

**IN THE DISTRICT COURT OF
LINCOLN COUNTY, NEBRASKA**

STATE OF NEBRASKA, *ex rel.* MICHAEL
T. HILGERS, ATTORNEY GENERAL,

ENERGY MARKETERS OF AMERICA,
and

RENEWABLE FUELS NEBRASKA

Plaintiffs,

v.

Case No. _____

DAIMLER TRUCK NORTH AMERICA,

INTERNATIONAL MOTORS, INC. F/K/A/
NAVISTAR, INC.,

PACCAR INC.,

VOLVO GROUP NORTH AMERICA, and

TRUCK & ENGINE MANUFACTURERS
ASSOCIATION

Defendants.

COMPLAINT

COME NOW Plaintiffs State of Nebraska, *ex rel.* Michael T. Hilgers, Attorney General; Energy Marketers of America; and Renewable Fuels Nebraska (“RFN”); and state and allege as follows:

INTRODUCTION

1. The U.S. automotive industry is at odds with itself. On the one hand, it seeks to pacify the growing all-electric movement; on the other hand, it seeks to prioritize its own economic health. In a world where so-called “zero-emission vehicles” (“ZEV”) repeatedly cause automakers to sustain billions of dollars in losses¹ and conventional internal combustion engine (“ICE”) vehicles remain both profitable and in high demand, it seems nearly impossible to achieve both ends. The apparent solution to this problem is to eliminate consumer choice and pass on the costs to consumers.

2. To this end, a California executive agency has recently embarked on a mission to eliminate the ICE vehicle and mandate the electrification of our nation’s vehicle fleet. Today, heavy-duty trucks are powered almost exclusively by internal-combustion engines. Internal-combustion trucks account for 99.9 percent of all heavy-duty vehicle sales. Yet a series of California regulations phase out those trucks – regardless of consumer preference or continued improvements available to ICE vehicles or liquid fuels. And as soon as 2036, those regulations outright ban California truck manufacturers from selling heavy-duty vehicles with internal-combustion engines. That looming deadline is felt today. The “regulatory lead time (i.e., awareness of future regulatory requirements)” for manufacturers to plan and build a product can reach up to seven years. *See Ohio v. EPA*, 98 F.4th 288, 302 (D.C. Cir. 2024).

3. After many lawsuits challenged California’s authority to assert powers of such economic and political significance, the truck manufacturing

¹ *See* Chris Isidore, *Ford Just Reported a Massive Loss on Every Electric Vehicle It Sold*, CNN (Apr. 25, 2024), <https://perma.cc/V7FP-P5UX> (“Ford’s electric vehicle unit reported that losses soared in the first quarter to \$1.3 billion, or \$132,000 for each of the 10,000 vehicles it sold in the first three months of the year, helping to drag down earnings for the company overall.”); Chris Isidore, *Ford EV Losses Climb But Overall Profits Rise*, CNN (July 27, 2023), <https://perma.cc/D6RD-3E8Z> (Ford reported \$1.1 billion losses from its EV business in July 2023 and projected \$4.5 billion loss for the full year); *see also* Haley Cawthon, *Ford EV Losses Mount, Weighing on Profits*, Automotive Dive (July 25, 2024), <https://perma.cc/5GD7-HUVY>.

industry sought another means to placate the all-electric crowd while protecting its economic interests: Collusion.

4. This antitrust action challenges an industry-wide conspiracy to completely phase out medium and heavy-duty ICE vehicles.

5. This conspiracy involves all major domestic manufactures of medium and heavy-duty vehicles (“MHDVs”) – also known as original equipment manufacturers, or “OEMs.” And it covers everything from pickup trucks to Class 8 vehicles – the largest semi-trucks on which our interstate trucking and logistics industries depend. The conspiracy also involves the California Air Resources Board (“CARB”), an agency of the State of California, and is memorialized in a 2023 “Clean Truck Partnership” agreement between the OEMs and CARB (the “CTP”).

6. Pursuant to the CTP, the OEMs will comply with CARB regulations that will cause them to reduce their output of ICE MHDVs in favor of electric MHDVs and consequently raise prices for ICE MHDVs. The CTP requires OEMs to comply with these regulations *even if they are found to be unlawful in litigation*. The CTP also requires the OEMs to comply with these regulations *outside* of California – in every state that has or “will” adopt them – again, even if they are ultimately found to be unlawful.

7. The CTP is nakedly anti-competitive. It represents an industry-wide commitment by companies to reduce their output of ICE vehicles and eliminate consumer choice, which will drive up prices for those same vehicles in Nebraska and elsewhere to subsidize the so-called “transition” to ZEVs. Further, the OEMs’ broad promise to follow CARB’s regulations in other States that purportedly “will” adopt them, and to not oppose any such out-of-state proposals, reflects the OEMs’ intention to reduce output and raise prices in states that have not and may never adopt such regulations, including Nebraska. This will all result in OEMs profiting at the expense of consumers, who in turn will have fewer options and will be forced to pay higher prices for their preferred ICE vehicles – while these vehicles are still available. When the supply of ICE vehicles runs dry, consumers will be left to purchase ZEVs they do not want – vehicles that come with a sticker price two or three times higher than comparable ICE vehicles.

8. The CTP ensures that each OEM electrifies its MHDV fleet at the same pace and on the same timeline to guarantee that no member sustains any competitive disadvantage. This is done largely at the expense of states, such as Nebraska, which have no intention of following California's regulations, and at the expense of consumers who have no desire to purchase electric vehicles but will have to pay higher prices for the ICE vehicles they want. The CTP is, therefore, violative of the antitrust laws of the State of Nebraska and should be declared null and void.

9. Defendants are competitors who dominate the market for Class 8 ICE vehicles both nationwide and in Nebraska. Their illegal horizontal conspiracy, enshrined in the CTP agreement, will injure the market for Class 8 ICE vehicles by reducing output, eliminating choice, and raising prices for these vehicles.

10. Defendants also include these competitors' trade association, which also negotiated and signed the CTP agreement and is a co-conspirator with the competitors.

11. Plaintiffs include the State of Nebraska and two trade associations. Plaintiffs' citizens and association members will be injured by Defendants' conduct, including by having to pay higher prices for Class 8 ICE vehicles in Nebraska. Plaintiffs now sue to stop the Defendants' harmful conspiracy and its anticompetitive effect in Nebraska.

PARTIES

I. Plaintiffs

12. Plaintiff State of Nebraska, *ex rel.* Michael T. Hilgers, Attorney General, is a sovereign State of the United States of America. Nebraska sues as *parens patriae* to prevent harm to Nebraska citizens and to vindicate Nebraska's interest in ensuring an honest marketplace for Class 8 ICE vehicles. The Attorney General is authorized to enforce Nebraska's antitrust and consumer protection laws. *See* Neb. Rev. Stat. §§ 59-828, 59-1608. Nebraska law expressly provides that "It shall be the duty of the Attorney General to institute and prosecute . . . violations of state and federal antitrust laws," *id.* § 84-211; and that "[h]e shall

have authority to bring civil actions in the name of the state against anyone found violating either state or federal antitrust laws,” *id.* § 84-212.

13. Plaintiff Energy Marketers of America is a trade association comprised of 49 state and regional trade associations whose members are energy marketers. Energy marketers encompass a wide range of commercial businesses that store, distribute, and sell conventional, alternative, and renewable vehicle fuels, heating fuels, and lubricants at wholesale to businesses, and at retail to motorists and other consumers, for residential, agricultural and industrial uses. The association seeks to “further th[e] common business interests” of companies that distribute vehicle fuels.² It is incorporated under the laws of the Commonwealth of Virginia, has no parent corporation, and no publicly held corporation has a 10% or greater ownership in it.

14. The CTP will directly harm the common business interests of energy marketers by causing them to pay more for the trucks they use to transport fuels, thereby frustrating the mission of Energy Marketers of America.

15. The CTP will also frustrate this association’s mission of furthering the business interests of combustible fuel distributors by reducing OEMs’ output of ICE vehicles in Nebraska. This will in turn reduce the consumption of combustible fuels and harm businesses that rely on selling such fuels, including motor fuel stations and gasoline retailers.

16. Energy Marketers of America’s members include the Nebraska Petroleum Marketers & Convenience Store Association (“NPCA”), a trade association representing the interests of fuel distributors, gasoline retailers, convenience store operators and truck stop owners throughout the State of Nebraska.

17. The CTP will directly harm the business interests of fuel distributors by causing them to pay more for trucks they use to transport fuels,

² *Energy Marketers of America (EMA) Mission Statement*, Energy Marketers of America, <https://www.energymarketersofamerica.org/about/mission-statement/> (Nov. 18, 2024).

thereby frustrating the mission of NPCA. The CTP will also frustrate NPCA's mission by reducing OEMs' output of ICE vehicles in Nebraska. This will in turn reduce the consumption of combustible fuels and harm businesses that rely on selling such fuels, including fuel distributors and gasoline retailers.

18. NPCA members that purchase Class 8 ICE trucks include JBC, Inc. ("JBC"), a petroleum distributor incorporated and based in the state of Nebraska. JBC purchases Class 8 ICE trucks from Nebraska dealerships that purchase these trucks directly from one or more Defendants. These trucks are essential to JBC's business.

19. Energy Marketers of America's members also include trade associations headquartered in Oregon, Illinois, Washington, and North Carolina.

20. Energy Marketers of America's members additionally include the California Fuels + Convenience Alliance.

21. Energy Marketers of America has authority to appear on behalf of and to represent its members.

22. Plaintiff Renewable Fuels Nebraska ("RFN") is a Nebraska trade association that advocates for the growth and expansion of Nebraska's ethanol industry.³ It is incorporated under the laws of the State of Nebraska, has no parent corporation, and no publicly held corporation has a 10% or greater ownership in it.

23. The CTP will harm the growth of Nebraska's ethanol industry, and thus frustrate RFN's mission, by causing OEMs to raise prices for trucks used to transport feedstock (e.g., corn), co-products (e.g., dried distillers grains), and fuels, which will in turn raise costs for RFN members.

³ Renewable Fuels Nebraska, <https://perma.cc/86WZ-XY25> (Oct. 25, 2024).

24. The CTP will also frustrate RFN's mission of growing and expanding Nebraska's ethanol industry by reducing OEMs' output of ICE vehicles in Nebraska, which will in turn will reduce the consumption of ethanol.

25. RFN's members include Niewohner Farms ("Niewohner"), based in the state of Nebraska. Niewohner purchases Class 8 ICE trucks from Nebraska dealerships that purchase these trucks directly from one or more Defendants. These trucks are essential to Niewohner's business.

26. RFN has authority to appear on behalf of and to represent its members.

II. Defendants

27. Defendant Daimler Truck North America LLC ("Daimler") is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Portland, Oregon. Its sole member is Daimler Trucks & Buses US Holding, LLC, which is a Delaware limited liability company with its principal place of business in Portland, Oregon. Daimler Trucks & Buses US Holding is a wholly owned subsidiary of Daimler Truck AG, which is a corporation organized and existing under the laws of the Federal Republic of Germany.

28. Defendant International Motors, LLC, formerly known as Navistar, Inc. ("Navistar") is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Lisle, Illinois.

29. Defendant PACCAR, Inc. ("PACCAR") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Bellevue, Washington.

30. Defendant Volvo Group North America, LLC ("Volvo") is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Greensboro, North Carolina. Its sole member, Mack Trucks, Inc., is a corporation incorporated in the

Commonwealth of Pennsylvania with its principal place of business in Greensboro, North Carolina.

31. Defendant Truck & Engine Manufacturers Association (“Engine Manufacturers”) is a trade association incorporated under the laws of the State of Illinois, with its principal place of business in Chicago, Illinois. Its members include Daimler, Navistar, PACCAR, and Volvo (the “OEM Defendants”).

JURISDICTION AND VENUE

32. Personal jurisdiction is proper under Nebraska’s long-arm statute, Neb. Rev. Stat. § 25-536.

33. Specifically, this Court has personal jurisdiction because Defendants have illegally conspired to reduce their output of, and artificially raise the prices for, Class 8 ICE vehicles the OEM Defendants sell in Nebraska. Due to Defendants’ illegal conspiracy, the OEM Defendants will sell vehicles with artificially inflated prices to Nebraska consumers; and they will also improperly restrict their sales of these vehicles in Nebraska. Through this conduct, which forms the basis for this action and causes antitrust injury in Nebraska, Defendants have created substantial connections with Nebraska and purposefully availed themselves of Nebraska’s benefits and protections.

34. Furthermore, the OEM Defendants have all engaged in continuous and systematic general business contacts with Nebraska, including through advertising, marketing, and selling their vehicles in Nebraska. These Defendants intended their vehicles to be purchased in Nebraska and used in Nebraska.

35. Relevantly, each OEM Defendant has dealerships in Nebraska: Daimler’s dealerships include Freightliner Truck Center Companies and Nebraska Truck Center Inc., both of which have locations in Lincoln County; Navistar’s dealerships include Cornhusker International Trucks, Inc., which has a location in Lincoln County, and Hansen International Truck; PACCAR’s dealerships include Rush Truck Centers, which has a location in Lincoln County, and Sahling Kenworth; and Volvo’s dealerships include Tec Equipment – Lexington and Tec Equipment – Omaha.

36. Through their advertising, marketing and sale of vehicles in Nebraska – including Class 8 ICE vehicles that they will sell at artificially-inflated prices – the OEM Defendants have purposefully directed their activities at Nebraska and have created substantial connections to Nebraska. These contacts with Nebraska are not random, fortuitous, or attenuated.

37. Venue is proper in Lincoln County under Neb. Rev. Stat. § 25-403.01.

38. Specifically, venue is proper because Defendants’ conduct will raise the prices for, and restrict the supply of, Class 8 ICE vehicles that the OEM Defendants sell in Lincoln County. Thus, this cause of action arose in this county; and in the alternative, this is the county where some or all of Defendants’ wrongful conduct occurred out of which this cause of action arises.

FACTS

I. MHDVs Include Distinct Categories of Vehicles

39. MHDV is a broad umbrella term that includes all vehicles sold in the United States with a gross vehicle weight rating (“GVWR”) of more than 8,500 lbs. GVWR means the weight specified by the manufacturer as the loaded weight of a single vehicle.

40. MHDVs are divided into weight classes depending on their GVWR.

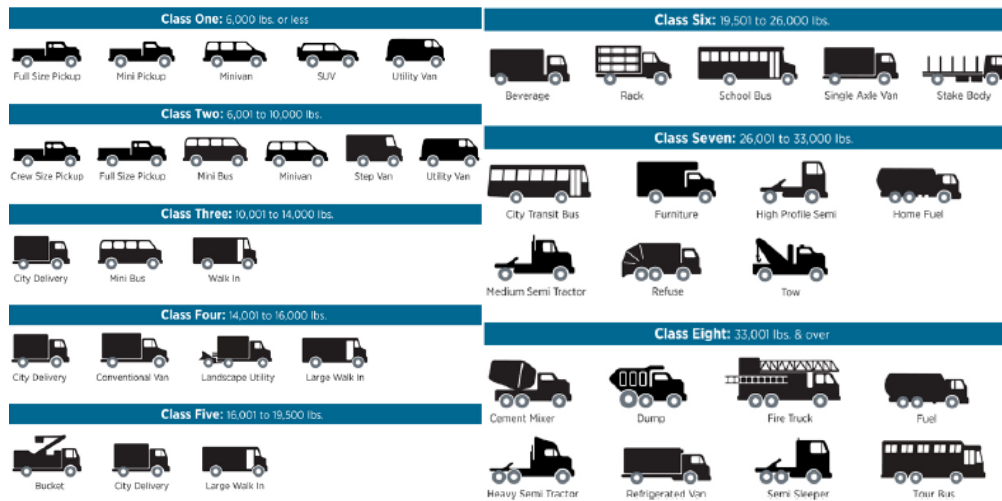
41. Class 8 consists of vehicles weighing 33,001 lbs. or more. This is the Class at issue in this litigation.

42. Class 8 vehicles include the type of truck colloquially referred to as “semi-trucks,” and typically travel long distances carrying heavy loads.⁴ Nearly a quarter of the trucks that power the nation’s logistics industry are Class 8 semi-

⁴ *Average Annual Fuel Use by Vehicle Type*, U.S. Dep’t of Energy (May 2024), <https://perma.cc/NV2W-WECF>.

trucks.⁵ Examples of such trucks include the Kenworth T680, the Freightliner M2 112, the Volvo VNL 860, and the International LT.

43. The different weight classes contain different products that are not close economic substitutes with products in other classes. These range from pickup trucks in Class 1 to heavy semi-trucks in Class 8, as illustrated by the following chart from the Department of Energy:⁶



44. Internal combustion engines, fueled by diesel, gasoline, or other liquid fuels, power approximately 99.9% of the nation’s commercial trucks. Diesel powers 97% of the nation’s Class 8 commercial trucks.

⁵ Brandon Hamilton, *Trucking by the Numbers*, St. Onge Co., (Sept. 10, 2024), <https://perma.cc/992G-9MF3>.

⁶ *Types of Vehicles by Weight Class*, U.S. Dep’t of Energy, <https://perma.cc/R47G-AMHD> (Oct. 25, 2024).

II. An Oligopoly Dominates the United States and Nebraska Markets for Class 8 ICE Vehicles.

45. The relevant product market in this case consists of Class 8 ICE vehicles, which are one of the types of internal-combustion MHDVs affected by Defendants' illegal agreement.

46. Class 8 ICE vehicles form a separate product market from other classes of internal-combustion MHDVs. These vehicles – such as semi-trucks, which carry large loads over long distances – have particular uses unsuited for other MHDVs, which evidences that they are not reasonably interchangeable with other classes. Furthermore, there is no cross-elasticity of demand between Class 8 ICE vehicles and other classes of internal-combustion MHDVs: consumers do not choose between Class 8 ICE vehicles and other classes based on their relative prices.

47. Defendants dominate, if not comprise, the U.S. market for Class 8 ICE vehicles. There are no current or future viable competitors to these OEMs.

48. Daimler sells Class 8 ICE vehicles under the Freightliner Trucks and Western Star Trucks brands.

49. Navistar sells Class 8 ICE vehicles under the International brand.

50. PACCAR sells Class 8 ICE vehicles under the Kenworth and Peterbilt brands.

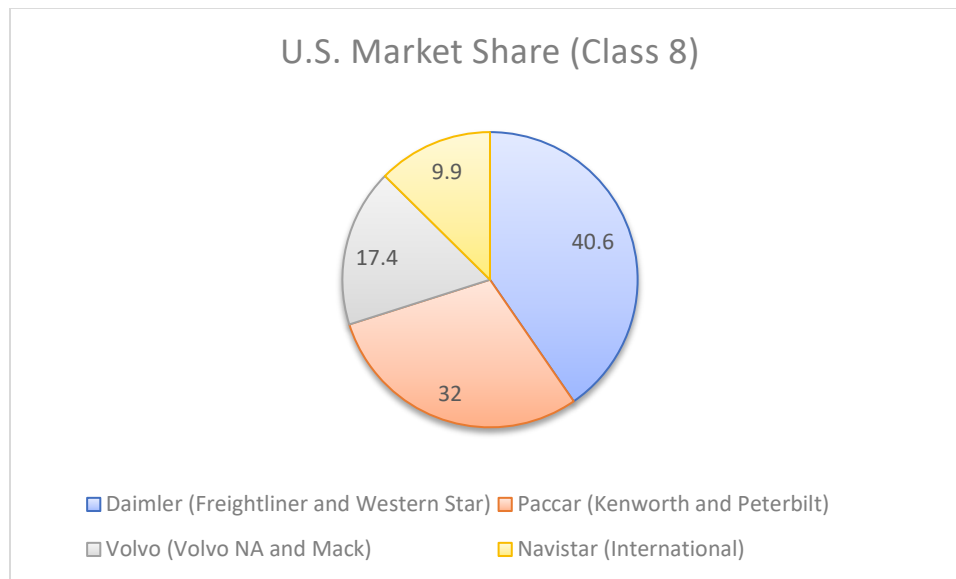
51. Volvo sells Class 8 ICE vehicles under the Volvo and Mack Trucks brands.

52. As of the second quarter of 2024, based on sales, each OEM's U.S. market share for Class 8 trucks was as follows:

<u>Class 8 Trucks</u>	<u>Market Share (%)</u>
Daimler (Freightliner and Western Star)	40.6
PACCAR (Kenworth and Peterbilt)	32
Volvo (Volvo NA and Mack)	17.4
Navistar (International)	9.9
Total	99.9

See Patrick Manzi, *Truck Beat*, Am. Truck Dealers (June 2024), <https://perma.cc/52PF-253Z>.

53. Or, in graphic form:



54. To the extent that other manufacturers of Class 8 vehicles exist – e.g., specialty manufacturers that make firetrucks and buses – they have insignificant market share. The overwhelming percentage of Class 8 vehicles are sold by Defendants.

55. While there are different types of Class 8 ICE vehicles (e.g., semi-trucks), they all comprise one relevant market dominated by Defendants. Alternatively, Class 8 ICE vehicles contain relevant submarkets, e.g., semi-trucks.

56. The relevant geographic market in this case is the United States. Defendants compete nationwide and sell Class 8 ICE vehicles in every state. Consumers can purchase Class 8 vehicles in one state for use in another. In turn, the United States comprises the area where consumers (e.g., Nebraska consumers) can turn to purchase Class 8 ICE vehicles.

57. In the alternative, the relevant geographic market in this case is the State of Nebraska, a state in which Defendants compete.

58. Defendants' CTP agreement with CARB implies the existence of state-specific geographic markets for MHDVs. Under the CTP agreement, the OEMs agreed to control what types of MHDVs they sell in California and other states that have or will adopt CARB regulations. Thus, the agreement's premise is that OEMs can limit what vehicles consumers purchase on a state-by-state basis.

59. The same four OEM Defendants that control the nationwide market for Class 8 ICE vehicles also control the Nebraska market for Class 8 ICE vehicles.

60. Defendants collectively have overwhelming market share in the U.S. and Nebraska and the ability to restrict output and raise prices. Thus, they collectively enjoy market and monopoly power in the U.S. and Nebraska markets for Class 8 ICE vehicles.

61. There are substantial barriers to entry into the Class 8 ICE vehicle market, including financial and regulatory barriers. This is evidenced by the fact that the same brands and OEMs have dominated this market for decades.⁷

⁷ See *The Trucks That Can't*, Forbes (June 18, 2002), <https://perma.cc/2L7H-QRZC> (DaimlerChrysler, PACCAR, Navistar and Volvo had 91% market share for Class 8 trucks in 2002 through their Freightliner, Western Star, Kenworth, Peterbilt, Navistar, and MACK brands).

62. For example, a prospective market entrant faces substantial costs associated with the need to develop a dealership and service network sufficient to attract consumers. The strength of an OEM's service network is a key factor in whether customers choose their vehicles.

63. A prospective market entrant from outside the U.S. also faces what can be a very complex and confusing regulatory process because motor vehicles imported into the U.S. are subject to, among other things, the safety, emissions, and certification requirements of the Environmental Protection Agency, Department of Transportation, and Customs and Border Protection.

64. Other OEMs that are parties to the CTP agreement, but do not manufacture Class 8 ICE vehicles, are unlikely to enter this market. Their ability to sell these vehicles and compete with Defendants would be limited by their CTP obligations, since (as explained below) they would be obligated to sell an increasing percentage of ZEVs relative to ICE vehicles. This would make market entry a poor investment.

65. At bottom, a prospective market entrant would face high costs to bring competitive products to market and would have to make intensive and sustained investments in marketing, warranty programs, demonstrations, sales, and service if they hoped to attract customers. They would additionally face enormous challenges designing and marketing trucks that complied with applicable regulations.

III. Class 8 ICE Vehicles Are a Separate Product Market from Zero-Emission Vehicles.

66. Class 8 ICE vehicles form a separate product market from "zero-emission" vehicles ("ZEVs"), such as electric trucks. Class 8 ICE vehicles and zero-emission vehicles are not reasonably interchangeable. Furthermore, raising prices for one type of vehicle will not drive consumers to the other (i.e., there is no cross-elasticity of demand between Class 8 ICE vehicles and their ZEV alternatives).

A. Electric Trucks Are Not Reasonable Substitutes for Class 8 ICE Trucks.

67. Class 8 ICE vehicles comprise a separate product market from Class 8 electric trucks. This is evidenced by, among other things, their distinct prices, uses, and production facilities.

68. Electric trucks are far more expensive than ICE trucks. As the New York Times has reported, “[E]lectric trucks can cost hundreds of thousands of dollars, two or three times the sticker price of a diesel truck.”⁸ This is true for Class 8 electric trucks⁹, whose batteries are a major driver of their higher prices over ICE trucks. This massive price gap suggests that a small but significant and non-transitory price increase for ICE trucks would not drive consumers to electric trucks. It further suggests that consumers who choose electric trucks over ICE trucks do so for reasons other than price.

69. Electric trucks also cannot be put to the same uses as ICE trucks – in particular, hauling freight long distances – because they have a more limited driving range, have insufficient infrastructure, and carry smaller payloads. This illustrates that they are not functionally interchangeable with their ICE counterparts.

70. First, electric trucks cover shorter distances before needing to be recharged than ICE trucks before needing to be refueled. For example, electric semi-trucks generally have ranges of 200 to 500 miles, at most, while ICE semi-trucks often have ranges of 1,000 to 2,000 miles. Further, because the batteries degrade over time, the range for an electric truck will worsen with age and require

⁸ Carol Davenport & Jack Ewing, *New Pollution Rules Aim to Lift Sales of Electric Trucks*, N.Y. Times (Mar. 29, 2024), <https://www.nytimes.com/2024/03/29/climate/epa-trucks-emissions-regulation.html>.

⁹ For example, in 2023 the Department of Energy estimated that while the cost of a representative Class 8 ICE vehicle was \$160,000, a Class 8 battery-electric vehicle cost \$457,500, a Class 8 plug-in hybrid electric vehicle cost \$324,000, and a Class 8 fuel-cell electric vehicle cost \$265,000.

more frequent recharging. This range will be even worse in Nebraska and other states due to cold winter temperatures.

71. There is also insufficient infrastructure (e.g., sufficient charging stations) for electric trucks. As of the end of 2023, fewer than ten fast charging locations in the United States were capable of serving heavy trucks.¹⁰ The lack of charging stations for Class 8 electric vehicles significantly limits their use across the country, including in Nebraska. This prevents them from replacing Class 8 vehicles and stymies their use in long-haul trucking. As Daimler’s CEO acknowledged last year, “Overwhelmingly, infrastructure is slowing us down in terms of EV deployment.”¹¹ This has not meaningfully improved in the past year, as Daimler has admitted.¹² The power grid limits the development of a charging system on such a broad scale because charging electric heavy-duty vehicles has the potential to destabilize electricity distribution systems.

72. Even if there were sufficient charging stations, recharging a battery and refueling an ICE truck is not equivalent. Electric trucks have substantially longer recharge times in comparison to the refuel times for ICE trucks. Refueling a heavy-duty ICE truck takes 10-15 minutes. In contrast, recharging a battery-electric truck can take from one to multiple hours, depending on the charger and size of the battery. The lengthy charging time reduces productive on-duty maximum driver hours and increases infrastructure costs. More charging stations are needed at every waystation, which is expensive and risks destabilizing the electric grid.

73. Electric trucks also have a significantly smaller payload and towing capacity than internal-combustion trucks. Tractors are used to carry

¹⁰ Jack Ewing, *Truck Makers Team Up to Push for Electric Vehicle Chargers*, N.Y. Times (Jan. 30, 2024), <https://www.nytimes.com/2024/01/30/business/electric-vehicles-trucks.html>.

¹¹ Bianca Giacobone, *Electric Semi-trucks Are Ready to Be Deployed, But There Aren’t Near Enough Plugs to Charge Them*, Business Insider (Feb. 4, 2023), <https://perma.cc/7BBU-AKWJ>.

¹² Seth Clevenger, *DTNA’s O’Leary: EV Infrastructure Buildout Still Lagging*, Transport Topics (May 30, 2024), <https://perma.cc/YQ5H-SBUH>.

freight. The more they weigh, the less freight they can carry. The batteries are heavier per unit of energy than an ICE tank, resulting in reduced payload for electric trucks, while still remaining under the legal weight limits.

74. Electric trucks' smaller payload and towing capacity, combined with their lengthy recharge times, may require consumers to purchase two or more electric trucks to replace the utility of a single ICE truck, in turn raising both their labor costs and their vehicle acquisition and maintenance costs.

75. The manufacturing processes for electric and ICE trucks are also very different and require distinct production facilities. For example, electric vehicles are typically assembled with a "skateboard" chassis onto which motors, suspensions, and brakes are attached, while ICE vehicles are typically assembled using a "rolling" chassis or unibody vehicle construction. This owes in large part to the need to build electric vehicles around battery packs as opposed to ICE engines. Manufacturing electric vehicles also differs significantly from manufacturing ICE vehicles due to differences in powertrain, battery production, charging capabilities, lightweight materials, and software integration. Because of these substantial differences, producing electric vehicles in factories formerly used to make ICE vehicles would require the reworking of entire assembly processes.

76. Industry recognizes that ICE and electric vehicles are distinct products. For example, Ford Motor Co. announced in March 2022 that it was reorganizing its company such that its ICE and electric vehicle business units would be run as completely separate businesses.¹³

77. Demand for ICE trucks dwarfs demand for electric trucks. This does not simply reflect electric trucks being a new, small piece of a broad MHDV market that also includes diesel trucks. Rather, it reflects consumers' knowledge that electric trucks are distinct from, inferior to, and not reasonable substitutes for

¹³ Paul Lienert, et al., *Ford Set To Announce Plans to Run EV, ICE as Separate Businesses-Sources*, Reuters (Mar. 1, 2022) <https://www.reuters.com/business/autos-transportation/exclusive-ford-set-announce-plans-run-ev-ice-separate-businesses-sources-2022-03-02/>.

ICE trucks.¹⁴ According to Defendant Engine Manufacturers, in 2021, approximately 600 heavy-duty zero-emissions vehicles were sold in the United States. Eighty percent of these ZEVs were sold for public transit, shuttle, and school bus applications. These vehicles would not carry heavy loads long distances, which is the typical use of Class 8 trucks.

78. The foregoing issues with electric trucks – their higher price, lack of charging infrastructure, reduced range, reduced payload, and different manufacturing process – distinguish all categories of Class 8 electric vehicles from their ICE counterparts.

B. Fuel Cell Trucks Are Not Reasonable Substitutes for ICE Trucks.

79. In Nebraska and nationwide, Class 8 ICE trucks do not compete with Class 8 fuel cell trucks, a different type of zero-emission vehicle.

80. Heavy-duty fuel cell trucks are not commercially available, with the U.S. Department of Energy stating that “[h]eavy-duty tractors have hydrogen options available on a demonstration basis.”¹⁵

81. Fuel cell trucks also have no refueling infrastructure outside of a limited number of stations in California.

82. The lack of any refueling infrastructure for fuel cell trucks in Nebraska precludes any finding that they are part of the same product market as Class 8 ICE trucks in Nebraska.

¹⁴ What little demand exists for Class 8 electric trucks is limited to battery-electric trucks. There are few if any sales, and little to no demand, for Class 8 hybrid-electric trucks.

¹⁵ *Hydrogen Fuel Cell Electric Vehicle Availability*, U.S. Dept’ of Energy, <https://perma.cc/8P3H-7RUF> (Oct. 25. 2024).

83. The lack of any refueling infrastructure for fuel cell trucks outside California precludes any finding that they are part of the same product market as Class 8 ICE trucks nationwide.

84. Because of this lack of availability and infrastructure, fuel cell trucks are not an alternative product to which Nebraskan consumers could turn.

IV. CARB Regulations Effectively Compel OEMs to Reduce Sales of ICE Vehicles.

85. In 2021, CARB adopted the Advanced Clean Trucks (“ACT”) rule. *See* CARB, Exec. Order R-20-004 (Jan. 26, 2021). The ACT rule requires OEMs to annually increase sales of zero-emission vehicles as a percentage of their overall MHDV sales in California.¹⁶

86. Under the ACT rule, OEMs earn “credits” by selling zero-emission or near-zero-emission vehicles in order to offset “deficits” they accumulate by selling MHDVs in California. Final Regulation Order §§ 1963.1(a), 1963.2(a).¹⁷ OEMs may alternatively purchase credits from one another.

87. From model year 2024 to 2035, under the ACT rule, the zero-emission percentage of truck sales in California would need to increase from 5% to 40% specifically for “Class 7-8 Tractors”¹⁸:

¹⁶ *Advanced Clean Trucks Fact Sheet*, Cal. Air Res. Bd. (Aug. 20, 2021), <https://perma.cc/2HE6-W8PX> (“Manufacturers who certify Class 2b-8 chassis or complete vehicles with combustion engines would be required to sell zero-emission trucks as an increasing percentage of their annual California sales from 2024 to 2035.”); *see also* Final Regulation Order, <https://perma.cc/5WL5-PCHC> (text of regulation)

¹⁷ The ACT rule defines near-zero-emission vehicles (“NZEVs”) as either plug-in hybrid electric vehicles or hybrid electric vehicles that achieve a minimum all-electric range defined by regulation. Final Regulation Order § 1963(c)(16). Selling NZEVs earns only partial credits compared to selling ZEVs. *See id.* § 1963.2(a, b). Thus, the rule pushes OEMs to sell ZEVs over NZEVs.

¹⁸ Final Regulation Order, Table A-1.

Table A-1. ZEV Sales Percentage Schedule

Model Year	Class 2b-3 Group	Class 4-8 Group	Class 7-8 Tractors Group
2024	5%	9%	5%
2025	7%	11%	7%
2026	10%	13%	10%
2027	15%	20%	15%
2028	20%	30%	20%
2029	25%	40%	25%
2030	30%	50%	30%
2031	35%	55%	35%
2032	40%	60%	40%
2033	45%	65%	40%
2034	50%	70%	40%
2035 and beyond	55%	75%	40%

88. The ACT will in effect likely force OEMs to reduce sales of new Class 8 ICE vehicles and increase sales of Class 8 ZEVs.

89. In theory, the ACT rule still permits OEMs to increase sales of ICE vehicles so long as they offset these sales by selling more ZEVs or purchasing credits. But it is improbable that U.S. demand for Class 8 vehicles will sufficiently grow over the coming years such that OEMs can *both* increase ICE vehicle sales *and* meet CARB’s quotas for ZEV sales in California and other states that have adopted CARB’s quotas. There will be unmet demand for Class 8 ICE vehicles, which will lead to price increases.

90. OEMs have told their dealerships that the ACT rule requires them to limit sales of ICE vehicles in California, and they have begun requiring dealers to sell ZEVs in order to qualify to receive ICE vehicles from the OEMs.

91. In 2021, CARB also adopted the “Omnibus” rule. Among other things, the Omnibus rule requires manufacturers to slash heavy-duty vehicle NO_x

and particulate emissions by model year 2024 and slash them further by model year 2027 and beyond. *See* 13 Cal. Code Regs. § 1956.8(a)(2)(C).

92. The Omnibus rule effectively requires OEMs to develop new Omnibus-compliant ICE vehicles and sell them instead of popular existing legacy vehicles.

93. The Omnibus rule will, ultimately, push OEMs to shift away from making Class 8 ICE vehicles and towards making ZEVs.

94. Ten states other than California have adopted the ACT rule, and nine of these states have also adopted the Omnibus rule. Already in effect in California, these rules become effective in other states in model years 2025, 2026 or 2027 depending on the state. Put together, CARB estimates that these eleven states (including California) account for 25% of all U.S. heavy-duty vehicle sales.

95. In 2023, CARB adopted the Advanced Clean Fleets (“ACF”) rule. The ACF rule complements the prior ACT rule and, among other things, increases the ACT rule’s zero-emission vehicle sales mandate to 100% of all MHDV sales (in Classes 2 through 8) in California by model year 2036. *See* 13 Cal. Code Regs. § 2016(c).

V. OEMs Agree to Reduce Sales and Extend CARB Rules Beyond California.

96. In July 2023, Defendants and other OEMs entered into an agreement with CARB forming the “Clean Truck Partnership” (“CTP”).¹⁹ Engine Manufacturers and the OEMs all signed the CTP agreement in late-June, with CARB’s Executive Officer signing on July 5, 2023.

¹⁹ *CARB and Truck and Engine Manufacturers Announce Unprecedented Partnership to Meet Clean Air Goals* (“CARB Announcement”), Cal. Air Res. Bd. (July 6, 2023), <https://perma.cc/2VRT-JXK2>; CTP Agreement, <https://perma.cc/33E2-ETJH>.

97. CARB announced the CTP as a partnership with “the nation’s leading truck manufacturers . . . that advances the development of zero-emission vehicles (ZEVs) for the commercial trucking industry.”²⁰

98. Among other requirements, the CTP agreement requires OEMs to comply with CARB regulations, including the ACT, ACF, and Omnibus rules, in California “irrespective of the outcome” of any litigation challenging the regulations. CTP § 2.

99. The agreement further gives extraterritorial effect to the ACT²¹ and Omnibus rules by requiring the OEMs to comply with the rules outside of California’s borders – even if the rules themselves are found invalid. Specifically:

- a. Pursuant to the agreement, OEMs agreed to reduce heavy-duty vehicle NOx emissions in every state that has adopted CARB’s Omnibus rule, regardless of the outcome of any legal challenge to the rule. CTP Appx. D ¶ B.²²
- b. The OEMs further committed to sell “as many zero emission trucks as reasonably possible in every state that has or will adopt” CARB’s ACT rule, regardless of the outcome of any legal

²⁰ CARB Announcement, *supra* n.20.

²¹ While ambiguous, Appendix D’s reference to the ACT rule may also include the ACF rule’s 100% zero-emission vehicle sales mandate. *Compare* CTP Appx. D, ¶ E *with* CTP Appx. B (referring to the ACT rule, its amendments, and the “100 percent ZEV sales requirement set forth in Cal. Code Regs title 13, section 2016, as it existed on April 28, 2023” – the date that CARB adopted the ACF rule).

²² *See* CTP Appx. D ¶ B (“The OEMs commit to comply with the 2027 and later model year provisions of the Omnibus regulations, as may be amended by Appendices A and B, adopted in any Section 177 state irrespective of the outcome of any litigation that has been filed or may be filed challenging the waivers or authorizations for those regulations or CARB’s or any state’s overall authority to implement those regulations.”).

challenge to the rule. CTP Appx. D ¶ F (emphasis added).²³ Again, the ACT rule requires OEMs to increase sales for ZEVs as a percentage of total sales.

100. The agreement does not explain how to identify states that “will adopt” the ACT rule. There is neither a requirement that the state’s adoption of the rule be imminent nor any criteria for determining whether a state is certain to adopt the rule. On the contrary, the introductory section of the Appendix broadly states that it applies to any states that “*may* choose to [adopt CARB’s rules] in the future.” CTP Appx. D (emphasis added).

101. The CTP also requires OEMs to (a) not challenge or support others’ legal challenges to any state’s adoption of the ACT or Omnibus rules; (b) be neutral towards proposals for other states to adopt the ACT rule; and (c) not oppose the adoption of the Omnibus rule in other states for 2027 and later model years and be neutral regarding such proposals for 2024-2026 model years. CTP Appx. D.

102. The foregoing requirements make it likely that Defendants will treat Nebraska as a state that “will adopt” or “may choose to” adopt the ACT rule.

103. The result of this agreement is that Defendants will reduce their output of Class 8 ICE vehicles in multiple states, including Nebraska, as they shift towards selling ZEVs. This will lead them to raise prices for ICE vehicles in Nebraska and nationwide.

²³ See CTP Appx. D ¶ F (“The OEMs commit to put forth their best efforts to sell as many zero emission trucks as reasonably possible in every state that has or will adopt CARB’s ACT regulations, even potentially exceeding any future U.S. EPA Phase 3 Greenhouse Gas requirements, irrespective of the outcome of any litigation that has been filed or may be filed challenging the waivers or authorizations for those regulations or CARB’s or any state’s overall authority to implement those regulations.”).

104. Importantly, the natural and intended consequence of the CTP agreement is that Defendants will reduce output and raise prices for ICE vehicles in states that have not yet and may never adopt the ACT rule.

105. Additionally, in promising to sell “as many zero emission trucks as reasonably possible” in states that have adopted or will adopt the ACT rule, the OEMs effectively committed to exceed the ACT rule’s requirements for ZEV sales (relative to ICE vehicle sales) wherever that was possible.

106. Furthermore, as Defendants increasingly shift to manufacturing and selling electric vehicles (to comply with the CTP agreement), they will raise prices on their Class 8 ICE vehicles in order to finance this expensive shift in their business models. In other words, Defendants will raise prices for Class 8 ICE vehicles in order to cross-subsidize their electric truck businesses. Indeed, Defendants will raise their prices of Class 8 ICE vehicles in states like Nebraska that have not adopted CARB’s rules in order to cross-subsidize their ZEV businesses in other states that have already adopted these rules.

107. Defendants have made public statements affirming that the CTP furthers their overall shift away from ICE vehicles.²⁴ PACCAR has stated that “[The CTP] . . . supports a balanced transition to zero emissions by ensuring continued supply of product into California and opt-in states.” Volvo is “working toward achieving [the] goal of offering only carbon-neutral vehicles by 2039,” and maintains that “[t]hrough cooperative efforts such as [the CTP, Volvo] . . . can achieve the quickest and least disruptive transition to a commercial zero emission vehicle future.” Navistar believes the CTP “enables the regulatory certainty we all need to prepare for a future which will include ever-increasing volumes of low and zero-emissions technology.”

108. As Defendants follow-through on their CTP commitments, they will increase prices of ICE vehicles in states, including Nebraska, that have not adopted CARB’s rules.

²⁴ CARB Announcement, *supra* n.20 (listing statements from OEMs).

VI. Defendants' Agreement Threatens to Harm the United States and Nebraska Markets.

109. Restrictions on output and price increases are textbook harms to competition that antitrust laws are meant to prevent, and it is widely recognized the former leads to the latter. *See Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma*, 468 U.S. 85, 107-08 (1984) (“NCAA”) (“Restrictions on price and output are the paradigmatic examples of restraints of trade that the Sherman Act was intended to prohibit.”); *Gypsum Co. v. Indiana Gas Co.*, 350 F.3d 623, 627 (7th Cir. 2003) (examples of antitrust injuries include “reduced output and higher prices”); *Gen. Leaseways, Inc. v. Nat'l Truck Leasing Ass'n*, 744 F.2d 588, 594-95 (7th Cir. 1984) (output restrictions lead to price increases); *United States v. Andreas*, 39 F. Supp. 2d 1048, 1059 (N.D. Ill. 1998), *aff'd*, 216 F.3d 645 (7th Cir. 2000) (“Output restrictions are classic per se violations which personify the law of supply because product scarcity causes consumers to pay inflated prices to satisfy demand.”).²⁵

110. Accordingly, Defendants will harm competition in Nebraska and nationwide in several ways pursuant to the CTP agreement.

111. First, Defendants will reduce their output (and accordingly raise prices) for Class 8 ICE vehicles in Nebraska, even though Nebraska has not yet adopted – and may not adopt – the ACT rule. This follows from Defendants broadly promising in the CTP agreement to sell as many “zero emission trucks as reasonably possible” in every state that “will adopt” the ACT rule without defining the term “will adopt.”

112. Defendants are an oligopoly in Nebraska’s market for Class 8 ICE vehicles. They have no meaningful competitors aside from one another. Thus, their concerted effort pursuant to the CTP agreement to reduce output (and consequently raise prices) for ICE vehicles in Nebraska will negatively affect the

²⁵ *See also Price Fixing*, Fed. Trade Comm’n, <https://perma.cc/4SNA-FCMF> (Oct. 25, 2024) (“An agreement to restrict production, sales, or output is just as illegal as direct price fixing, because reducing the supply of a product or service drives up its price.”).

entire market and all consumers in it, including Plaintiffs' citizens and association members.

113. Second, even if Defendants do not reduce their output in Nebraska, they will still raise prices in Nebraska by reducing output nationwide. Specifically, Defendants will reduce their output of Class 8 ICE vehicles in multiple other states, including California and those states that have already adopted CARB rules, pursuant to their promise to sell as many "zero emission trucks as reasonably possible" in any state that "has or will adopt" the ACT rule. Defendants' reduction of output in the nationwide market for Class 8 ICE vehicles will lead to price increases across this nationwide market (where Defendants have an oligopoly), and those price increases will be felt in Nebraska.

114. Third, Defendants will in fact reduce output both in and outside Nebraska pursuant to their foregoing promises in the CTP agreement. Defendants' output reductions in Nebraska will only exacerbate the Nebraska price increases caused by its output reductions elsewhere.

115. Fourth, Defendants' output reductions for Class 8 ICE vehicles outside Nebraska will cause them to raise prices for these vehicles – nationwide and in Nebraska – in order to cross-subsidize their production and sale of ZEVs.

116. In short, Defendants' agreement will have anticompetitive effects on the United States and Nebraska markets for Class 8 ICE vehicles in the form of output reductions and/or price increases. These anticompetitive effects will impact Nebraska residents irrespective of how the relevant geographic market in this case is defined.

VII. Defendants' Agreement is *Per Se* Illegal and Has No Procompetitive Benefit or Valid Defense.

117. The CTP agreement is an explicit horizontal agreement between competitors.

118. Furthermore, it is clear Defendants agreed among themselves to the terms of the CTP agreement before signing the agreement with CARB. This is evidenced by the fact that Defendants all signed the agreement on the same day

– June 28, 2023 – days before CARB signed on July 5, 2023. Such simultaneous action could only occur with a high level of interfirm communications and prior agreement between Defendants. This agreement among Defendants is just as anticompetitive as the signed CTP agreement itself.

119. Agreeing to the terms of the CTP agreement was not in any OEM Defendant’s independent self-interest. It only made sense for each OEM to join the CTP because they knew their competitors would so as well, and thus no OEM would gain a competitive advantage from avoiding the CTP’s requirements.

120. Horizontal agreements between competitors to restrict output in a market are ordinarily *per se* unreasonable and condemned as a matter of law. The CTP is such an agreement, as is any agreement reached between Defendants prior to signing the CTP that they would comply with the CTP’s terms.

121. Defendants are competitors, and their horizontal agreement to reduce output and increase prices in the U.S. and Nebraska markets for Class 8 ICE vehicles is *per se* illegal.

122. Even were Defendants’ agreement not *per se* illegal under antitrust law, it would still be unreasonable under the rule of reason.

123. Defendants’ agreement has no procompetitive benefits. Consumers in the Class 8 ICE vehicle market do not benefit from paying higher prices or from having fewer available trucks.

124. Even if Defendants’ agreement had potential procompetitive benefits, those benefits would be substantially outweighed by the agreement’s anticompetitive effects.

125. Defendants’ agreement burdens competition more than necessary to achieve any ostensible benefit to consumers given that less restrictive means are available. For example, Defendants should not have committed to “sell as many zero emission trucks as reasonably possible” and follow CARB regulations (a) outside California, including in states that have not adopted (but “will” adopt) the ACT rule, and (b) even if the underlying regulations are found invalid. But

more broadly, Defendants' agreement and its anticompetitive effects simply cannot be justified.

126. There is also no valid defense for Defendants' agreement or its effect in Nebraska and nationwide. Outside of California, the CTP is nothing more than a private agreement between competing companies to restrain trade. Outside of California, there is no petitioned-for CARB action, no CARB supervision of OEMs, and no clearly-articulated policy by the State of California to follow. California cannot give Defendants *de facto* permission to restrain a nationwide market or a Nebraska market. Defendants' private agreement enjoys no legal protection from antitrust laws.

127. Defendants' commitment to follow CARB regulations even if the regulations are invalidated is effectively a private agreement. Private agreements enjoy no legal protection. CARB cannot require companies to comply with invalid regulations and cannot be petitioned to do so.

VIII. Plaintiffs Face Imminent Injury and Have Standing to Bring Suit.

128. As a direct result of the CTP agreement, Defendants will reduce their output of Class 8 ICE vehicles in Nebraska and elsewhere. As a direct result of reducing their overall output of ICE vehicles, Defendants will raise the prices of these trucks, including in Nebraska. Defendants will raise their prices both as a result of their reduced output of Class 8 ICE vehicles and/or to cross-subsidize their sale of electric vehicles. The CTP agreement essentially guarantees this outcome; it is not speculative or contingent on future events.

129. Plaintiffs' citizens and association members include companies that purchase Class 8 ICE vehicles in Nebraska from dealerships. These dealerships purchase ICE vehicles from Defendants, and ICE vehicles are essential to support the ultimate purchasers' business operations.

130. Defendants' price increases for Class 8 ICE vehicles will be passed along to these ultimate purchasers, which will cause harm to these purchasers. Ultimate purchasers will also be harmed as a result of the vehicles' more limited availability in Nebraska. Thus, Defendants' conduct pursuant to the CTP

agreement will cause inevitable, irreparable, and imminent harm to Plaintiffs' citizens and association members.

131. Defendants' conduct will also harm the Nebraska dealerships who will have to pay higher prices for Defendants' Class 8 ICE vehicles; Nebraska brings this action on their behalf as well as on behalf of injured ultimate purchasers.

132. There is a significant threat of irreparable antitrust injury. Plaintiffs would be harmed if this Court delayed considering this matter and granting them equitable relief. This matter is fit for judicial decision.

133. OEMs make business plans for what they will sell years in advance.²⁶ It follows that Defendants are making or have made plans for what they will sell years into the future that are premised on their CTP commitment to comply with CARB rules even if the rules are invalidated. These plans would be different if the OEMs believed that overturning the rules would end their effect; instead, thanks to the CTP, these plans will cause market injury. The CTP is thus causing harm that must be remedied irrespective of whether the rules are eventually overturned.

134. Defendants' scheme will also be particularly detrimental for Nebraska's livestock industry. Nebraska is the nation's top beef exporter and is second in total cattle with 6.25 million head of cattle.

135. Cattle feeders frequently purchase feeder calves from cow-calf operations in the Nebraska Sandhills or South Dakota to raise in their feedlots in southeast Nebraska. These animals travel over 500 miles to reach the feedlot.

136. Cattle feeders could never utilize Class 8 ZEV trucks to transport these animals, as the livestock would be stranded at a station in excessive heat or

²⁶ See *Ohio*, 98 F.4th at 302 (citing evidence that "automobile manufacturers need years of lead time to make changes to their future model year fleets.")

freezing temperatures waiting for the truck to charge its batteries, leading to untold death and injury.

137. Defendants' scheme will disproportionately impact Nebraska cow-calf operations and cattle feeders who will be forced to purchase Class 8 ICE vehicles at exorbitant prices, if there are any available at all.

138. The same holds true for Nebraska's grain producers. During the midst of harvest, these operations typically operate 12-16 hour days utilizing Class 8 ICE vehicles to haul their product to market.

139. Defendants' scheme would force Nebraska grain farmers to shut down their operations for 3-5 hours twice per day to charge ZEVs or pay excessive costs for a Class 8 ICE vehicle to keep their operation running.

CLAIMS

COUNT I

***Per Se* Violation of Nebraska Consumer Protection Act (Against All Defendants)**

140. Plaintiffs restate, re-allege, reaffirm, and incorporate by reference all preceding paragraphs as if fully set forth herein.

141. Plaintiffs have a cause of action under the Nebraska Consumer Protection Act ("NE CPA"), Neb. Rev. Stat. § 59-1603.

142. Under the NE CPA, "Any contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce shall be unlawful." *Id.*

143. The NE CPA is construed in accordance with the federal Sherman Antitrust Act.

144. The United States market for Class 8 ICE vehicles, or alternatively the Nebraska market for Class 8 ICE vehicles, is a relevant market for antitrust purposes.

145. Defendants have market and monopoly power in this market, where they are horizontal competitors and constitute an oligopoly.

146. Defendants have entered into an agreement whereby they will reduce output and increase prices in this market, thereby restraining trade, injuring the market, and harming consumers.

147. The anticompetitive effects of Defendants' conduct, including output reductions and/or price increases, will be felt in Nebraska and reflect a restraint of trade within Nebraska.

148. Defendants' horizontal agreement to restrain trade is illegal *per se*.

149. Defendants' conduct violates the NE CPA.

150. Plaintiffs have suffered injury and/or will continue to suffer injury as a result of Defendants' violation of the NE CPA.

COUNT II

Violation of Nebraska Consumer Protection Act Under the Rule of Reason (Against All Defendants)

151. Plaintiffs restate, re-allege, reaffirm, and incorporate by reference all preceding paragraphs as if fully set forth herein.

152. Plaintiffs have a cause of action under the Nebraska Consumer Protection Act ("NE CPA"), Neb. Rev. Stat. § 59-1603.

153. Under the NE CPA, "Any contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce shall be unlawful." *Id.*

154. The NE CPA is construed in accordance with the federal Sherman Antitrust Act.

155. The United States market for Class 8 ICE vehicles, or alternatively the Nebraska market for Class 8 ICE vehicles, is a relevant market for antitrust purposes.

156. Defendants have market and monopoly power in this market, where they are horizontal competitors and constitute an oligopoly.

157. Defendants have entered into an agreement whereby they will reduce output and increase prices in this market, thereby restraining trade, injuring the market, and harming consumers.

158. The anticompetitive effects of Defendants' conduct, including output reductions and/or price increases, will be felt in Nebraska and reflect a restraint of trade within Nebraska.

159. Defendants' horizontal agreement to restrain trade is unreasonable under the rule of reason.

160. Defendants' conduct has no procompetitive justification. Even if it had a potential justification, it would restrain trade more than necessary to accomplish any procompetitive ends.

161. Defendants' conduct violates the NE CPA.

162. Plaintiffs have suffered injury and/or will continue to suffer injury as a result of Defendants' violation of the NE CPA.

COUNT III

***Per Se* Violation of the Junkin Act (Against All Defendants)**

163. Plaintiffs restate, re-allege, reaffirm, and incorporate by reference all preceding paragraphs as if fully set forth herein.

164. Plaintiffs have a cause of action under the Nebraska Unlawful Restraint of Trade Act (“Junkin Act”), Neb. Rev. Stat. § 59-801.

165. Under the Junkin Act, “Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, within this state, is hereby declared to be illegal.” *Id.*

166. The United States market for Class 8 ICE vehicles, or alternatively the Nebraska market for Class 8 ICE vehicles, is a relevant market for antitrust purposes.

167. Defendants have market and monopoly power in this market, where they are horizontal competitors and constitute an oligopoly.

168. Defendants have entered into an agreement whereby they will reduce output and increase prices in this market, thereby restraining trade, injuring the market, and harming consumers.

169. The anticompetitive effects of Defendants’ conduct, including output reductions and/or price increases, will be felt in Nebraska and reflect a restraint of trade within Nebraska.

170. Defendants’ horizontal agreement to restrain trade is illegal *per se*.

171. Defendants’ conduct violates the Junkin Act.

172. Plaintiffs have suffered injury and/or will continue to suffer injury as a result of Defendants’ violation of the Junkin Act.

COUNT IV

Violation of the Junkin Act Under the Rule of Reason (Against All Defendants)

173. Plaintiffs restate, re-allege, reaffirm, and incorporate by reference all preceding paragraphs as if fully set forth herein.

174. Plaintiffs have a cause of action under the Nebraska Unlawful Restraint of Trade Act (“Junkin Act”), Neb. Rev. Stat. § 59-801.

175. Under the Junkin Act, “Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, within this state, is hereby declared to be illegal.” *Id.*

176. The United States market for Class 8 ICE vehicles, or alternatively the Nebraska market for Class 8 ICE vehicles, is a relevant market for antitrust purposes.

177. Defendants have market and monopoly power in this market, where they are horizontal competitors and constitute an oligopoly.

178. Defendants have entered into an agreement whereby they will reduce output and increase prices in this market, thereby restraining trade, injuring the market, and harming consumers.

179. The anticompetitive effects of Defendants’ conduct, including output reductions and/or price increases, will be felt in Nebraska and reflect a restraint of trade within Nebraska.

180. Defendants’ horizontal agreement to restrain trade is unreasonable under the rule of reason.

181. Defendants’ conduct has no procompetitive justification. Even if it had a potential justification, it would restrain trade more than necessary to accomplish any procompetitive ends.

182. Defendants’ conduct violates the Junkin Act.

183. Plaintiffs have suffered injury and/or will continue to suffer injury as a result of Defendants’ violation of the Junkin Act.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, the State of Nebraska, Energy Marketers of America, and RFN respectfully request that this Court:

- (a) Enter judgment in Plaintiffs' favor, and against Defendants, and declare that Defendants have violated the NE CPA and the Junkin Act;
- (b) Declare the CTP violates the antitrust laws of the State of Nebraska and is, therefore, null and void in the State of Nebraska;
- (c) Permanently enjoin Defendants from (1) reducing their output of Class 8 ICE vehicles in Nebraska pursuant to the CTP agreement; (2) raising prices for Class 8 ICE vehicles in Nebraska as a result of the CTP agreement; and (3) coordinating activity or taking any action pursuant to the CTP agreement in any way in Nebraska;
- (d) Declare the CTP null and void nationwide because it will injure Nebraska residents and violate Nebraska antitrust laws if Defendants comply with it in other states; and
- (e) Award any additional relief that the Court deems just and appropriate.

Dated: November 19, 2024

Respectfully submitted,

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