

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
25 Market Street, PO Box 093  
Trenton, NJ 08625-0093

By: Thomas P. Lihan (020891991)  
Matthew D. Knoblauch (201692016)  
Deputy Attorneys General  
(609) 376-2740

Counsel for Plaintiff, New Jersey  
Department of Environmental Protection

SUPERIOR COURT OF NEW JERSEY, MERCER COUNTY  
CHANCERY DIVISION  
Docket No. C-\_\_\_\_-20

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,  
Plaintiff,

v.

MANHEIM REMARKETING, INC.,  
d/b/a MANHEIM NEW JERSEY,  
d/b/a NATIONAL AUTO DEALERS  
EXCHANGE, d/b/a N.A.D.E.,  
d/b/a MANHEIM NY METRO  
SKYLINE; MURPHY'S MOTORS, LLC;  
REZZETTI ENTERPRISES, INC.;  
and FARGO AUTO SALES &  
SERVICES, LLC,  
Defendants.

Civil Action

**COMPLAINT**

Plaintiff New Jersey Department of Environmental  
Protection (DEP), by way of Complaint against Defendants Manheim  
Remarketing Inc. (Manheim); Murphy's Motors, LLC (Murphy's  
Motors); Rezzetti Enterprises, Inc. (Rezzetti); and Fargo Auto  
Sales & Services, LLC (Fargo), says:

## NATURE OF THE ACTION

1. Vehicle emissions, including diesel exhaust, can pose a threat to public health. Indeed, exposure to sufficiently high levels of air pollution from cars has been linked to, among other things, aggravation of respiratory and cardiovascular disease, decreased lung function and difficulty breathing, asthma attacks, and serious cardiovascular problems.

2. To address that problem, state and federal laws alike limit the emissions of harmful air pollution that cars may emit, including fine particulate matter (abbreviated as "PM2.5"), and ozone-forming pollutants called oxides of nitrogen (NOx) and volatile organic compounds (VOCs). To comply with those laws, new vehicle manufacturers install air pollution controls like catalytic converters and diesel particulate filters on their new vehicles, and certify to state and federal regulators that their new vehicles are compliant.

3. This case is about the ongoing sale of used vehicles that have been tampered with to emit more than the lawful levels of pollution. Tampering refers to the disconnection, detachment, deactivation, or other alteration or modification of vehicles' air pollution controls in a manner that means the vehicle no longer conforms to the manufacturer's compliance certification. Tampering can be achieved by physical alteration

of emissions control equipment, and also by modifying engine control software.

4. Because a tampered vehicle can emit unlawful levels of air pollution, selling tampered vehicles and/or offering them for sale is illegal in New Jersey. Unfortunately, the problem persists. Emissions tampering is especially common in medium-duty diesel trucks like Ford F-Series trucks with Powerstroke engines, Chevrolet and GMC Duramax trucks, and Dodge Ram diesel trucks with Cummins engines. Pollution controls may be removed to cut down on maintenance expenses and purportedly to improve engine performance, but this comes at the expense of higher emissions of harmful air pollution.

5. An important part of this issue is Manheim Remarketing Inc., the largest vehicle auction company in the United States. Manheim operates auction sites in many states, including at two facilities in New Jersey, and the company runs sophisticated auction websites that allow dealerships to bid on and ship vehicles from anywhere in the country. Unfortunately, Manheim has allowed open sales of tampered vehicles at its New Jersey auction facilities and on its website for years. That is because Manheim's interconnected, nation-wide auction service allows New Jersey dealerships to buy and import tampered vehicles from all over the country, thereby increasing the

number of tampered vehicles sold to New Jersey drivers and operated here.

6. DEP's investigation bears out the problem. Between December 2016 and March 2019, at least 214 vehicles were offered for sale or sold at two of Manheim's auction facilities in New Jersey that were clearly and explicitly disclosed as tampered. Moreover, when DEP conducted an inspection of Manheim's auction facility in Burlington County in 2019, 14 of 50 diesel trucks DEP inspected had missing, deactivated, or otherwise tampered air pollution controls - 28 percent. And when DEP also conducted inspections of eleven dealerships and identified tampered vehicles on their lots, four stated that they had purchased at least some of their tampered vehicles through Manheim.

7. There is also more information to be had. In 2019, DEP issued an investigative subpoena to Manheim seeking records of vehicle listings and sales at its in-state facilities, as well as records of tampered vehicle sales from out-of-state sellers to New Jersey dealerships using Manheim's services. Manheim produced certain records for in-state listings and sales, but it refused to provide any records of sales of tampered vehicles to New Jersey dealerships if the vehicles came from out of state.

8. DEP thus brings this action against Manheim to prevent it from continuing to allow the sale of these tampered vehicles in New Jersey. DEP asks for an order requiring Manheim to take common-sense precautions -- such as screening vehicle listings for common tampering indicators and performing basic visual inspections of vehicles auctioned at its in-state facilities -- to ensure that tampered vehicles are not being sold in New Jersey or to New Jersey buyers.

9. The court should also order Manheim to turn over records of sales of tampered vehicles into New Jersey that Manheim has refused to provide to DEP. Manheim's refusal to produce these subpoenaed records has stymied DEP's investigation into the true extent of the illegal trade in tampered vehicles through Manheim's services into New Jersey.

10. Because the problem is not exclusive to Manheim, DEP is also pursuing action against three car dealerships that sold multiple explicitly tampered vehicles - at least four each - at Manheim's in-state locations during that same investigatory period. DEP seeks an order to prevent these car dealerships, Murphy's Motors, Rezzetti, and Fargo (collectively, the Dealer Defendants), from selling tampered vehicles, and to fully restore emissions controls on each of the tampered vehicles that they previously offered for sale.

11. Finally, as part of its work to shut down the illegal tampered vehicle market, and deter this conduct by Defendants, DEP also seeks civil penalties for each violation of the Air Pollution Control Act by each of the Defendants.

#### JURISDICTION AND VENUE

12. This action is authorized by the Air Pollution Control Act, N.J.S.A. 26:2C-1 to -25.2 (the Act), and by DEP's statutory authority to investigate and enforce air pollution violations under N.J.S.A. 13:1D-9(d), (e), and (n); N.J.S.A. 13:1D-7(a); and N.J.S.A. 26:1A-47.

13. The Superior Court has jurisdiction over suits by DEP to enjoin air pollution violations, to require specific compliance measures, to assess civil penalties, and for other relief arising from violations of the Act. N.J.S.A. 26:2C-19.

14. The Superior Court also has authority to enforce agency subpoenas under N.J.S.A. 26:1A-48 and -49, and under Rule 1:9-6(b).

15. Defendant Manheim is a Delaware corporation with headquarters in Georgia, but is subject to this court's jurisdiction because Manheim operates two large facilities in New Jersey and regularly transacts business with thousands of vehicle dealerships across the state.

16. Defendants Murphy's Motors, Rezzetti, and Fargo are New Jersey used car dealerships that each offered multiple tampered vehicles for sale at Manheim's New Jersey facilities.

17. Venue is appropriate in Mercer County because DEP has its headquarters here, Manheim's registered office is in Ewing Township, DEP's witnesses are based in Trenton, and because the action arises from offers for sale and sales of vehicles through Manheim's auction services in violation of the Act by and to vehicle dealerships throughout the state, including in Mercer County.

#### PARTIES

18. The Department of Environmental Protection is a principal department of the State of New Jersey charged with the enforcement of New Jersey's environmental protection statutes. DEP's main offices are at 401 East State Street in Trenton.

19. In addition to its other statutory powers, DEP establishes standards and enforces requirements for the control of air contaminants from vehicles operated in New Jersey pursuant to the Act and DEP's rules, including N.J.A.C. 7:27-14.1 to -14.11 (for diesel vehicles) and N.J.A.C. 7:27-15.1 to -15.9 (for gasoline vehicles).

20. Manheim Remarketing, Inc. is a Delaware corporation doing business in New Jersey as "Manheim New Jersey," "Manheim NY Metro Skyline," the "National Auto Dealers Exchange," and

"N.A.D.E." Manheim operates nearly 80 vehicle auction facilities around the country, including two in New Jersey. Manheim's national corporate headquarters are in Atlanta, Georgia.

21. The larger of Manheim's two New Jersey facilities is in Mansfield Township, Burlington County. This 300-plus-acre campus at 730 Route 68 outside of Bordentown is known as "Manheim New Jersey."

22. Manheim's second New Jersey auction facility, known as "Manheim NY Metro Skyline," is in Fairfield Township, Essex County, at 100 U.S. Highway 46.

23. During all times relevant to this action, Manheim transacted business with thousands of New Jersey vehicle dealerships that are registered to bid on used vehicle auctions at Manheim's New Jersey facilities. Between December 2016 and March 2019, over 850,000 used vehicles were offered for sale at Manheim's two New Jersey facilities, an average of approximately 7,800 vehicles per week.

24. During all times relevant to this action, Manheim hosted daily, real-time auctions on its website Manheim.com, and permitted registered New Jersey dealerships to bid remotely to purchase vehicles located at Manheim's other auction facilities across the country for delivery to New Jersey. Registered New

Jersey dealerships also purchased vehicles offered for sale on Manheim's "Online Vehicle Exchange" at OVE.com.

25. Defendant Murphy's Motors, LLC, is a used car dealership doing business at 190 Bergen Boulevard in Fairview Borough, Bergen County. Murphy's Motors is registered to transact vehicle sales using Manheim's services.

26. Defendant Rezzetti Enterprises, Inc., is a used car dealership doing business at 1882 West Landis Avenue in the City of Vineland, Cumberland County. Rezzetti is registered to transact vehicle sales using Manheim's services.

27. Defendant Fargo Auto Sales, LLC, is a used car dealership doing business at 207A Carriage Lane in Delran Township, Burlington County. Fargo is registered to transact vehicle sales using Manheim's services.

#### FACTUAL ALLEGATIONS

##### DEP'S RULES PROHIBIT THE SALE OR OFFER FOR SALE OF TAMPERED VEHICLES WITH DEACTIVATED OR MISSING AIR POLLUTION CONTROLS.

28. This action arises under the Act and DEP's rules prohibiting the sale or offer for sale of used diesel or gasoline vehicles with disconnected, detached, deactivated, or otherwise altered or modified air pollution emissions controls. See N.J.A.C. 7:27-14.3(e); N.J.A.C. 7:27-15.7(a).

29. All new vehicles sold in the United States must be certified to meet air pollution standards set by either the U.S.

Environmental Protection Agency (EPA) or the California Air Resources Board. Which standards apply depends on the size and type of the vehicle, and on the state where each new vehicle is delivered for sale by manufacturers.

30. To meet new vehicle emission standards, manufacturers have designed engines and specialized exhaust devices that significantly reduce emissions of NOx, VOCs, PM2.5, and other air pollutants emitted in engine exhaust.

31. In gasoline-powered vehicles, the most common emission control devices are three-way catalytic converters, positive crankcase ventilation systems, and exhaust gas recirculation systems.

32. Diesel vehicles also use a combination of emissions control devices to meet the federal standards. The most common components are the exhaust gas recirculation system, diesel oxidation catalyst, diesel particulate filter, and the selective catalytic reduction system.

33. After the initial sale of new vehicles from the manufacturer, vehicles in operation are subject to "in-use" regulation by states. See Wyoming v. Volkswagen Group of Am., 264 F. Supp. 3d 1040, 1051 (N.D. Ca. 2017).

34. For example, in New Jersey, DEP has adopted in-use rules for vehicles under its Air Pollution Control Act powers. See N.J.S.A. 26:2C-8.3 (directing DEP to "establish standards

and requirements for the control of air contaminants from motor vehicles manufactured with air pollution control devices" required by federal law); N.J.S.A. 26:2C-8.17(a) (directing DEP to implement California's Low Emissions Vehicle program standards for new vehicles delivered for sale in New Jersey beginning in 2009).

35. DEP's rules prohibit tampering with any pollution control device required to comply with federal and California emissions standards. See N.J.A.C. 7:27-14.3(e) (prohibiting tampering with emissions controls on diesel vehicles); N.J.A.C. 7:27-15.7(a) (same for gasoline vehicles).

36. Tampering refers to the physical alteration of emissions control equipment, or software modifications to a vehicle's engine control module, or both.

37. Physical alterations include the removal of an emission control device, modifications that make the controls less effective, or even the addition of equipment that increases vehicle emissions in some fashion.

38. Software modifications typically involve installing or running aftermarket software programs designed to deactivate emission controls without physically removing the controls, or altering the performance of the engine in such a way that would invalidate the vehicle manufacturer's emissions compliance certification for that vehicle.

39. Software modifications can also hide evidence of a physical modification, for example by overriding the check-engine light or on-board diagnostic system error codes that would otherwise flag non-operable or altered emissions controls during an emissions inspection.

40. DEP's rules also forbid the sale, lease, or offer for sale or lease of any tampered diesel vehicle, N.J.A.C. 7:27-14.3(e)(2), and any tampered gasoline vehicle. N.J.A.C. 7:27-15.7(a)(3).

**TAMPERED VEHICLES WITH DEACTIVATED OR MISSING AIR POLLUTION CONTROLS EMIT HIGHER LEVELS OF HARMFUL AIR POLLUTANTS.**

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41. Emissions tampering can significantly increase the amount of harmful air pollutants released by vehicles, notably NOx, VOCs, and PM2.5.

42. Disabling exhaust gas recirculation controls and removing catalytic converters on a diesel pickup truck can increase the truck's NOx emissions by approximately 20 times federal emissions limits. Removing diesel particulate filters from these trucks can increase PM2.5 emissions by approximately 10 times federal emissions limits.

43. Disabling air pollution controls on gasoline vehicles may cause increased tailpipe emissions of NOx, VOCs, and carbon monoxide.

44. Fine particulate matter is abbreviated as "PM2.5" because the term refers to particles smaller than 2.5 microns in diameter. PM2.5 in vehicle exhaust includes both carbon particles and liquid droplets. The health effects associated with exposure to PM2.5 are significant, mainly because particles of this size can easily reach into the deepest regions of the lungs. Significant health effects associated with exposure to PM2.5 include premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function and difficulty breathing, asthma attacks, and serious cardiovascular problems such as heart attacks and cardiac arrhythmia. See 49 N.J.R. 515(a), 521 (March 20, 2012).

45. Vehicle exhaust from both diesel and gasoline engines also contains relatively high levels of NOx and VOCs: the precursors of harmful ground-level ozone pollution.

46. Ground level ozone may result in a number of adverse health effects. Short-term exposure to ozone can irritate the respiratory system, causing coughing, throat irritation and chest pain. Breathing may become more rapid and shallower than normal, limiting a person's normal activity. Ozone can also lead to more asthma attacks that require a doctor's attention and the use of additional medication. Increased hospital admissions and emergency room visits for respiratory problems have been associated with ambient ozone exposures. Longer term

ozone exposure may lead to permanent changes in lung tissue and irreversible reductions in lung function. See 41 N.J.R. 1606(a), 1614 (April 20, 2009).

47. In addition to contributing to the formation of ozone, NOx may be harmful if directly inhaled. Notably, EPA has found that short-term exposure to nitrogen dioxide (NO2), a component of NOx, likely exacerbates asthma based on evidence of increased hospital admissions and emergency room visits and other indicators. See 81 Fed. Reg. 73,478, 73,838 (October 25, 2016).

48. State and federal vehicle emissions standards, and DEP's in-use tampering prohibitions at N.J.A.C. 7:27-14.3(e) and -15.7(a), reduce levels of NOx, VOCs, and PM2.5 to minimize and prevent these well-known health effects. Tampering, by defeating the effectiveness of these standards, contributes to public health risks by increasing emissions of harmful air pollutants.

**MANHEIM AUCTIONS THOUSANDS OF USED DIESEL TRUCKS,  
AND HUNDREDS-OF-THOUSANDS OF USED GASOLINE VEHICLES,  
EACH YEAR IN NEW JERSEY.**

49. Manheim is a national company that auctions used cars and trucks to dealerships and other wholesale buyers.

50. In New Jersey, Manheim operates two auction facilities where diesel and gasoline vehicles are offered for sale.

51. The larger of the two facilities is located in Mansfield Township, Burlington County, at 730 Route 68 outside

of Bordentown, New Jersey. This facility is called Manheim New Jersey.

52. Manheim's second auction facility, Manheim NY Metro Skyline, is located at 100 U.S. Highway 46 in Fairfield Township, Essex County.

53. Manheim typically conducts auctions every Wednesday at Manheim New Jersey, and every Tuesday and Thursday at Manheim NY Metro Skyline. Thousands of vehicles pass through these auction facilities every week.

54. Manheim also operates a limited-access website at Manheim.com where registered dealerships can view for-sale listings of vehicles to be sold at auction by Manheim, including vehicles to be auctioned at Manheim New Jersey and Manheim NY Metro Skyline.

55. Auctions at all of Manheim's U.S. facilities are generally live-streamed on Manheim.com, meaning that registered dealerships can either purchase vehicles in-person at the auction facility or by placing an online bid through Manheim.com.

56. New Jersey dealerships can purchase vehicles from Manheim at either of its New Jersey facilities, or from any other Manheim facility around the country simply by placing bids online.

57. Manheim also operates the Online Vehicle Exchange at OVE.com. The Exchange is a virtual marketplace for the offer and sale of vehicles on demand, i.e. without an auction. OVE.com is only available to registered Manheim customers and is not viewable by the public or by DEP.

58. Vehicles purchased at any Manheim facility, or through one of Manheim's websites, can be collected in-person or shipped to the purchaser using third-party transporters.

59. Manheim collects a commission on all vehicle sales made through Manheim.com, OVE.com, and at its facilities.

60. Manheim also collects a fee for optional inspections performed by its employees before and after vehicle sales.

61. For example, Manheim employees can generate a pre-sale Condition Report based on an inspection of the vehicle including frame, mechanical, and visual damage, paint condition, tire condition, and vehicle options. Condition Reports are included with the vehicle listing and are intended to assure potential buyers that the vehicle's condition has been independently verified.

62. Manheim also offers inspection services after a vehicle sells at auction. Manheim's Post-Sale Inspection reports can be ordered for vehicles with less than 125,000 miles at time of auction and are intended to identify material defects that were not disclosed in the listing. Post-Sale Inspections

cover the transmission, engine function and operation, drivetrain, brakes, certain electrical functions, air conditioning, vehicle frame and structure, and safety equipment like airbags and seatbelts. These Post-Sale Inspections also include checks for the presence of emission control equipment to meet standards in the state where the inspection is conducted.

63. For older, high-mileage vehicles Manheim only offers a Limited Powertrain Inspection covering the vehicle's structure, engine, transmission, and certain key drivetrain components. The Limited Powertrain Inspection does not include an inspection of emissions control equipment.

**DEP TOLD MANHEIM IN 2017 THAT STATE RULES PROHIBITING THE SALE AND OFFER FOR SALE OF TAMPERED VEHICLES APPLY TO VEHICLES OFFERED FOR SALE AT MANHEIM FACILITIES.**

64. On January 5, 2017, two DEP representatives met with John Odorisio, the Assistant General Manager of Manheim New Jersey, at Manheim's Mansfield Township location.

65. The purpose of DEP's visit was to educate Manheim about DEP's prohibition on the sale or offer for sale of tampered vehicles, and to explain that Manheim shares responsibility with its dealer customers to comply with DEP's rules.

66. DEP warned Mr. Odorisio that Manheim, too, could be liable with vehicle owners for violating DEP's prohibition on the sale or offer for sale of tampered vehicles at its auctions.

67. DEP sent a follow-up email to Mr. Odorisio the following day summarizing the tampering prohibitions of N.J.A.C. 7:27-14.3 and -15.7, including the prohibition on the sale or offer for sale of tampered gasoline and diesel vehicles.

**DEP'S TAMPERING ENFORCEMENT SWEEP FOUND MANY DIESEL TRUCKS OFFERED FOR SALE WITH DEACTIVATED OR MISSING AIR POLLUTION CONTROLS.**

68. On November 15, 2017, the Department issued a Compliance Advisory Enforcement Alert regarding the tampering of emission control systems on diesel and gasoline vehicles. The Compliance Alert notified vehicle owners, operators, repair facilities, and dealerships that it "is illegal under state and federal law to tamper with the emission system of any vehicle. All vehicles, diesel or gasoline, light or heavy-duty, are subject to the regulation." The Compliance Alert also warned that, under state law, "it is illegal to sell, lease, or offer for sale or lease any vehicle with a tampered emission system." Violations "could result in penalties up to the maximum penalty of \$30,000 per offense."

69. The Department's Enforcement Alert was distributed on various State email listservs and messaging systems, including by an email alert to all State-certified emissions repair

technicians, and to all State-licensed private vehicle inspection facilities. The Department forwarded the Enforcement Alert to the New Jersey Coalition of Automotive Retailers -- an automotive trade association of new car dealers in New Jersey -- to distribute the alert to its members. The Department also posted copies of the Enforcement Alert to its websites, where it is still available. See <https://www.nj.gov/dep/enforcement/advisories-air.htm> (last visited June 23, 2020); <https://stopthesoot.org> (DEP website listing the Enforcement Alert under 'Hot Topics') (last visited June 23, 2020).

70. In 2017 the Department also opened an investigation into vehicle emissions tampering with a focus on the sale of tampered diesel pickup trucks.

71. Between July 11, 2018, and February 6, 2019, DEP inspected six New Jersey dealerships suspected of offering tampered diesel trucks for sale. DEP found evidence of tampering in many of the trucks DEP inspected.

72. Four of those dealerships told DEP they purchased at least some of their tampered trucks at Manheim auctions in New Jersey and elsewhere in the country. DEP took administrative enforcement action against these dealerships pursuant to N.J.S.A. 26:2C-14 for their sale of tampered trucks.

73. One dealer, for example, purchased tampered trucks from Manheim auctions around the country, including from Manheim

facilities in Maryland, Virginia, Utah, New York, Pennsylvania, and Florida. This dealer bid on the vehicles remotely, then had them shipped back to its sales lot in New Jersey.

74. This dealer gave DEP copies of Manheim-issued Bills of Sale proving that the dealer bought these tampered trucks at Manheim.

75. DEP also obtained screen shots and printouts of auction listings from Manheim's dealers-only website showing tampered trucks scheduled for auction at Manheim New Jersey. Each of these listings plainly announced that the trucks were missing one or more of their emissions control components.

**DEP FOUND A HIGH RATE OF DEACTIVATED OR MISSING AIR POLLUTION CONTROLS ON DIESEL PICKUP TRUCKS AWAITING AUCTION AT MANHEIM NEW JERSEY DURING DEP'S FEBRUARY 25, 2019 INSPECTION.**

76. DEP inspectors, assisted by compliance inspectors from EPA, conducted an unannounced compliance inspection at Manheim New Jersey on February 25, 2019.

77. Of the 50 trucks that DEP and EPA inspected, fourteen showed evidence of tampering, a 28-percent tampering rate. Eleven of these were scheduled for auction on Wednesday, February 27, 2019.

78. The most common tampered models were Ford F-series Super Duty diesel pickup trucks. DEP also found tampered Dodge

Ram and Chevrolet Silverado diesel pickup trucks, and one tampered Ford F-350 Super Duty gasoline pickup truck.

79. In many of the tampered trucks, exhaust gas recirculation system components were removed or disabled, and under-chassis catalytic converters and diesel particulate filters had been cut out and replaced with "straight pipes."

80. DEP later determined that only two of the eleven vehicles were described as tampered in the vehicle listings shown on Manheim.com.

81. After the Manheim New Jersey inspection, DEP inspected another 27 diesel trucks at five more New Jersey dealerships. Of these, seven had been tampered with.

82. In all, DEP has inspected 178 trucks as part of its tampering enforcement sweep at eleven dealerships and at Manheim New Jersey, and has uncovered 43 tampered trucks.

**RECORDS FROM MANHEIM'S NEW JERSEY FACILITIES SHOW AT LEAST 214 TAMPERED VEHICLES WERE OFFERED FOR SALE OR SOLD AT MANHEIM AUCTIONS BETWEEN DECEMBER 2, 2016, AND MARCH 15, 2019.**

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83. During its February 25, 2019 inspection, DEP demanded access to records of current vehicle listings, as well as records of past sales by Manheim in New Jersey and to New Jersey dealerships beginning in December 2016.

84. Manheim New Jersey representatives did not provide access to any records except for a list of diesel trucks on-site that were scheduled for auction that week.

85. Manheim agreed to accept service of an investigatory subpoena, and committed to provide records of past sales on a rolling basis beginning with sales in the past month.

86. DEP served its subpoena on Manheim on the morning of February 25, 2019.

87. The subpoena demanded records describing Manheim's corporate structure and organization, its auction and sale services, its terms and conditions, fees and commissions, and procedures for inspecting vehicles.

88. The subpoena also demanded data on all diesel vehicles sold at Manheim's New Jersey facilities over approximately two years, including listing information, disclosures, and condition reports.

89. DEP's subpoena demanded records from December 2016 onward about any vehicles sold at any Manheim facility or on Manheim.com or OVE.com, by or to a New Jersey customer that were disclosed or discovered to have any emissions-related modification.

90. In response, Manheim produced records of approximately 855,672 gas and diesel vehicles offered for sale or sold at its

New Jersey auction facilities from December 2, 2016, through March 15, 2019.

91. DEP analyzed this data and determined that 81 diesel vehicles and 133 gas vehicles (214 total) were disclosed as tampered at the time of offer and/or sale at Manheim New Jersey and Manheim NY Metro Skyline. This number represents only the vehicles whose listings explicitly describe missing, deactivated, or otherwise modified emissions controls.

92. All of the tampered diesel vehicles DEP identified are trucks over 8,501 pounds gross vehicle weight rating (GVWR). All but one of the gas vehicles are light-duty vehicles, mostly passenger cars and sport utility vehicles, below 8,501 pounds GVWR.

93. DEP identified these tampered vehicles from statements in the auction listings stating, for example, that the vehicles were being offered with "NO CATS", or "ALTERED EMISSIONS", or "EGR DELETE": terms associated with tampering violations that indicate manufacturer-certified emissions controls have been removed from the vehicles.

94. The actual number of tampered vehicles offered for sale at these two facilities was most likely much higher than these numbers show because only a fraction of tampering violations are actually disclosed in this manner.

95. For example, of the eleven tampered diesel trucks scheduled for auction that DEP found during its February 25, 2019, only two were described as tampered in the listing information.

96. DEP's inspection findings suggest that, on average, 24 percent of diesel trucks between 8,501 and 17,999 pounds GVWR are tampered. The ratio was even higher during DEP's February 25, 2019 inspection of Manheim New Jersey, where fourteen out of 50 trucks inspected were tampered, a 28-percent tampering rate.

97. DEP's February 25, 2019 subpoena also demanded records of tampered vehicles sold or offered for sale by New Jersey dealers, or purchased by New Jersey dealers, at Manheim's out-of-state locations and on Manheim.com and OVE.com.

98. Manheim refused to provide records responsive to this demand, claiming that such requests are outside the scope of DEP's regulatory jurisdiction.

99. Manheim is withholding subpoenaed records of (i) sales of tampered vehicles into New Jersey from its out-of-state facilities to New Jersey purchasers; and (ii) tampered vehicles listed for sale by New Jersey dealerships through Manheim's websites.

**THE DEALER DEFENDANTS REPEATEDLY LISTED TAMPERED  
VEHICLES FOR SALE AT MANHEIM'S NEW JERSEY LOCATIONS.**

100. Collectively, the Dealer Defendants offered 13 tampered vehicles for sale at Manheim's New Jersey locations between December 2, 2016, and March 15, 2019. All 13 vehicles were plainly disclosed as tampered in vehicle listings. Twelve of those vehicles were diesel trucks.

101. Defendant Murphy's Motors offered five tampered diesel trucks for sale.

102. Defendant Fargo Auto Sales offered for sale three tampered diesel trucks and one tampered Subaru sedan missing its catalytic converter.

103. Defendant Rezzetti Enterprises offered four tampered diesel trucks for sale.

**COUNT 1**

**AIR POLLUTION CONTROL ACT VIOLATIONS  
(MANHEIM)**

104. DEP incorporates the foregoing paragraphs as if restated here in full.

105. The Act authorizes DEP to sue to enjoin any violation of the Act or any rule adopted thereunder. See N.J.S.A. 26:2C-19(a).

106. DEP's air pollution rules forbid any person to cause, suffer, allow, or permit the sale or offer for sale of any diesel-powered motor vehicle with a certified configuration or

motor vehicle engine with a certified configuration in which any element of design installed on such vehicle has been disconnected, detached, deactivated, or in any other way altered or modified from the design of the original vehicle manufacturer. See N.J.A.C. 7:27-14.3(e)(2).

107. Manheim caused, suffered, allowed, or permitted the sale or offer for sale of diesel-powered vehicles with deactivated and missing air pollution controls at its New Jersey facilities in violation of N.J.A.C. 7:27-14.3(e)(2).

108. Manheim caused, suffered, allowed, or permitted the sale or offer for sale of diesel-powered vehicles with deactivated and missing air pollution controls through its websites at Manheim.com and OVE.com to New Jersey dealerships, and for delivery into New Jersey, in violation of N.J.A.C. 7:27-14.3(e)(2).

109. DEP's rules also forbid any operator to cause, suffer, allow, or permit the sale or offer for sale of any gasoline-powered motor vehicle with a certified configuration or motor vehicle engine with a certified configuration in which any element of design installed on such vehicle has been disconnected, detached, deactivated, or in any other way altered or modified from the design of the original vehicle manufacturer. See N.J.A.C. 7:27-15.7(a)(3).

110. Manheim caused, suffered, allowed, or permitted the sale or offer for sale of gasoline-powered vehicles with deactivated and missing air pollution controls while those vehicles were under Manheim's operation at its New Jersey facilities in violation of N.J.A.C. 7:27-15.7(a)(3).

111. Manheim caused, suffered, allowed, or permitted the sale or offer for sale of gasoline-powered vehicles with deactivated and missing air pollution controls while those vehicles were under Manheim's operation through its websites at Manheim.com and OVE.com to New Jersey dealerships, and for delivery into New Jersey, in violation of N.J.A.C. 7:27-15.7(a)(3).

112. Any person who violates the Act or any rule adopted pursuant thereto shall be liable for a civil penalty of not more than \$10,000 for the first offense, not more than \$25,000 for the second offense, and not more than \$50,000 for the third and each subsequent offense. When the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense. See N.J.S.A. 26:2C-19(d).

113. Manheim is liable for compliance and for penalties for violations of the Act and DEP's rules without regard to whether Manheim had any intent to commit the aforementioned violations.

COUNT 2

AIR POLLUTION CONTROL ACT VIOLATIONS  
(MURPHY'S MOTORS, LLC)

114. DEP incorporates the foregoing paragraphs as if restated here in full.

115. Between December 2, 2016, and March 15, 2019, Murphy's Motors, LLC, caused, suffered, allowed, or permitted the sale or offer for sale of five diesel-powered vehicles with deactivated and missing air pollution controls in violation of N.J.A.C. 7:27-14.3(e)(2).

116. Murphy's Motors is liable for compliance and for penalties for violations of the Act and DEP's rules without regard to whether Murphy's Motors had any intent to commit the aforementioned violations.

COUNT 3

AIR POLLUTION CONTROL ACT VIOLATIONS  
(FARGO AUTO SALES & SERVICES, LLC)

117. DEP incorporates the foregoing paragraphs as if restated here in full.

118. Between December 2, 2016, and March 15, 2019, Fargo Auto Sales & Services, LLC, caused, suffered, allowed, or permitted the sale or offer for sale of three diesel-powered vehicles with deactivated and missing air pollution controls in violation of N.J.A.C. 7:27-14.3(e)(2).

119. Between December 2, 2016, and March 15, 2019, Fargo caused, suffered, allowed, or permitted the sale or offer for sale of one gasoline-powered vehicle with deactivated and missing air pollution controls in violation of N.J.A.C. 7:27-15.7(a)(3).

120. Fargo is liable for compliance and for penalties for violations of the Act and DEP's rules without regard to whether Fargo Auto Sales had any intent to commit the aforementioned violations.

**COUNT 4**

**AIR POLLUTION CONTROL ACT VIOLATIONS  
(REZZETTI ENTERPRISES, INC.)**

121. DEP incorporates the foregoing paragraphs as if restate here in full.

122. Between December 2, 2016, and March 15, 2019, Rezzetti Enterprises, Inc. caused, suffered, allowed, or permitted the sale or offer for sale of four diesel-powered vehicles with deactivated and missing air pollution controls in violation of N.J.A.C. 7:27-14.3(e)(2).

123. Rezzetti is liable for compliance and for penalties for violations of the Act and DEP's rules without regard to whether Rezzetti had any intent to commit the aforementioned violations.

COUNT 5

**FAILURE TO RESPOND TO AN AGENCY SUBPOENA  
(MANHEIM)**

124. DEP incorporates the foregoing paragraphs as if restated here in full.

125. DEP is empowered to investigate actual and suspected sources of air pollution, including by entering and inspecting any building or place to ascertain compliance with the Act under N.J.S.A. 26:2C-9(b)(4) and N.J.S.A. 13:1D-9(d).

126. DEP has authority to issue subpoenas to compel the attendance of witnesses and the production of records in the course of its investigation and enforcement of any Air Pollution Control Act violation. N.J.S.A. 13:1D-7(a); N.J.S.A. 26:1A-47.

127. On February 25, 2019, DEP properly served a subpoena on Manheim bearing on DEP's investigation of known or suspected air pollution violations by Manheim.

128. Manheim provided six partial responses to the subpoena between March 8 and April 19, 2019.

129. On May 16, 2019, DEP notified Manheim that its responses to the subpoena were materially deficient.

130. To date, Manheim has not produced records demanded in the subpoena that are within Manheim's possession and control, and that are relevant to DEP's investigation. DEP has no other means of obtaining the records except from Manheim.

131. Manheim is liable for violating N.J.S.A. 26:1A-47 by unreasonably and unlawfully withholding records required to be provided to DEP, and is liable for civil penalties and other relief under N.J.S.A. 26:1A-48 and Rule 1:9-6(b).

**PRAYER FOR RELIEF**

WHEREFORE, based upon the preceding allegations, DEP requests that the court enter judgment against Defendants and award the following relief under the Air Pollution Control Act:

- a. Finding that Defendants are liable for violating the Act, N.J.S.A. 26:2C-1 to -25.2;
- b. Entering permanent injunctive relief forbidding the offer for sale or sale of any tampered vehicle in violation of N.J.A.C. 7:27-14.3(e)(2) or N.J.A.C. 7:27-15.7(a)(3) at any Manheim facility in New Jersey, and on Manheim.com and OVE.com by any seller from New Jersey or to any purchaser in New Jersey or for delivery to New Jersey;
- c. Entering permanent injunctive relief ordering and directing Manheim to:
  - 1) issue to DEP one user name and password granting access to view any and all sale and auction listings, and to view all live-streamed auctions and sales, hosted on Manheim.com and OVE.com, and to maintain that login for DEP's use at no cost to DEP for a period of not less than 24 months;
  - 2) update Manheim's Terms and Conditions and any other standard contractual terms for the offer for sale, sale, or purchase of vehicles by any registered users of Manheim's New Jersey facilities, and by all registered users in New Jersey of Manheim's online services, to prohibit the offer for sale or sale in New Jersey, or the purchase for delivery to a New Jersey purchaser or for delivery to New Jersey, of any tampered vehicle;
  - 3) implement changes to Manheim's operating procedures to require Manheim employees at its New Jersey

facilities to check for and document common emissions tampering violations when preparing Condition Reports, Limited Powertrain Inspections, Post-Sale Inspections, and any other fee-based vehicle inspection service offered at Manheim's New Jersey facilities;

- 4) implement an ongoing procedure to identify and cancel any auction or sale listing, or auction or sale, by any New Jersey seller or to any New Jersey purchaser of any vehicle known or suspected to be tampered in violation of N.J.A.C. 7:27-14.3(e)1 or N.J.A.C. 7:27-15.7(a)1, including, for example, any vehicle listing describing any missing emissions controls or describing any "delete" or other modification of any emissions controls, or any vehicle listing for which any disclosure or condition report indicates any such missing, "deleted," or modified emissions controls; and
  - 5) propose for DEP's review and approval a standard operating procedure to conduct under-chassis and under-hood visual inspections of all vehicles offered for sale at Manheim's New Jersey facilities for signs of tampering with original equipment manufacturer air pollution controls.
- d. Ordering Murphy's Motors, LLC, Rezzetti Enterprises, Inc., and Fargo Auto Sales & Services, LLC, to submit documentary proofs to DEP within 90 days of the repair of each of the 19 tampered vehicles sold or offered for sale by them, respectively;
  - e. Entering permanent injunctive relief against Murphy's Motors, LLC, Rezzetti Enterprises, Inc., and Fargo Auto Sales & Services, LLC, prohibiting the offer for sale or sale of any tampered vehicle in violation of N.J.A.C. 7:27-14.3(e)(2) or N.J.A.C. 7:27-15.7(a)(3);
  - f. Assessing civil penalties against Defendants for each violation of the Act under N.J.S.A. 26:2C-19(d); and
  - g. Granting such other relief as the interests of justice may require.

WHEREFORE DEP further requests that the court enter judgment against Manheim and award the following relief under N.J.S.A. 26:1A-48 and Rule 1:9-6(b):

- a. Finding that Manheim is liable for violating N.J.S.A. 26:1A-47 by failing to comply with an agency subpoena;
- b. Directing Manheim to provide complete responses to DEP's subpoena within sixty days;
- c. Assessing civil penalties against Manheim under N.J.S.A. 26:1A-48 for its failure to comply with DEP's subpoena; and
- d. Granting such other relief as the interests of justice may require.

Respectfully,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: \_\_\_\_\_



Thomas P. Lihan  
Matthew D. Knoblauch  
Deputy Attorneys General

Counsel for Plaintiff  
New Jersey Department of  
Environmental Protection

Dated: July 8, 2020

RULE 4:5-1 CERTIFICATION

I am designated as Trial Counsel for Plaintiff DEP.

I certify, to the best of my information and belief, that the violations alleged above are not the subject of any other action pending in any court or of a pending arbitration proceeding, and that no other action or arbitration proceeding is contemplated. I further certify that there is no other party who should be joined in this action at this time.

I certify that confidential personal identifiers have been redacted from the document now submitted to the court, and will be redacted from all document submitted in the future, in accordance with Rule 1:38-7(b).

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: \_\_\_\_\_

  
Thomas P. Lihan  
Deputy Attorney General

Counsel for Plaintiff  
New Jersey Department of  
Environmental Protection

Dated: July 8, 2020

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Deputy Attorney General Thomas P. Lihan is designated as trial counsel for Plaintiff in this action.

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: \_\_\_\_\_



Thomas P. Lihan  
Deputy Attorney General

Counsel for Plaintiff  
New Jersey Department of  
Environmental Protection

Dated: July 8, 2020