction Machinery Co., Ltd. is a subsidiary of Fayat S.A.S.

37. BOMAG (China) Construction Machinery Co., Ltd. is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

38. BOMAG (China) Construction Machinery Co., Ltd. is a "manufacturer" within the meaning of Section 216(1) of the Clean Air Act, 42 U.S.C. § 7550(1).

39. At all times relevant to this action, BOMAG (China) Construction Machinery Co., Ltd. was engaged in the business of manufacturing, importing, offering for sale, selling, and/or introducing or delivering for introduction into United States commerce nonroad units of equipment powered by nonroad compression-ignition engines.

40. MARINI S.p.A. is incorporated under the laws of Italy.

41. MARINI S.p.A. is headquartered in Ravenna, Italy.

42. MARINI S.p.A is a subsidiary of Fayat S.A.S.

43. MARINI S.p.A. is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

44. MARINI S.p.A. is a "manufacturer" within the meaning of Section 216(1) of the Clean Air Act, 42 U.S.C. § 7550(1).

45. At all times relevant to this action, MARINI S.p.A. was engaged in the business of manufacturing, importing, offering for sale, selling, and/or introducing or delivering for introduction into United States commerce nonroad units of equipment powered by nonroad compression-ignition engines.

46. RAVO B.V. is incorporated under the laws of the Netherlands.

47. RAVO B.V. is headquartered in Alkmaar, the Netherlands.

48. RAVO B.V. is a subsidiary of Fayat S.A.S.

49. RAVO B.V. is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

50. RAVO B.V. is a "manufacturer" within the meaning of Section 216(1) of the Clean Air Act, 42 U.S.C. § 7550(1).

51. At all times relevant to this action, RAVO B.V. was engaged in the business of manufacturing, importing, offering for sale, selling, and/or introducing or delivering for introduction into United States commerce nonroad units of equipment powered by nonroad compression-ignition engines.

52. PTC S.A.S. is incorporated under the laws of France.

53. PTC S.A.S. is headquartered in Noisy-le-Sec, France.

54. PTC S.A.S. is a subsidiary of Fayat S.A.S.

55. PTC S.A.S. is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

56. PTC S.A.S. is a "manufacturer" within the meaning of Section 216(1) of the Clean Air Act, 42 U.S.C. § 7550(1).

57. At all times relevant to this action, PTC S.A.S. was engaged in the business of manufacturing, importing, offering for sale, selling, and/or introducing or delivering for introduction into United States commerce nonroad units of equipment powered by nonroad compression-ignition engines.

58. Charlatte of America, Inc. is registered under the laws of the Commonwealth of Virginia.

59. Charlatte of America, Inc. has its principal place of business in Bluefield, Virginia.

60. Charlatte of America, Inc. is a subsidiary of Fayat S.A.S.

61. Charlatte of America, Inc. is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

62. Charlatte of America, Inc. is a "manufacturer" within the meaning of Section 216(1) of the Clean Air Act, 42 U.S.C. § 7550(1).

63. At all times relevant to this action, Charlatte of America, Inc. was engaged in the business of manufacturing, importing, offering for sale, selling, and/or introducing or delivering for introduction into United States commerce nonroad units of equipment powered by nonroad compression-ignition engines.

64. Secmair S.A.S. is incorporated under the laws of France.

65. Secmair S.A.S is headquartered in Cossé-Le-Vivien, France.

66. Secmair S.A.S is a subsidiary of Fayat S.A.S.

67. Secmair S.A.S. is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

68. Secmair S.A.S. is a "manufacturer" within the meaning of Section 216(1) of the Clean Air Act, 42 U.S.C. § 7550(1).

69. At all times relevant to this action, Secmair S.A.S. was engaged in the business of manufacturing, importing, offering for sale, selling, and/or introducing or delivering for introduction into United States commerce nonroad units of equipment powered by nonroad compression-ignition engines.

70. MATHIEU S.A. is incorporated under the laws of France.

71. MATHIEU S.A. is headquartered in Toul, France.

72. MATHIEU S.A. is a subsidiary of Fayat S.A.S..

73. MATHIEU S.A. is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

74. MATHIEU S.A. is a "manufacturer" within the meaning of Section 216(1) of the Clean Air Act, 42 U.S.C. § 7550(1).

75. At all times relevant to this action, MATHIEU S.A. was engaged in the business of manufacturing, importing, offering for sale, selling, and/or introducing or delivering for introduction into United States commerce nonroad units of equipment powered by nonroad compression-ignition engines.

STATUTORY AND REGULATORY BACKGROUND

76. This action arises under Title II of the Clean Air Act, as amended, 42 U.S.C. § 7521, *et seq.*, and the regulations promulgated thereunder relating to exhaust emissions standards for nonroad compression-ignition engines.

Congressional Findings, Purposes, and Mandates

77. In enacting the Clean Air Act, Congress found that "the growth in the amount and complexity of air pollution . . . has resulted in mounting dangers to the public health and welfare . . . ." 42 U.S.C. § 7401(a)(2).

78. Through the Clean Air Act, Congress intended "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population[.]" 42 U.S.C. § 7401(b)(1).

79. The Clean Air Act requires EPA to prescribe and revise standards for air pollutant emissions from any class or classes of "new motor vehicles or new motor vehicle engines" and certain "nonroad engines and nonroad vehicles," that, in EPA's judgment, cause or contribute to air pollution, including emissions of nitrogen oxides, particulate matter, and other pollutants,

which may reasonably be anticipated to endanger public health or welfare. 42 U.S.C. §§ 7521(a)(1), 7547(a).

80. Pursuant to Section 213(d) of the Clean Air Act, 42 U.S.C. § 7547(d), emission standards for nonroad engines and nonroad vehicles shall be enforced in the same manner as enforcement of emission standards for new motor vehicles or new motor vehicle engines under Section 202 of the Clean Air Act, 42 U.S.C. § 7521.

The Emissions Standards

81. EPA has promulgated regulations regarding requirements and prohibitions for the manufacture and introduction into commerce of nonroad engines, and vehicles and equipment using such engines, at 40 C.F.R. Parts 1039 (Control of Emissions from New and In-use Nonroad Compression-Ignition Engines) and 1068 (General Compliance Provisions for Highway, Stationary, and Nonroad Programs).

Certificates of Conformity

82. Section 203(a)(1) of the Clean Air Act, 42 U.S.C. § 7522(a)(1) prohibits manufacturers of nonroad vehicles using compression-ignition engines from selling, offering for sale, introducing or delivering for introduction into United States commerce, or (in the case of any person) importing into the United States (or causing any of the foregoing with respect to) any such vehicles unless the engine contained in it is covered by a certificate of conformity issued by EPA under regulations prescribed by the Clean Air Act. *See* 42 U.S.C. § 7547(d) (making standards applicable to nonroad engines and vehicles enforceable in the same manner as Section 203 of the Clean Air Act, 42 U.S.C. § 7521).

83. The certification process allows EPA to ensure that every covered engine introduced into commerce satisfies applicable emission standards.

84. To obtain a certificate of conformity covering nonroad compression-ignition engines, an engine manufacturer must apply for a certificate of conformity to EPA for each nonroad engine family, under 40 C.F.R. § 1039.230, and each model year that it intends to manufacture and introduce nonroad engines into United States commerce. The certificate of conformity application must include, among other things, identification of the covered engine family, a description of the nonroad engines and their emission control system, and test results from a test engine or engines showing that the engine family satisfies applicable emissions standards. 40 C.F.R. §§ 1039.201, 1039.205.

85. If, after review of the certificate of conformity application and other information, EPA determines that the test engine or engines described in the certificate of conformity application meet(s) the requirements of the Clean Air Act, EPA will issue a certificate of conformity for the nonroad engine family for that model year. 40 C.F.R. § 1039.255.

86. The provisions of 40 C.F.R. Part 1068 apply to land-based nonroad compression-ignition engines or equipment containing these engines regulated under 40 C.F.R. Part 1039. *See* 40 C.F.R. §§ 1039.15(b) and 1068.1(a).

87. Pursuant to 40 C.F.R. Part 1068, manufacturers of nonroad equipment must "not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine/equipment after emission standards take effect for the engine/equipment, unless it is covered by a valid certificate of conformity for its model year and has the required label or tag." 40 C.F.R. § 1068.101(a)(1). Manufacturers of nonroad equipment also "must not take any such actions [ ] with respect to any equipment containing an engine subject to [Part 1068's] provisions unless the engine is covered by a valid certificate of conformity for its model year and has the required engine label or tag." *Id*. "[A] valid certificate of conformity is one that applies to

the same model year as the model year of the equipment (except as allowed by 40 C.F.R. § 1068.105(a)).". 40 C.F.R. § 1068.101(a)(1)(i).

88. For purposes of Title II of the Clean Air Act:

> The term 'manufacturer' as used in sections 7521, 7522, 7525, 7541, and 7542 of this title means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce.

42 U.S.C. § 7550(1).

89. The regulations state:

> *Manufacturer* has the meaning given in section 216(1) of the Clean Air Act (42 U.S.C. 7550(1)). In general, this term includes any person who manufactures or assembles an engine or piece of equipment for sale in the United States or otherwise introduces a new engine or piece of equipment into U.S. commerce. This includes importers that import new engines or new equipment into the United States for resale.

40 C.F.R. § 1068.30.

The Tier 4 Emissions Standards for Nonroad Engines

90. EPA has promulgated, and from time to time revised, emissions standards for nonroad compression-ignition engines. *See* 40 C.F.R. Parts 89 and 1039. These standards are referred to with a "Tier" designation.

91. In 2004, EPA adopted more stringent emission standards intended for use in nonroad equipment using compression-ignition engines ("Tier 4 standards") and sulfur reductions in nonroad diesel fuel, to achieve significant reductions in particulate matter, nitrogen oxides, and sulfur oxides. To meet Tier 4 standards, equipment manufacturers generally must modify their

equipment designs to accommodate engines with additional and improved emissions control devices. *See* 69 Fed. Reg. 38,958 (June 29, 2004) (codified at 40 C.F.R. Part 1039); *see also* 40 C.F.R. § 1039.101.

92. Tier 4 standards were set in two phases, Tier 4i (or interim) and Tier 4f (or final), the timing of which is governed by the size of the engine output, as measured by kilowatts (kW) of power.

93. Less than 19 kW Power Category. Tier 4i became effective for engines with power less than 19 kW on January 1, 2008, and Tier 4f became effective for such engines on January 1, 2014. 40 C.F.R. §§ 1039.101 & 1039.102.

94. 19 – 56 kW Power Category. Tier 4i became effective for engines with power greater than or equal to 19 kW and less than 56kW on January 1, 2008 (unless an alternative option #2 is selected), and Tier 4f became effective for such engines on January 1, 2014. 40 C.F.R. §§ 1039.101 & 1039.102.

95. 56 – 130 kW Power Category. Tier 4i became effective for engines with power greater than or equal to 56 kW and less than 130 kW on January 1, 2012, and Tier 4f became effective for such engines on January 1, 2014. 40 C.F.R. §§ 1039.101 & 1039.102.

96. 130 – 560 kW Power Category. Tier 4i became effective for engines with power greater than or equal to 130 kW and less than 560 kW on January 1, 2011, and Tier 4f became effective for such engines on January 1, 2014. 40 C.F.R. §§ 1039.101 & 1039.102.

97. Equipment introduced into commerce in the calendar year (or after) in which Tier 4 standards became effective must contain engines certified to the new Tier 4 standards, except that equipment manufacturers may "continue to use up normal inventories of engines that were built before" Tier 4 standards became effective. 40 C.F.R. §§ 1068.101(a) and 1068.105(a).

The Transition Program for Equipment Manufacturers

98. EPA adopted transition provisions for nonroad equipment manufacturers to provide flexibility for these manufacturers to selectively delay compliance with the Tier 4 standards for a limited number of units for up to seven years, subject to certain requirements. This program is known as the Transition Program for Equipment Manufacturers or TPEM. 40 C.F.R. § 1039.625.

99. Under the TPEM, nonroad equipment manufacturers are allowed to produce and introduce into commerce in the United States a limited number of nonroad vehicles using engines that have not been certified to the applicable Tier 4 emissions standards only if they comply with all TPEM requirements of 40 C.F.R. § 1039.625. Thus, under the TPEM, equipment manufacturers may, subject to certain requirements, continue to introduce into commerce vehicles containing a limited number of "exempt" engines that would otherwise be uncertified to Tier 4 standards.

100. Equipment manufacturers may qualify for exemptions under the TPEM based either on a percentage of their production allowance or a maximum number of exempted units of equipment (small volume allowance), and they may choose either option for a particular power category. 40 C.F.R. § 1039.625(b).

101. Under the small-volume allowance, equipment manufacturers are allowed to determine an alternate allowance for a specific number of exempted engines for U.S.-directed production volumes, with the specific number depending on the engine power category and whether the engines are from a single engine family or multiple engine families.
40 C.F.R. § 1039.625(b)(2).

102. Less than 19 kW Power Category. Under the general availability (not delayed) small-volume allowance for manufacturers exempting engines in multiple engine families, manufacturers may produce for introduction into United States commerce no more than 525 units

with exempted engines total between 2008-2014, with no more than 150 units in any single year. 40 C.F.R. §§ 1039.625(a)(1) and 1039.625(b)(2)(ii).

103. 19 - 56 kW Power Category. Under the general availability (not delayed) small-volume allowance for manufacturers exempting engines in multiple engine families, manufacturers may produce for introduction into United States commerce no more than 525 units with exempted engines total between 2008-2014, with no more than 150 units in any single year. 40 C.F.R. §§ 1039.625(a)(1) and 1039.625(b)(2)(ii).

104. 56 - 130 kW Power Category. Under the general availability (not delayed) small-volume allowance for manufacturers exempting engines in multiple engine families, manufacturers may produce for introduction into United States commerce no more than 525 units with exempted engines total between 2012-2018, with no more than 150 units in any single year. 40 C.F.R. §§ 1039.625(a)(1) and 1039.625(b)(2)(ii).

105. 130 - 560 kW Power Category. Under the general availability (not delayed) small-volume allowance for manufacturers exempting engines in multiple engine families, manufacturers may produce for introduction into United States commerce no more than 350 units with exempted engines total between 2011-2017, with no more than 100 units in any single year. 40 C.F.R. §§ 1039.625(a)(1) and 1039.625(b)(2)(ii).

106. The limit on TPEM-exempted engines ("TPEM allowance") for a power category applies to all U.S.-directed sales of an equipment manufacturer, including those from any parent or subsidiary companies and any other companies the manufacturer licenses to produce equipment for it. 40 C.F.R. § 1039.625(a). Thus, when determining an equipment manufacturer's TPEM allowance, a parent company, and its subsidiary companies, as defined at 40 C.F.R. § 1068.30, and

any companies licensed to produce equipment for an equipment manufacturer share one set of allowances among them for U.S.-directed sales.

107. Before an equipment manufacturer using engines not certified to applicable Tier 4 standards may begin using the TPEM exemption, it must notify EPA of its intent to do so and provide information about its intended use of TPEM exemptions, including an estimate of the number of units in each power category it plans to produce and whether it intends to use the percent-of-production or small volume approach to determine its TPEM allowance. 40 C.F.R. § 1039.625(g).

108. A foreign equipment manufacturer importing equipment with exempted engines must comply with the provisions in 40 C.F.R. § 1039.625 and the requirements under 40 C.F.R. § 1039.626(a), including posting a bond to cover any potential enforcement actions under the Clean Air Act before importation of equipment. 40 C.F.R. § 1039.626.

109. Section 213(d) of the Clean Air Act, 42 U.S.C. § 7547(d), states that standards established for nonroad engines and vehicles are subject to, *inter alia*, the provisions of Section 207 of the Clean Air Act, 42 U.S.C. § 7541. Section 207(c)(3)(C) of the Clean Air Act, 42 U.S.C. § 7541(c)(3)(C), requires manufacturers of engines and vehicles to permanently affix to each engine and vehicle a label or tag indicating such engine or vehicle is covered by a certificate of conformity as well as provide any other information prescribed by regulation.

110. Section 203(a)(4)(A) of the Clean Air Act, 42 U.S.C. § 7522(a)(4)(A), and EPA regulations at 40 C.F.R. § 1068.101(a)(1), prohibit any manufacturer of a new engine or vehicle to sell such engine or vehicle unless a label or tag is permanently affixed to such engine and vehicle in accordance with Section 207(c)(3)(C) of the Clean Air Act, 42 U.S.C. § 7541(c)(3)(C).

111. TPEM Labels: The TPEM regulations at 40 C.F.R. § 1039.625 further require equipment manufacturers to label each piece of equipment produced using a TPEM engine with specified information that supplements the engine emission control label or tag. 40 C.F.R. § 1039.625(f). Pursuant to Section 202(c)(3) of the Clean Air Act, 42 U.S.C. § 7521(c)(3), the label must be permanently affixed (attached in such a manner that it cannot be removed without destroying or defacing it in accordance with 40 C.F.R. § 1068.45(a)) and, along with other information, state that "This equipment has an engine that meets U.S. EPA emission standards under 40 C.F.R. § 1039.625." *Id.*

112. Equipment that is not permanently labeled in accordance with the TPEM labeling requirements of 40 C.F.R. § 1039.625(f), is not eligible for exemption under the TPEM. 40 C.F.R. § 1039.625. To be eligible to use the TPEM allowances, an equipment manufacturer must follow all the requirements of 40 C.F.R. §§ 1039.625 and 1039.626 (if applicable). An engine or piece of equipment that is purportedly exempt from the Clean Air Act's certification requirement under the TPEM is not in fact exempt if the engine or equipment manufacturer fails to comply with the detailed TPEM requirements. 40 C.F.R. § 1039.625.

113. Once an equipment manufacturer has used up its TPEM allowance, any additional vehicles that it imports, sells, offers for sale, introduces, or delivers for introduction into United States commerce that contain engines not certified to currently applicable Tier 4 standards violate the prohibition of Section 203(a)(1) of the Clean Air Act, 42 U.S.C. § 7522(a)(1), and 40 C.F.R. §§ 1068.101(a)(1) and 1039.625(i).

Normal Existing Inventory

114. Even after the Tier 4 standards are effective, equipment manufacturers may continue to use up "normal inventories" of engines that were built before the new standards became effective. 40 C.F.R. § 1068.105(a).

115. 40 C.F.R. § 1068.105(a) provides in part: "[i]f new engine-based emission standards apply in a given model year, your equipment produced in that calendar year (or later) must have engines that are certified to the new standards, except that you may continue to use up normal inventories of engines that were *built before the date of the new or changed standards*. For purposes of this paragraph (a), normal inventory applies for *engines you possess and engines from your engine supplier's normal inventory*." (emphasis added).

116. Normal inventories of engines under 40 C.F.R. § 1068.105(a) are considered compliant engines (even though they may not be certified to current emission control standards in effect) and not included in the vehicle manufacturer's TPEM allowances. 40 C.F.R. § 1039.625(d)(1).

117. Equipment manufacturers are specifically prohibited from circumventing the certification requirement by stockpiling engines that were built before Tier 4 standards took effect or by knowingly installing engines that were stockpiled by engine suppliers in violation of 40 C.F.R. §§ 1068.101(a)(1)(i), 1068.103(g) and 1068.105(a).

118. Equipment manufacturers who, after the effective date of the Tier 4 standards, introduce into United States commerce equipment containing engines not certified to the applicable Tier 4 standards and not part of the manufacturers' normal inventory are liable for violations of Section 203(A)(1), 42 U.S.C. § 7522(a)(1), and 40 C.F.R. § 1068.101(a), unless the vehicles are within the manufacturers' TPEM allowance exemption.

Annual TPEM Reporting Requirements

119. Section 213(d) of the Clean Air Act, 42 U.S.C. § 7547(d), states that standards established for nonroad engines and vehicles are subject to, *inter alia*, the provisions of Section 208 of the Clean Air Act, 42 U.S.C. § 7542. Section 208(a), 42 U.S.C. § 7542(a) requires, *inter alia*, that persons subject to Part A of Title II of the Clean Air Act (including Sections 203 and 213 of the Clean Air Act, 42 U.S.C. §§ 7522 and 7547) establish and maintain records, perform certain testing, and make reports and provide information that EPA may reasonably require to determine whether such persons have acted or are acting in compliance with the Clean Air Act.

120. Section 203(a)(2)(A) of the Clean Air Act, 42 U.S.C. § 7522(a)(2)(A), prohibits any person from failing or refusing to permit access to or copying of records or failing to make reports or provide information required under Section 208 of the Clean Air Act, 42 U.S.C. § 7542. EPA's implementing regulations provide that engine and equipment manufacturers must give EPA "complete and accurate reports and information without delay." 40 C.F.R. § 1068.101(a)(2).

121. The TPEM regulations require an equipment manufacturer (including a parent and its subsidiaries) using TPEM allowances to submit to EPA an annual report to verify that the manufacturer is not exceeding any annual or total TPEM allowance. 40 C.F.R. § 1039.625(g)(2). The annual report must be submitted by March 31 of the year following each year a manufacturer used TPEM allowances, and the report must identify: (i) the total count of units the manufacturer sold in the preceding year for each power category based on actual U.S.-directed production information; and (ii) the percentages of U.S.-directed production that correspond to the number of units in each power category (if the manufacturer is using the percent-of-production allowance) and the cumulative numbers and percentages of units for all the units that the manufacturer has sold pursuant to TPEM for each power category. *Id*.

122. A manufacturer's failure to comply with TPEM annual report requirements is a violation of Section 203(a)(2)(A) of the Clean Air Act, 42 U.S.C. § 7522(a)(2)(A), and 40 C.F.R. § 1068.101(a)(2).

Import Reporting Requirements

123. Importers of equipment containing engines subject to EPA emission standards into the United States are required to complete the appropriate EPA declaration form before importing any engines or equipment and to retain the forms for five years and make them available upon request. 40 C.F.R. § 1068.301(d).

124. EPA has created Declaration Form 3520-21 for the purpose of satisfying the declaration form requirement under 40 C.F.R. § 1068.301(d). EPA Declaration Form 3520-21 requires importers to detail information about the engines being imported and directs importers to indicate on the form whether the engine is subject to exemption under the TPEM. If more than one engine is contained in a shipment, a single EPA Declaration Form 3520-21 may be used for all the engines in a shipment.

125. An importer's failure to comply with EPA Declaration Form 3520-21 requirements for imported vehicles with regulated engines is a violation of Section 203(a)(2)(A) of the Clean Air Act, 42 U.S.C. § 7522(a)(2)(A), and 40 C.F.R. § 1068.101(a)(2).

Fuel Inlet Labeling Requirements

126. EPA regulations require equipment containing new, compression-ignition nonroad engines with model years between 2011 and 2019 (inclusive) have a permanently attached label near the fuel inlet with the statement "Ultra Low Sulfur Fuel Only." 40 C.F.R. § 1039.135(e) (2021) ("ultra low sulfur fuel only" label required for model years 2019 and earlier) and 40 C.F.R. § 1039.135(e) (2007-2020) ("ultra low sulfur fuel only" label required except as provided in 40

C.F.R. § 1039.104(e)(2), which contains label requirements for 2010 and earlier model years); *see also* 40 C.F.R. § 1039.104(e) ("For diesel-fueled engines in 2011 and later model years, the diesel test fuel is ultra low-sulfur diesel fuel specified in 40 CFR part 1065"); 69 Fed. Reg. 38,959, 39,037 (June 29, 2004) ("In general, beginning in model year 2011, nonroad engines will be required to use the Ultra Low Sulfur diesel fuel … Thus, the default label will state "ULTRA LOW SULFUR FUEL ONLY."); 86 Fed. Reg. 34,308, 34,345 (June 29, 2021) (amending 40 C.F.R. §1039.135(e) to stop requiring the "ultra low sulfur fuel only" fuel inlet labels after model year 2019 "[s]ince in-use diesel fuel for these engines must universally meet [ultra low sulfur diesel] requirements, there is no longer a benefit to including this label information.").

Enforcement Mechanisms

127. The U.S. Department of Justice has authority to bring this action on behalf of the EPA Administrator under 28 U.S.C. §§ 516 and 519 and Sections 204(b), 205(b) and 305(a) of the Clean Air Act, 42 U.S.C. §§ 7523(b), 7524(b) and 7605(a), and under 40 C.F.R. § 1068.125.

128. Section 213(d) of the Clean Air Act, 42 U.S.C. § 7547(d), provides that regulations applicable to nonroad engines shall be enforced in the same manner as the standards for new motor vehicles and new motor vehicle engines. The standards for new motor vehicles and new motor vehicle engines are enforced pursuant to Sections 203 (Prohibited Acts), 204 (Actions to Restrain Violations), and 205 (Civil Penalties), 42 U.S.C. §§ 7522, 7523, and 7524.

129. Section 204(b) of the Clean Air Act, 42 U.S.C. § 7523(b), authorizes the United States to bring a civil action to restrain violations of Section 203(a) of the Clean Air Act, 42 U.S.C. § 7522(a). The regulations at 40 C.F.R. § 1068.125 authorize a civil action to enjoin and restrain violations of 40 C.F.R. § 1068.101.

130. Section 205(b) of the Clean Air Act, 42 U.S.C. § 7524(b), authorizes the EPA Administrator to bring a civil action to assess and recover civil penalties for violations of Section 203(a) of the Clean Air Act, 42 U.S.C. § 7522(a). The regulations at 40 C.F.R. §§ 1068.101(a) and 1068.125 authorize a civil action to assess and recover civil penalties for violations of 40 C.F.R. § 1068.101.

131. Section 205(a) of the Clean Air Act, 42 U.S.C. § 7524(a), authorizes civil penalties of up to $25,000 per vehicle or engine for each violation of Section 203(a)(1) or (a)(4) of the Clean Air Act, 42 U.S.C. § 7522(a)(1), (a)(4), and civil penalties of up to $25,000 per day of violation for each violation of Section 203(a)(2) of the Clean Air Act, 42 U.S.C. § 7522(a)(2). *See also* 40 C.F.R. § 1068.101.

132. The Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101–410), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701), requires EPA to periodically adjust civil penalties for inflation. Pursuant to this authority, EPA increased the amount of civil penalties to $37,500 per engine or per day for each violation under Section 205(a) of the Clean Air Act, 42 U.S.C. § 7524(a), occurring on and after December 6, 2013 through November 2, 2015, and up to $59,114 per engine or per day for each violation occurring after November 2, 2015 and assessed on or after January 8, 2025. 40 C.F.R. §§ 19.4 and 1068.101(a)(1), (a)(2). *See also* 78 Fed. Reg. 66,647 (Nov. 6, 2013) (updating statutory civil penalties for inflation through December 6, 2013),81 Fed. Reg. 43,094 (July 1, 2016) (updating statutory civil penalties through August 1, 2016), and 90 Fed. Reg. 1,375 (January 8, 2025) (updating statutory civil penalties assessed on or after January 8, 2025).

GENERAL ALLEGATIONS

133. Defendants are related entities.

134. Defendants' business includes manufacturing and selling equipment containing nonroad compression-ignition engines.

135. This equipment includes, among other things, pavers, rollers, compactors, and other types of equipment for the construction and maintenance of roads.

136. Fayat S.A.S is the parent company (as defined at 40 C.F.R. § 1068.30) of the other named Defendants: BOMAG GmbH, Bomag Americas, Inc., BOMAG (China) Construction Machinery Co., Ltd., MARINI S.p.A., RAVO B.V., Charlatte of America, Inc., PTC S.A.S., Secmair S.A.S., and MATHIEU S.A.

137. These other Defendants, listed above, are part of Fayat S.A.S.'s Road Equipment Division and are all subsidiary companies of Fayat S.A.S. (as defined at 40 C.F.R. § 1068.30).

138. Between December 2010 and March 2014, BOMAG GmbH, on behalf of itself and all other Defendants, notified EPA of their intent to voluntarily participate in the TPEM for each of the five power categories: less than 19 kW, 19-56 kW, 56-130 kW, 130-560 kW, and more than 560 kW.

139. From January 1, 2014 (the effective date of the Tier 4f emissions standards) through December 31, 2018 (the "relevant period"), Defendants manufactured, imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce nonroad equipment with Tier 3 and Tier 4i nonroad compression-ignition engines they acquired from third-party engine manufacturers.

140. Some of these equipment units (and the engines contained therein) were labeled as exempt under the TPEM, but hundreds of equipment units (and the engines contained therein)

were not labeled as TPEM exempt and were not, in fact, otherwise exempt from the Tier 4f certification requirements.

141. Defendants, acting through BOMAG GmbH, elected the small-volume TPEM allowance for each power category.

142. Defendants elected to participate in the TPEM during the "general availability" period (not the delayed availability period) for each power category.

143. Defendants elected to use their TPEM allowances in multiple engine families for each power category.

144. On May 5, 2015, counsel for Defendants sent EPA a letter disclosing eighteen (18) exceedances of their TPEM annual allowance for 2014 of 150 units of equipment in the 19 - 56 kW power category. Defendants also described these exceedances in their 2014 TPEM annual report.

145. During the relevant period, Defendants did not disclose any other exceedances to EPA in their TPEM annual reports or otherwise.

146. Defendants did not disclose any other violations of Tier 4 standards to EPA during the relevant period.

Certification Violations – Non-Tier 4f Engines

147. During the relevant period, Defendants manufactured, imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce nonroad units of equipment containing 691 nonroad compression-ignition engines with power between 19 kW and 560 kW that were not compliant with Tier 4f emission standards and were not labeled as TPEM exempt.

148. Each of these engines was neither covered by an EPA-issued certificate of conformity valid for the applicable model year, nor otherwise exempt from the Clean Air Act's certification requirement.

Certification Violations – Non-Tier 4f Engines Exceeding TPEM Exemption Allowances

149. During the relevant period, Defendants produced and then imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce nonroad equipment units containing 139 nonroad compression-ignition engines that were not compliant with Tier 4f emission standards and were labeled as purportedly exempt from those standards under the TPEM, but did not comply with the TPEM regulations.

150. Under the TPEM regulations, Fayat S.A.S.'s Road Equipment Division (comprised of all Defendants as related parent and subsidiary companies) constitutes one manufacturer for allowance and reporting purposes. All U.S.-directed sales of equipment manufactured by the Defendants were subject to the same, single TPEM exemption allowances for the Defendants under 40 C.F.R. § 1039.625(a) which provides: "[c]onsider all U.S.-directed equipment sales in showing that you meet the requirements of this section, including those from any parent or subsidiary companies and those from any other companies you license to produce equipment for you."

151. In 2018, Defendants produced and then imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce nonroad equipment units containing 2 Tier 4i and/or Tier 3 nonroad compression-ignition engines in the 130 to 560 kW power category labeled as purportedly exempt from the Tier 4f emission standards under the TPEM, but the seven-year period of general availability of allowances under the TPEM for this power category ended in 2017.

152. During the relevant period, Defendants produced (and subsequently imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce) 18 nonroad equipment units containing Tier 4i and/or Tier 3 nonroad compression-ignition engines in the 19 – 56 kW power category labeled as purportedly exempt from the Tier 4f emission standards under the TPEM in exceedance of the small-volume total allowance limit of 525 units for that power category.

153. During the relevant period, Defendants produced (and subsequently imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce) nonroad equipment units containing 119 Tier 4i and/or Tier 3 nonroad compression ignition engines labeled as purportedly exempt from the Tier 4f emission standards under the TPEM, but which exceeded the applicable annual small-volume production allowance limits of 150 units.

TPEM Annual Reporting Violations

154. Defendants failed to submit complete and accurate annual TPEM reports in at least 2014, 2015, 2016, and 2017 pursuant to 40 C.F.R. § 1039.625(g)(2).

155. Defendants' reports failed to include complete and accurate information about Defendants' actual U.S.-directed TPEM-exempted equipment volume, in violation of Section 203(a)(2) of the Clean Air Act, 42 U.S.C. § 7522(a)(2), and 40 C.F.R. § 1068.101(a)(2).

Fuel Inlet Labeling Violations

156. Defendants manufactured 8,735 units of equipment that either had no fuel inlet label or had a fuel inlet label that did not read "Ultra Low Sulfur Fuel Only" as required by 40 C.F.R. § 1039.135(e).

157. During the relevant period, Defendants imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce 8,735 units of equipment

with missing or incorrect fuel inlet labels in violation of Section 203(a)(4) of the Clean Air Act, 42 U.S.C. §§ 7522(a)(4), and 40 C.F.R. § 1068.101(a)(1).

Import Declaration Form Violations

158. During the relevant period, Defendants failed to complete and retain a complete and accurate EPA Declaration Form 3520-21 identifying 2,766 pieces of imported equipment containing nonroad compression-ignition engines and the relevant Clean Air Act compliance status, as required under 40 C.F.R. § 1068.301(d).

159. Defendants' failure to complete and retain EPA Declaration Form 3520-21 as required to import this equipment violated Section 203(a)(2) of the Clean Air Act, 42 U.S.C. § 7522(a)(2) and 40 C.F.R. § 1068.101(a)(2). *See* 40 C.F.R. § 1068.335(a).

FIRST CLAIM FOR RELIEF

(Violations of Clean Air Act Section 203(a)(1) and 40 C.F.R. § 1068.101(a)(1): Uncertified Non-Tier 4f Engines)

160. Paragraphs 1 through 159 are realleged and incorporated by reference.

161. Defendants imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce (or caused any of the foregoing), nonroad units of equipment with 691 nonroad compression-ignition engines not certified to the applicable Tier 4f standards, that were not labeled as TPEM exempt, and that were not otherwise exempt from the Clean Air Act's certification requirements.

162. Pursuant to 42 U.S.C. § 7524(a), each Defendant's importation, sale, offering for sale, introduction or delivery for introduction into United States commerce (or causing any of the foregoing), of each nonroad-piece of equipment using a nonroad compression-ignition engine that was not covered by a valid certificate of conformity nor otherwise exempt from the Clean Air

Act's certification requirements constitutes a separate violation of Section 203(a)(1) of the Clean Air Act, 42 U.S.C. § 7522(a)(1), and 40 C.F.R. § 1068.101(a)(1).

163. The United States is entitled to injunctive relief as to each Defendant and Defendants are each liable for civil penalties of up to $37,500 per engine for each violation of the Clean Air Act identified in the preceding paragraph occurring between January 1, 2014 and November 2, 2015, and up to $59,114 per engine for each violation occurring after November 2, 2015 and assessed on or after January 8, 2025. 40 C.F.R. §§ 19.4 and 1068.101(a)(1), (a)(2).

SECOND CLAIM FOR RELIEF

(Violations of Clean Air Act Section 203(a)(1) and 40 C.F.R. § 1068.101(a)(1): Uncertified Engines in Excess of TPEM Allowances)

164. Paragraphs 1 through 159 are realleged and incorporated by reference.

165. Defendants imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce (or caused any of the foregoing), nonroad units of equipment with 139 nonroad compression-ignition engines not certified to the applicable Tier 4f standards that were labeled as purportedly exempt from those standards under the TPEM, but which exceeded Defendants' TPEM exemption allowance.

166. Pursuant to 42 U.S.C. § 7524(a), each Defendant's importation, sale, offering for sale, introduction or delivery for introduction into United States commerce (or causing any of the foregoing), of each nonroad piece of equipment using a nonroad compression-ignition engine that was not covered by a valid certificate of conformity nor otherwise exempt from the Clean Air Act's certification requirements, and that exceeded the TPEM exemption allowance, constitutes a separate violation of Section 203(a)(1) of the Clean Air Act, 42 U.S.C. § 7522(a)(1), and 40 C.F.R. § 1068.101(a)(1).

167. The United States is entitled to injunctive relief as to each Defendant and Defendants are each liable for civil penalties of up to $37,500 per engine for each violation of the Clean Air Act identified in the preceding paragraph occurring between January 1, 2014 and November 2, 2015, and up to $59,114 per engine for each violation occurring after November 2, 2015 and assessed on or after January 8, 2025. 40 C.F.R. §§ 19.4 and 1068.101(a)(1), (a)(2).

THIRD CLAIM FOR RELIEF

(Violations of Clean Air Act Section 203(a)(2) and 40 C.F.R. § 1068.101(a)(2): Inaccurate TPEM Annual Reports)

168. Paragraphs 1 through 159 are realleged and incorporated by reference.

169. Defendants were required to file annual TPEM reports for calendar years 2014, 2015, 2016, and 2017, by March 31, 2015, March 31, 2016, March 31, 2017, and March 31, 2018, respectively, identifying all prior year unit sales of nonroad vehicles using TPEM exempt engines in United States commerce, total cumulative sales of nonroad vehicles using TPEM exempt engines, and the manufacturer of such engines if different than previously reported, as provided in 40 C.F.R. § 1039.625(g)(2).

170. Defendants failed to accurately disclose the required information in annual TPEM reports in at least 2014, 2015, 2016, and 2017.

171. Such information was reasonably required by EPA to determine whether Defendants had acted or were acting in compliance with the Clean Air Act, pursuant to 42 U.S.C. § 7542, and the failure to provide complete and accurate information constitutes violations of Section 203(a)(2) of the Clean Air Act, 42 U.S.C. § 7522(a)(2) and 40 C.F.R. § 1068.101(a)(2).

172. The United States is entitled to injunctive relief as to each Defendant and Defendants are each liable for civil penalties of up to $37,500 for each day Defendants were in violation of the Clean Air Act identified in the preceding paragraph occurring between January 1, 2014 and

November 2, 2015, and up to $59,114 for each day for each violation occurring after November 2, 2015 and assessed on or after January 8, 2025. 40 C.F.R. §§ 19.4 and 1068.101(a)(1), (a)(2).

FOURTH CLAIM FOR RELIEF

(Violations of Clean Air Act Section 203(a)(4) and 40 C.F.R. § 1068.101(a)(1): Fuel Inlet Labeling Violations)

173. Paragraphs 1 through 159 are realleged and incorporated by reference.

174. Defendants imported, sold, offered for sale, and/or introduced or delivered for introduction into United States commerce (or caused any of the foregoing), 8,735 nonroad units of equipment that either lacked a fuel inlet label completely or had a fuel inlet that did not read "Ultra Low Sulfur Fuel Only" as required by 40 C.F.R. § 1039.135(e).

175. Pursuant to 42 U.S.C. § 7524(a), each Defendant's importation, sale, offering for sale, introduction or delivery for introduction into United States commerce (or causing any of the foregoing), of each unit of equipment with an unlabeled or mislabeled fuel inlet constitutes a separate violation of Section 203(a)(4) of the Clean Air Act, 42 U.S.C. § 7522(a)(4), and 40 C.F.R. § 1068.101(a)(1).

176. The United States is entitled to injunctive relief as to each Defendant and Defendants are each liable for civil penalties of up to $37,500 for each violation of the Clean Air Act identified in the preceding paragraph occurring between January 1, 2014 and November 2, 2015, and up to $59,114 for each violation occurring after November 2, 2015 and assessed on or after January 8, 2025. 40 C.F.R. §§ 19.4 and 1068.101(a)(1), (a)(2).

FIFTH CLAIM FOR RELIEF

(Violations of Section 203(a)(2) of the Clean Air Act and 40 C.F.R. § 1068.101(a)(2): Import Form Reporting Violations)

177. Paragraphs 1 through 159 are realleged and incorporated by reference.

178. During the relevant period, Defendants failed to complete and retain complete and accurate EPA Declaration Forms 3520-21 identifying imported equipment containing 2,766 nonroad compression-ignition engines and the relevant Clean Air Act compliance status, as required under 40 C.F.R. § 1068.301(d).

179. Defendants' failure to complete and retain EPA Declaration Form 3520-21 as required to import this equipment violated Section 203(a)(2)(A) of the Clean Air Act, 42 U.S.C. § 7522(a)(2)(A), and 40 C.F.R. § 1068.101(a)(2). *See* 40 C.F.R. § 1068.335(a).

180. The United States is entitled to injunctive relief as to each Defendant and Defendants are each liable for civil penalties of up to $37,500 for each violation of the reporting requirements identified in the preceding paragraph occurring between January 1, 2014 and November 2, 2015, and up to $59,114 for each violation occurring after November 2, 2015 and assessed on or after January 8, 2025. 40 C.F.R. §§ 19.4 and 1068.101(a)(1), (a)(2).

PRAYER FOR RELIEF

Wherefore, the United States requests that this Court:

a. Enjoin Defendants from further violations of the Clean Air Act and order them to take all steps necessary to achieve compliance and remedy the violations identified above, including through mitigation of the excess nitrogen oxides and particulate matter emissions that have resulted from the introduction into commerce of the uncertified engines and equipment.

b. Assess civil penalties against Defendants for their violations as provided for in the Clean Air Act;

c. Award the United States its costs in this action; and

d. Grant such other relief as this Court deems just and proper.

Respectfully Submitted,

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