

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1:24-cv-1091
	)	
COBB TUNING PRODUCTS, LLC,	)	
	)	
Defendant.	)	
_____	)	

COMPLAINT

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

I. NATURE OF THE ACTION

1. This is a civil action brought pursuant to Sections 203, 204, and 205, of the Clean Air Act, 42 U.S.C. §§ 7522-7524, seeking injunctive relief and the assessment of civil penalties against Cobb Tuning Products, LLC (Cobb Tuning *or* Defendant) for violations of the Clean Air Act, related to Defendant's manufacture and sale of aftermarket products that bypass, defeat, or render inoperative emission controls installed on motor vehicles or motor vehicle engines, in violation of the Clean Air Act.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of and the parties to this action pursuant to Sections 204 and 205 of the Clean Air Act, 42 U.S.C. §§ 7523 and 7524, and

28 U.S.C. §§ 1331 (Federal Question), 1345 (United States as Plaintiff), and 1355 (Fine, Penalty, or Forfeiture).

3. This Court has personal jurisdiction over the Defendant because Cobb Tuning is located in and the Defendant does business within the jurisdictional boundaries for the United States District Court for the Western District of Texas, as established under 28 U.S.C. § 124(d).

4. Venue is proper in the Western District of Texas pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395, as well as Section 205(b) of the Clean Air Act, 42 U.S.C. § 7524(b), because it is the judicial district in which the Defendant is located, is doing business, and in which a substantial part of the alleged violations occurred.

III. AUTHORITY

5. The United States Department of Justice has the authority to bring this action on behalf of the Environmental Protection Agency pursuant to 28 U.S.C. §§ 516 and 519, and under Section 305 of the Clean Air Act, 42 U.S.C. § 7605(a).

IV. DEFENDANT

6. Defendant, Cobb Tuning Products, LLC, is a Utah limited liability company licensed to do business in the state of Texas.

7. The registered address for Defendant is 2311 West Rundberg Lane, Suite 500, Austin, Texas 78758.

8. Defendant manufactures, sells, and offers for sale aftermarket products for select, light-duty motor vehicles equipped with gasoline-powered engines.

9. Defendant markets its products as devices that enhance a motor vehicle's power or performance.

10. At all times relevant to this Complaint, Defendant manufactured, sold, and offered for

sale its products to end-users through: (1) three company-owned retail stores located in Plano, Texas; Fountain Valley, California; and Portland, Oregon; (2) internet sales via its website; and (3) sales to distributors and other retailers that then market the products to consumers.

11. At all times relevant to this Complaint, Defendant has been a *person* as defined in Clean Air Act Section 302(e), and within the meaning of Clean Air Act Section 205(a), 42 U.S.C. §§ 7602(e), 7524(a), because it is an association.

V. BACKGROUND

12. This action arises under Title II of the Clean Air Act, as amended, 42 U.S.C. §§ 7521-7590, and the regulations promulgated thereunder relating to the control of emissions of air pollution from motor vehicles and motor vehicle engines.

A. Statutory and Regulatory Objectives

13. In enacting the Clean Air Act, Congress found that “. . . the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare. . . .” 42 U.S.C. § 7401(a)(2). Congress’s purposes in enacting the Clean Air Act were “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” 42 U.S.C. § 7401(b)(1)-(2).

14. *Motor vehicle* is defined in the Clean Air Act as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” 42 U.S.C. § 7550(2); 40 C.F.R. § 85.1703.

15. Title II of the Clean Air Act and the regulations promulgated thereunder establish standards for the emissions of air pollutants from motor vehicles that “cause, or contribute to, air

pollution which may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7521(a)(1). These pollutants include nitrogen oxides (NO_x), non-methane hydrocarbons (NMHC), and carbon monoxide (CO). 42 U.S.C. § 7521(b).

16. EPA has also established National Ambient Air Quality Standards for certain pollutants, including ozone, particulate matter (PM), NO_x, and CO. *See* 40 C.F.R. §§ 50.1-50.19.

17. Ozone is a highly reactive gas that is formed in the atmosphere from other pollutants, including pollutants emitted from motor vehicles.

18. PM is a form of air pollution composed of microscopic solids and liquids suspended in air. PM is emitted directly from motor vehicles and is also formed in the atmosphere from other pollutants, including pollutants emitted from motor vehicles.

19. NO_x, NMHC, and non-methane organic gases (NMOG) are reactive gases that contribute to the formation of PM and ozone.

20. Exposure to PM and ozone is linked to respiratory and cardiovascular health issues and to premature death. Children, older adults, people who work outdoors, and people with heart or lung disease are particularly at risk for health effects related to PM or ozone exposure.

21. CO is a highly toxic gas that forms when the carbon in fuel does not burn completely. CO is harmful to human health because it reduces oxygen delivery to the body’s organs and tissues. CO can cause headaches, dizziness, vomiting, nausea, loss of consciousness, and death. Long-term exposure to CO has been associated with an increased risk of heart disease.

B. Acts Prohibited by Clean Air Act Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B)

22. Section 203(a)(3)(B) makes it a prohibited act for “any person to manufacture or sell, or offer to sell, or install any part or component intended for use with, or as a part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass,

defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” 42 U.S.C. § 7522(a)(3)(B). This is known as the *defeat device prohibition*.

C. Clean Air Act Enforcement Provisions

23. Any person violating Clean Air Act Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), is subject to civil penalties of up to \$3,750 for each violation occurring on or after January 13, 2009, through November 2, 2015, and up to \$5,761 for each violation occurring after November 2, 2015, and assessed on or after December 27, 2023. 42 U.S.C. § 7524(a). *See also* 40 C.F.R. § 19.4.

24. Any person violating Clean Air Act Section 203(a)(3)(B) is also subject to injunctive relief pursuant to Clean Air Act Section 204, 42 U.S.C. § 7523.

25. Each part or component Defendant manufactured, sold, or offered for sale in violation of Clean Air Act Section 203(a)(3)(B), is a separate violation. 42 U.S.C. § 7524(a).

D. EPA’s Certificate of Conformity Program for New Motor Vehicles and Motor Vehicle Engines

26. Manufacturers of new motor vehicles must apply for and obtain a Certificate of Conformity from EPA to sell, offer to sell, or introduce or deliver for introduction into commerce any new motor vehicle in the United States. 42 U.S.C. § 7522(a)(1).

27. To obtain a Certificate of Conformity, the original equipment manufacturer (OEM) must demonstrate that the motor vehicle does not exceed established emissions standards for CO, PM, NO_x, NMHC, and other pollutants during a motor vehicle or motor vehicle engine’s useful life. 42 U.S.C. § 7525(a)(2); *see* 40 C.F.R. §§ 86.004-21, 86.1811-04, 86.1811-17, 86.1844-01.

28. The Certificate of Conformity application must include, *inter alia*, a description of the vehicle's "emission control system and fuel system components." *see* 40 C.F.R. § 86.094-21.

29. Once issued by EPA, a Certificate of Conformity covers only those new motor vehicles or motor vehicle engines that conform in all material respects to the specifications provided to EPA in the Certificate of Conformity application for such motor vehicles or motor vehicle engines. 40 C.F.R. § 86.1848-01(c)(6).

E. Emissions-Related Elements of Design

30. An *element of design* is "any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine." 40 C.F.R. § 86.1803-01.

31. An *emission control system* is a "unique group of emission control devices, auxiliary emission control devices, engine modifications and strategies, and other elements of design designated by the Administrator used to control exhaust emissions of a vehicle." *Id.*

32. OEMs install software and hardware elements of design in motor vehicles and motor vehicle engines that control emissions of pollutants in order to comply with the Clean Air Act and obtain certification, hereinafter referred to as *Emissions-Related Elements of Design*.

33. Modern motor vehicles are equipped with Electronic Control Units (ECU), which are onboard computer systems that run the software that monitors and controls vehicle operations, including the operation of Emissions-Related Elements of Design. Emissions-Related Elements of Design generally include both the specific hardware described below, and the ECU or ECUs that contain software and calibrations that control operation of that hardware.

i. Engine Emissions Controls

34. The engine is equipped with some emissions controls, including the Exhaust Gas Recirculation System and Tumbler Generator Valve Systems.

35. Exhaust Gas Recirculation System. Gasoline-powered engines produce high combustion temperatures that result in the production of NO_x. An exhaust gas recirculation (EGR) system reduces NO_x emissions by recirculating engine exhaust gas back through the engine's cylinders, thereby lowering the combustion temperature and reducing NO_x production. The EGR system is an Emissions-Related Element of Design and is a “device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with [Clean Air Act] regulations” within the meaning of Clean Air Act Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

36. Tumbler Generator Valve Systems. Tumbler generator valve (TGV) systems are installed on certain spark-ignition motor vehicle engines and regulate air flow to reduce emissions during cold starts and/or when the engine is idle. TGV systems are an Emissions-Related Element of Design and are a “device or element of design installed on or in a motor vehicle . . . in compliance with [Clean Air Act] regulations” within the meaning of Clean Air Act Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

ii. Aftertreatment Systems

37. *Aftertreatment* means any “system, component, or technology mounted downstream of the exhaust valve . . . whose design function is to reduce emissions in the engine exhaust before it is exhausted to the environment.” 40 C.F.R. § 1068.30.

38. Aftertreatment systems consist of hardware installed in the OEM exhaust system, as well as software that runs on one or more ECUs and directs operation of the hardware components. Three-way catalytic converters, air pumps, and oxygen sensors are Aftertreatment

systems that can be used alone, or in combination with each other or with other Emissions-Related Elements of Design, to control the emission of pollutants.

39. Three-Way Catalytic Converter. A three-way catalytic converter (TWC) is an emissions control device that is designed to reduce NO_x, NMOG, and CO emissions from the exhaust of gasoline-powered motor vehicles. The TWC is an Emissions-Related Element of Design and is a “device or element of design installed on or in a motor vehicle . . . in compliance with [Clean Air Act] regulations within the meaning of Clean Air Act Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

40. Air Pumps. Air pumps allow fresh air into the exhaust system of the engine to reduce NMHC and CO emissions. Air pumps are an Emissions-Related Element of Design and are a “device or element of design installed on or in a motor vehicle . . . in compliance with [Clean Air Act] regulations” within the meaning of Clean Air Act Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

41. Oxygen Sensors. Oxygen sensors are electronic devices positioned in front of and behind the catalytic converter to measure the proportion of oxygen in the exhaust gas of a motor vehicle. An imbalanced air-to-fuel ratio during fuel combustion can result in increases in NO_x or NMOG. Oxygen sensors are an Emissions-Related Element of Design and are a “device or element of design installed on or in a motor vehicle . . . in compliance with [Clean Air Act] regulations” within the meaning of Clean Air Act Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

iii. Onboard Diagnostic System

42. The Clean Air Act requires OEMs to install an onboard diagnostic (OBD) system on motor vehicles. 42 U.S.C. § 7521(m). The OBD system is typically incorporated into the software and calibration(s) contained in the ECU(s). The OBD system monitors, detects, reports,

and records malfunctions of monitored Emissions-Related Elements of Design and other components through a network of sensors and actuators installed throughout the motor vehicle. *See* 40 C.F.R. §§ 86.007-17, 86.010-18, 86.1806-05. The OBD system monitors sensor inputs for malfunction or wear that could cause a vehicle to fail to meet Clean Air Act emission standards. When the OBD system detects a malfunction of an emissions-related system or component, it must illuminate the malfunction indicator light (MIL, *a/k/a* check engine light) on the motor vehicle's instrument panel. 40 C.F.R. §§ 86.1806-05(b)-(d).

43. Clean Air Act regulations require that once the MIL has been illuminated, the OBD system must record a diagnostic trouble code (DTC). 40 C.F.R. § 86.1806-05(e). The OBD system stores the DTC, enabling service technicians to diagnose and make repairs, and government inspectors to download and verify a vehicle's compliance with emissions standards.

44. The OBD system may also prompt a vehicle's operator to correct a problem by altering vehicle performance, for example, putting the vehicle into "limp mode." In limp mode, the ECU reduces engine performance to alert the operator of a problem with the emission control system, permitting the vehicle to be driven (at a reduced speed) to a service facility for repair.

45. The OBD system is a "device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with [Clean Air Act] regulations" within the meaning of Clean Air Act Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), and also an Emissions-Related Element of Design.

iv. Certified Stock Calibrations

46. OEMs install a suite of pre-set software calibrations for operational parameters (Certified Stock Calibrations); these calibrations control all aspects of motor vehicle and engine operation including combustion, performance, and operation of EGR, aftertreatment systems,

and OBD system functions. The Certified Stock Calibrations for a particular motor vehicle or motor vehicle engine operate together to control the formation and emission of pollutants. OEMs program the vehicle's ECU with Certified Stock Calibrations. Certified Stock Calibrations are an important part of a motor vehicle's overall emissions control strategy, and the OEM's Certified Stock Calibrations enable the vehicles to adhere to all the applicable regulatory requirements.

47. Examples of parameters within Certified Stock Calibrations relevant to this Complaint are:

- a. parameters that affect the operation of engine emissions controls or aftertreatment systems (e.g., the EGR, TWC, TGV, or oxygen sensors);
- b. parameters that affect engine combustion, performance, and operation (e.g., air-fuel ratio, fuel quality, ignition timing, and boost) which are critical elements of the OEM's strategy to control the formation of pollutants in the engine; and
- c. parameters related to OBD system functions such as malfunction thresholds, entry conditions for OBD monitors to enable, and other parameters related to how malfunctions are recorded and reported.

48. Each of the above-listed types of Certified Stock Calibration is an "element of design installed on or in a motor vehicle or motor vehicle engine in compliance with [Clean Air Act] regulations" within the meaning of Clean Air Act Section 203(a)(3)(B), 42 U.S.C.

§ 7522(a)(3)(B), and also an Emissions-Related Element of Design.

F. Aftermarket Products that Bypass, Defeat, or Render Inoperative Emissions-Related Elements of Design

49. Third parties, including Defendant, manufacture, sell, offer for sale, and install products for use with existing motor vehicles that are designed to enhance the vehicle's power, performance, or fuel economy. In some cases, these products achieve their purpose through a design that bypasses, defeats, or renders inoperative OEM-installed Emissions-Related Elements of Design. These products fall into two broad categories: hardware and software.

i. Aftermarket Defeat Products Relevant to this Complaint

a. Aftermarket Hardware Defeat Products

50. Some aftermarket defeat products are designed to physically interfere with, or remove, Emissions-Related Elements of Design through the addition of new or replacement hardware to a motor vehicle or motor vehicle engine. The following types of aftermarket hardware defeat products are relevant to this Complaint:

Exhaust Replacement Pipes. Some aftermarket hardware defeat products change, remove, or replace essential physical elements of the TWC. This often involves removing the motor vehicle's entire exhaust system, in which the aftertreatment systems are installed, and installing a replacement exhaust system that contains no aftertreatment systems or aftertreatment systems that are not as effective as the OEM aftertreatment systems. Examples include "straight pipes" and "catted downpipes." These products are referred to in this Complaint as "Exhaust Replacement Pipes."

TGV Deletes. Some aftermarket hardware defeat products interfere with (including via bypass or removal) elements inside the TGV assembly that regulate air flow when the engine is at idle and/or cold start conditions. These products are referred to in this Complaint as "TGV Deletes."

Air Pump Deletes. Some aftermarket hardware defeat products interfere with (including via bypass or removal) air pumps that inject air into the exhaust system stream of the engine to reduce NMHC and CO emissions. These products are referred to in this Complaint as "Air Pump Deletes."

51. Exhaust Replacement Pipes, TGV Deletes, and Air Pump Deletes bypass, defeat, or render inoperative Emissions-Related Elements of Design and are referred to in this Complaint

as “Hardware Defeat Products.”

b. Aftermarket Software Defeat Products: (a/k/a Tunes)

52. Other aftermarket defeat products consist of calibration(s) and/or software that are “flashed” (i.e., installed) onto a motor vehicle’s ECU in order to alter or overwrite the vehicle’s Certified Stock Calibrations. Such calibration(s) and/or software are referred to as “Tunes.”

53. Tunes modify or replace the following general categories of parameters within Certified Stock Calibrations in ways relevant to this Complaint:

- a. parameters relating to engine emissions controls or aftertreatment systems: the EGR, TWC, TGV, or oxygen sensors, as well as signals or records related to these systems.
- b. parameters related to engine combustion, performance, and operation (e.g., air-fuel ratio, ignition timing, and boost).
- c. parameters related to OBD system functions in order to prevent the generation of diagnostic trouble codes and the malfunction indicator light from illuminating.

54. A single Tune can change or overwrite multiple types of Certified Stock Calibrations. For instance, a Tune that allows for removal of a TWC system functions will typically modify oxygen sensor and OBD system functions so that the TWC system deletion will not be detected.

55. Multiple Tunes are often bundled together and sold as a single product.

56. Tunes can be stored and transmitted in numerous ways, including electronically through e-mail and through electronic storage devices such as USB drives.

57. Tunes are primarily pre-loaded or custom installed into ECU Programmers (“Tuners”), handheld devices that connect to a motor vehicle’s ECU through the vehicle’s OBD port in order to interface with and override OEM installed software calibrations. Examples include Tuners manufactured and sold by Defendant under the Accessport brand.

58. Products that include Tunes that bypass, defeat, or render inoperative Emissions-

Related Elements of Design are referred to in this Complaint as “Defeat Tune Products.”

VI. GENERAL ALLEGATIONS

59. On August 29, 2017, EPA issued a request for information to Defendant under Clean Air Act Section 208(a), 42 U.S.C. § 7542(a), requesting, *inter alia*, the identification of each exhaust system, exhaust system component, and ECU programmer (Tuner) manufactured, sold, or offered for sale by Defendant between January 1, 2015 and August 29, 2017, that allows the customer or end-user to bypass, defeat, or otherwise render inoperative a motor vehicle emission control device or emission related part.

60. In response to EPA’s information request, Defendant provided information about the products it manufactured, sold, offered for sale that enable end-users to bypass, defeat, or otherwise render inoperative, emissions control devices or emissions-related parts equipped on light-duty, gasoline-powered motor vehicles.

61. On September 18, 2018, EPA issued a Notice of Violation to Defendant alleging at least 55,000 violations of Clean Air Act Section 203(a)(3)(B), based upon Defendant’s responses to EPA’s information request. 42 U.S.C. § 7522(a)(3)(B).

62. EPA’s continuing investigation and additional information disclosed by Defendant subsequently identified at least 34,000 additional violations of Clean Air Act Section 203(a)(3)(B). 42 U.S.C. § 7522(a)(3)(B).

63. At all times relevant to this Complaint, Defendant manufactured, sold, and offered for sale Hardware Defeat Products and Defeat Tune Products, intended for use in *motor vehicles* as that term is defined in Clean Air Act Section 216(2), 42 U.S.C. § 7550(2), and the regulations promulgated at 40 C.F.R. § 85.1703.

64. The Exhaust Replacement Pipes that Defendant manufactured or sold are designed to

bypass or remove a motor vehicle's OEM installed emission components such as TWCs and oxygen sensors, or replace the vehicle's TWCs with TWCs that are not as effective as the OEM aftertreatment systems.

65. The TGV Deletes and Air Pump Deletes that Defendant sold are designed to bypass or render inoperative TGV systems and air pumps, which are emissions components installed on a motor vehicle by the OEM.

66. The Defeat Tune Products that Defendant manufactured, sold, offered for sale have the ability to change or overwrite the following types of Certified Stock Calibrations:

- a. Certified Stock Calibrations relating to EGR and aftertreatment systems (e.g., the TWC, TGV or oxygen sensors) as well as signals or records related to these systems.
- b. Certified Stock Calibrations related to engine combustion, performance and operation such as air-fuel ratio, fuel quality, ignition timing, and boost.
- c. Certified Stock Calibrations related to OBD system functions in order to prevent the generation of DTCs, and prevent the MIL from illuminating, and prevent the OBD system from putting the vehicle in "limp mode."

67. At all times relevant to this Complaint, Defendant manufactured, sold, and/or offered for sale the aforementioned Hardware Defeat Products and Defeat Tune Products through: (1) its company-owned retail stores located in Plano, Texas; Fountain Valley, California; and Portland, Oregon; (2) its website; (3) telephone orders; and (4) sales to retailers and distributors that then market the products to consumers.

68. The Hardware Defeat Products and Defeat Tune Products that Defendant manufactured, sold, and/or offered for sale were intended for use with EPA-certified motor vehicles, including BMW, Ford, Mazda, Mitsubishi, Nissan, Porsche, Subaru, and Volkswagen light-duty gasoline-powered motor vehicles.

FIRST CLAIM FOR RELIEF

**Violations of Clean Air Act Section 203(a)(3)(B) for the
Manufacture, Sale, or Offer for Sale of Hardware Defeat Products**

69. Plaintiff incorporates by reference Paragraphs 1-68 of the Complaint.

70. From January 1, 2015, through August 29, 2017, Defendant manufactured, sold, and offered for sale at least 8,000 Exhaust Replacement Pipes.

71. From January 1, 2015, through August 29, 2017, Defendant sold and offered for sale at least 30 TGV Deletes and Air Pump Deletes.

72. The Exhaust Replacement Pipes that Defendant manufactured, sold, or offered for sale are, and at all relevant times were, intended for use with EPA-certified motor vehicles, including Mitsubishi, Nissan, and Subaru light-duty gasoline-powered vehicles.

73. The TGV Deletes and Air Pump Deletes that Defendant sold or offered for sale are, and at all relevant times were, intended for use with EPA-certified motor vehicles, including Subaru light-duty gasoline-powered vehicles.

74. A principal effect of each Exhaust Replacement Pipe, TGV Deletes, and Air Pump Deletes that Defendant manufactured, sold, or offered for sale is, and at all relevant times was, to bypass, defeat, or render inoperative a motor vehicle's three-way catalytic converter, oxygen sensor, TGV, and/or air pump.

75. Defendant knew or should have known that each Exhaust Replacement Pipe, TGV Delete, and Air Pump Delete it manufactured, sold, or offered for sale was being offered for sale or installed for such use or put to such use.

76. Pursuant to Clean Air Act Section 205(a), 42 U.S.C. § 7524(a), each unit of each Exhaust Replacement Pipe, TGV Delete, and Air Pump Delete that Defendant manufactured, sold, or offered for sale constitutes a separate violation of Clean Air Act Section 203(a)(3)(B), 42 U.S.C.

§ 7522(a)(3)(B).

77. As a result of said violations, Defendant is liable to the United States for civil penalties of up to \$3,750 for each violation of Section 203(a)(3)(B) occurring on or after January 13, 2009, through November 2, 2015, and civil penalties of up to \$5,761 for each violation of Section 203(a)(3)(B) occurring after November 2, 2015, and assessed on or after December 27, 2023, in accordance with Clean Air Act Section 204(a), and 205(a), 42 U.S.C. §§ 7523(a), 7524(a), as amended. 40 C.F.R. § 19.4.

SECOND CLAIM FOR RELIEF

Violations of Clean Air Act Section 203(a)(3)(B) for the Manufacture, Sale, or Offer for Sale of Defeat Tune Products that Bypass, Defeat or Render Inoperative Emissions-Related Elements of Design

78. Plaintiff incorporates by reference Paragraphs 1-68 of the Complaint.

79. From January 1, 2015, through August 29, 2017, Defendant manufactured, sold, or offered for sale at least 81,000 Defeat Tune Products intended for use with EPA-certified motor vehicles, including BMW, Ford, Mazda, Mitsubishi, Nissan, Porsche, Subaru, and Volkswagen light-duty gasoline-powered motor vehicles and motor vehicle engines.

80. A principal effect of each Defeat Tune Product that Defendant manufactured, sold, or offered for sale is, and at all relevant times was, to bypass, defeat, or render inoperative Emissions-Related Elements of Design by modifying or overwriting a motor vehicle's Certified Stock Calibrations relating to the following:

- a. Engine emissions controls and aftertreatment systems (e.g., the EGR, TWC, TGV, or oxygen sensors);
- b. engine combustion, performance, and operation (e.g., air-fuel ratio, ignition timing, and boost); and/or
- c. OBD system functions.

81. Defendant knew or should have known that each Defeat Tune Product it manufactured, sold, or offered for sale was being offered for sale or installed for such use or put to such use.

82. Pursuant to Clean Air Act Section 205(a), 42 U.S.C. § 7524(a), each unit of each Defeat Tune Product that Defendant manufactured, sold, or offered for sale constitutes a separate violation of Clean Air Act Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).

83. As a result of said violations, Defendant is liable to the United States for injunctive relief and civil penalties of up to \$3,750 for each violation of Section 203(a)(3)(B) occurring on or after January 13, 2009, through November 2, 2015, and injunctive relief and civil penalties of up to \$5,761 for each violation of Section 203(a)(3)(B) occurring after November 2, 2015, and assessed on or after December 27, 2023, in accordance with Clean Air Act Sections 204(a) and 205(a), 42 U.S.C. §§ 7523(a), 7524(a), as amended. 40 C.F.R. § 19.4.

RELIEF REQUESTED

WHEREFORE, the United States respectfully requests that this Court:

1. Enter judgment in favor of the United States and against Defendant, Cobb Tuning.
2. Assess civil penalties against Defendant for each violation of Clean Air Act Section 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), in the amount of up to \$3,750 for each violation occurring after August 15, 2013 through November 2, 2015, and up to \$5,761 for each violation occurring after November 2, 2015;
3. Permanently enjoin Defendant from manufacturing, offering to sell or selling products intended for use with a motor vehicle or motor vehicle engine where a principal effect of such product is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with Title II of the Clean Air Act;
4. Order Defendant to take other appropriate actions to remedy, mitigate, and offset the

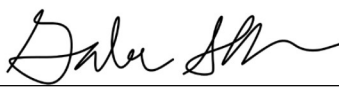
harm caused by its Clean Air Act violations;

5. Award the United States its costs and expenses incurred in this action; and
6. Grant the United States such other relief as the Court may deem just and proper.

Respectfully submitted,

TODD KIM
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September 16, 2024
Date


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