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SUPERIOR COURT OF WASHINGTON
FOR CLARK COUNTY

RANDALL CASHATT, BRANDON KENDALL,
DAVID HODEL, CHAD PRENTICE, BETH
JOSWICK, individually and on behalf of all others
similarly situated,
Plaintiffs,
vs.
WASHINGTON STATE PATROL and Steven
Smeland in his personal and official capacity
Defendants

Case No.:
COMPLAINT FOR DAMAGES
JURY TRIAL DEMANDED
CLAIM IS NOT SUBJECT TO
ARBITRATION
PUNITIVE DAMAGES DEMANDED

The allegations herein are based on personal knowledge as to Plaintiffs' own conduct and are made on information and belief as to all other matters based on an investigation by counsel. Counsel's investigation includes an analysis of publicly available information, including consumer complaints to the National Highway Transportation Safety Administration, Technical Service Bulletins issued by Defendant, Washington State Labor and Industries Report which imposed sanctions against the Washington State Patrol in August of 2018, and additional analysis. Attorney for Plaintiffs is in possession of the full report of Washington

1 State Department of Labor and Industries report of August 30, 2018, (322 pages), where the
2 Washington State Patrol was initially cited for its intentional use of Home Carbon Monoxide
3 Detectors in their Ford Explorer Patrol Vehicles when they had been notified by the
4 manufacturer that the monitors that the State Patrol was purchasing was not designed for
5 vehicle use and could result in lawsuits. Despite the manufacturer **Home Safe** refusing to sell
6 the Home Carbon Monoxide detectors to the Washington State Patrol, Fleet management
7 **Steven Smeland** found another out of state vendor to fill the orders (**Kidde**) and continued to
8 use and install the inadequate monitors knowing that Plaintiffs would continue to be exposed
9 to carbon monoxide and intentionally placing their employees and sworn officers in a position
10 where they would be poisoned by carbon monoxide intrusion into their vehicles due to the
11 design flaw which Defendants knew to have existed in Ford Explorers made between 2011-
12 2018.

13 Plaintiffs believe that a reasonable opportunity for discovery will provide further support for
14 the claims alleged herein.

15 I. INTRODUCTION

16 1. Plaintiffs bring this class action against their Employer, Washington State Patrol
17 (“WSP”), and Fleet supervisor Steven Smeland in his personal and official capacity for
18 Plaintiffs’ individually and on proposed Class which would be on behalf of all Troopers,
19 employees and operators of the Police Ford Explorers in Washington State.

20 2. The affected vehicles are 2011-2017 model year Ford Explorers.

1 3. The Class would consist of all Washington State Patrol Troopers and WSP Employees
2 who were required to operate or ride in the Ford Explorer Interceptor SUV's between 2011
3 and today.

4 4. The Washington State Patrol has known that the Ford Explorers have had serious
5 defects which allow carbon monoxide to intrude into the passenger compartment of their
6 patrol vehicles and failed to remove the vehicles from use; intentionally utilized carbon
7 monoxide detectors which were not designed for patrol vehicles, even after the manufacturer
8 of the home carbon monoxide detectors notified the state patrol that they were ineffective in
9 vehicles and should not be used. This hazardous defect which was known to the Defendants
10 has resulted in numerous complaints to the National Highway Transportation Safety
11 Administration ("NHTSA") and the opening of a NHTSA investigation into the Ford
12 Explorers. Ford has recently issued an emission recall notice (19E02) for all Ford Interceptor
13 SUV's built from 2011 to 2018. Defendants knew the intrusion of carbon monoxide was
14 occurring in the FORD SUV's and that their intentional use of a carbon monoxide detector
15 which was not suitable for use in the patrol vehicles would and did in fact cause injury to the
16 Plaintiffs and potential Class members.

17 5. The defect is not new to Ford or the Washington State Patrol. As early as 2012,
18 FORD had issued Technical Service Bulletins ("TSBs") to its exclusive network of dealers,
19 recognizing the presence of exhaust odors and fumes in the passenger compartment of certain
20 Ford Explorers. Further, in late 2016, Ford settled a class action litigation that alleged
21 that model year 2011-2015 Ford Explorers similarly permitted exhaust and other gases to
22 enter the passenger compartment. Notices of the problem were sent to Defendants, who

1 ignored the dangers and intentionally chose to allow their members and employees to operate
2 the motor vehicles with full knowledge that the poisonous gas would in fact injure or kill
3 those riding or operating the FORD Explorers. Defendants were aware that police officers in
4 California and Texas had filed actions against FORD and that several police agencies across
5 the country had removed the defective FORD SUV's from use due to the absolute knowledge
6 that carbon monoxide was being sucked into the passenger compartments via the HVAC vents
7 adjacent to the manifolds.

8 6. The defect exposes on a daily basis Plaintiffs and potential Class members to noxious
9 gases, including carbon monoxide, when the vehicles are in use and creates a clear safety
10 hazard which causes injury and did cause injury.

11 7. Defendants were aware and intentionally disregarded NHTSA's investigation summary
12 reports:

13 ... three crash events and 25 injury incidents citing a total of 41 injuries. The alleged
14 injuries, as affirmatively indicated on the [Vehicle Owner Questionnaire] reports, range
15 from unspecified to loss of consciousness, with the majority indicating nausea, headaches, or
16 light headedness. One police incident alleged a crash with related injuries, and a second police
17 incident reported a physiological injury allegedly from carbon monoxide (CO) exposure.

18 Another reported police incident resulted in a rollover crash event with injuries.

19 8. Despite the TSBs, the class action settlement and the complaints to NHTSA and the
20 NHTSA investigation into the FORD Explorers, as well as being told that the carbon
21 monoxide detectors placed in the vehicles would not measure dangerous levels of carbon
22 monoxide, WSP intentionally failed to take action to remove the vehicles from use and

1 instead continued to purchase carbon monoxide detectors which were not meant to be used in
2 the vehicles. Defendant knowingly, intentionally, actively, and affirmatively omitted and/or
3 concealed the existence of the defect, intentionally placed inadequate CO detectors in the
4 FORD SUV's and then directed its members and employees to continue to operate the
5 defective fleet vehicles with the defective monitors knowing it would physically harm the
6 Plaintiffs and proposed class members. Further Defendant deliberately and intentionally
7 continued to use faulty carbon monoxide detectors in all of its fleet vehicles on and after being
8 advised by the manufacturer that the detectors being used would not work to determine if
9 carbon monoxide was present in the vehicles and that the manufacturer would not sell them to
10 the WSP because they did not want to be sued themselves. This intentional act of harming its
11 employees is an exemption contemplated by RCW 51.24.

12
13 9. As a direct result of Defendants' intentional conduct, Plaintiffs and potential Class
14 members have been harmed and are entitled to actual damages, including damages for
15 diagnosis, medical care, medical expenses, lost income, future medical treatment,
16 disfigurement, loss of consortium ; pain and suffering; costs of long term medical testing and
17 observation of chronic and acute carbon monoxide exposure, compensatory, statutory and
18 punitive damages, attorneys' fees, costs, restitution, and injunctive and declaratory relief.
19 Plaintiffs specifically plead for PUNITIVE DAMAGES.

20 **II. JURISDICTION AND VENUE**

21 10. This Court has jurisdiction over this action as the Washington State Patrol, is a state
22 agency; Steven Smeland is and/or was an employee of Defendant Washington State Patrol and

1 his activities were taken in official performance of his assigned duties. Plaintiffs are all
2 Washington State Patrol Troopers and potential class members are persons who are employed
3 or rode in the defective FORD SUV's owned and operated by the Washington State Patrol.
4 Troopers operate in every county in the state and are required as part of their duties to patrol
5 every county in this state. Because a substantial part of the events or omissions giving rise to
6 Plaintiffs' claims occurred in this State, and because Defendant is a State Agency or potential
7 State Actor, venue and jurisdiction is proper in Clark County Superior Court.

8 III. PARTIES

9 **11. Plaintiffs are all first responders, cadets, Troopers, or employees who operated**
10 **or rode in the defective FORD Explorers. Plaintiffs are also Troopers who were**
11 **issued the Ford Explorer Interceptors as their regular patrol vehicles.** Potential class
12 members are all first responders, employees, cadets, and passengers who are/were required to
13 operate or ride in the named Ford Explorer vehicles as part of their work assignments for the
14 years 2011-2018 in Washington State.

15 12. Soon after receiving their assigned vehicles, Plaintiffs detected exhaust fumes within
16 the passenger compartment while driving. Plaintiffs thereafter presented their patrol vehicles
17 to authorized Ford dealerships in order to address the problem. The dealers were without
18 sufficient information from FORD to repair the vehicles and were unable to eradicate the
19 carbon monoxide intrusion into the passenger compartments of the Ford Vehicles.

20 13. Plaintiffs were advised by the Defendant that the vehicles were safe to drive and that
21 there were no problems which would cause them any hazard, injury or harm. Plaintiffs
22 continued to detect exhaust fumes within the passenger compartment of their vehicles while

1 driving, and Plaintiffs have suffered headaches, nausea, foggy thinking, and flu like
2 symptoms. Some Plaintiffs including Trooper Cashatt, have suffered permanent neurological
3 damage which has prevented him from continuing his job as a Washington State Patrol
4 Trooper. Some Plaintiffs have permanent physical impairments as a result of the intentional
5 tortious actions of the Defendants. The exposure to chronic carbon monoxide leaks existed
6 from the time that the vehicles were put into use until present day. Defendant Washington
7 State Patrol, Steven Smeland misrepresented the seriousness of the design defect they knew
8 existed and assured Plaintiffs that they were in no danger of exposure to carbon monoxide.
9 Defendants intentionally placed Plaintiffs in a situation where they knew they would be
10 injured with callous disregard to human life.

11 14. Defendant Washington State Patrol is a state agency of Washington State as such
12 proper notice was provided pursuant to RCW 4.96.

13 IV. FACTUAL ALLEGATIONS

14 15. The Defective Vehicles are FORD Explorer SUV's including the police
16 Interceptor – model year 2011-2018

17 16. The model year 2011-2018 Ford Explorers were put into use as patrol vehicles for
18 members of the Washington State Patrol and were used as daily patrol vehicles for Plaintiffs
19 and potential class members.

20 17. According to the Centers for Disease Control and Prevention, **carbon monoxide (CO)**
21 **is “an odorless, colorless gas that can kill you.”** Washington State Patrol was aware that
22 carbon monoxide is a poisonous gas and the intrusion of poisonous gas into the passenger

1 compartment of their fleet vehicles would cause serious physical injury and/or death to
2 occupants.

3 **18. The most common symptoms of CO poisoning are headache, dizziness,**
4 **weakness, upset stomach, vomiting, chest pain, and confusion.” Chronic exposure to**
5 **carbon monoxide can cause mood changes, blurry vision, ringing in the ears, personality**
6 **changes, sleep disturbances, loss of hearing, balance issues, decreased motor strength,**
7 **hypersensitivity to chemicals, slowed motor skills and reaction time, moodiness, anger,**
8 **seizures, heart palpitations, numbness, tingling, depression and anxiety.**

9 19. Upon information and belief, aside from carbon monoxide, the exhaust fumes
10 present in the passenger compartment of the Ford Explorers, as a result of the Exhaust Fume
11 Defect, may contain sulfur dioxide, nitrogen oxides, formaldehyde, benzene and soot, which
12 also present safety hazards for Plaintiffs and the potential class.

13 20. As a result of Defendant’s intentional acts against their employees, including its
14 failure to disclose the carbon monoxide detectors placed in their patrol vehicles were not
15 designed and would not work to identify the presence of deadly gases, Defendants have
16 intentionally caused Plaintiffs and members of the potential Class to suffer actual
17 damages, including but not limited to injury, sickness and neurological damage by their
18 exposure to exhaust fumes, including carbon monoxide and permanent disability.

19 21. Defendant WSP and Steven Smeland have known since at least 2012 of the presence of
20 exhaust fumes in the passenger compartment of certain Ford Explorer models including the
21 Ford Explorer SUV Interceptors used and operated by State Patrol members and employees.

1 22. Defendants fraudulently and intentionally concealed from Plaintiffs and members of the
2 proposed Class the defect in the Class Vehicles, assured them that the vehicles were safe to
3 operate and ride in even though Defendants knew of the design and/or manufacturing defects
4 in those vehicles and that the carbon monoxide detectors placed in those vehicles would not in
5 fact show the presence of carbon monoxide. This in fact led to Plaintiffs and potential class
6 members to being continuously exposed to the deadly gases as they operated or rode in the
7 defective vehicles. This caused actual physical harm to Plaintiffs and was an egregious
8 intentional act on the part of Defendants. Washington State Patrol Troopers and employees
9 who have been driving the Ford Explorer Interceptor SUV's have been experiencing signs and
10 symptoms of carbon monoxide exposure. Exhaust issues were documented by the Defendants,
11 including accumulating parts returned to them from authorized dealers which included
12 cracked manifolds, warped manifolds, and other parts, where Defendants stored the parts in
13 boxes and crates at their headquarters to document the CO intrusion through vents which pull
14 in air adjacent to the manifold into the HVAC system and therefore intrude into the passenger
15 compartment of the vehicles being operated by Plaintiffs.

16 See Insert Below. The cracks which resulted in the leak of CO gas into the passenger
17 compartments through the HVAC system had nothing to do with any after market changes
18 made by police agencies and vehicles inspected by Defendants showed that the actual cause of
19 CO leaks were cracks in the manifolds and warped Y exhaust pipes.

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COMPLAINT - 10

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Note: Different Unit from Different Vehicle than photo above.

Despite Defendants (and FORD), knowing that the CO leaks were not coming from any after market changes to vehicles, Defendants did not return the vehicles to FORD, they did not remove the Fleet vehicles from the road, and they ordered Plaintiffs and the proposed class to continue to drive and/or ride in the defective vehicles with inadequate home CO detectors when they were told they would not and could not work in the SUV's. This forced Plaintiffs to have continued chronic exposure to CO gas and suffer physical injury.

1 This exposure resulted in Plaintiffs all requiring medical care for their exposure to carbon
2 monoxide and in some cases, the continuing exposure to Carbon Monoxide caused permanent
3 disabling conditions from the repeated, chronic exposure to carbon monoxide.

4 In the summer of 2017, Defendant WSP ordered “home” carbon monoxide detectors” to
5 be installed in the cabs of the Ford SUV Fleet vehicles. These devices were inappropriate for
6 evaluating workplace exposure. Plaintiffs and potential class members relied on the
7 inadequate home CO alarms to gauge their exposure. Over the course of the following year,
8 the alarms rarely activated as they were not designed to detect levels below 70 parts per
9 million and even then may not alarm for 4 hours, thus, giving Plaintiffs and other class
10 members the false sense of security while their chronic exposure to carbon monoxide and
11 other dangerous and deadly gases continued¹. In August of 2017, Home Safe refused to
12 continue to sell the inadequate carbon monoxide detectors to WSP property management
13 division, where their point of contact was Steven Smeland, when they learned that they were
14 being installed in vehicles, citing the fear of potential lawsuits. Defendants, rather than
15 stopping using the inadequate home CO detectors, and heeding the very clear warning by
16 Home Safe, found Kidde, a manufacturer in California who agreed to sell the inadequate
17 Home CO monitors to Defendants and continued to place them in Plaintiff’s vehicles with the
18 full knowledge this decision would in fact and did in fact cause physical harm to Plaintiffs and
19 the potential class. At the time of the Department of Labor and Industries Inspection there
20 had been approximately 50 Troopers with reported signs and symptoms of exposure.

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22 ¹ Washington State Department of Labor and Industries Report August 2018

1 75 vehicles had been found to have CO leaks which intruded into the passenger compartment
2 as a result of faulty exhaust systems which had cracked and allowed CO to escape similar to
3 what is pictured above.

4 Despite this knowledge, and the knowledge that the FORD Explorer Interceptors had
5 this design defect, and that the problem had not been fixed and could not be fixed, Defendant
6 continued to order and place into operation 55 new Ford Interceptor SUV's with full
7 knowledge that the exhaust system had not changed and that the Plaintiffs and potential class
8 members would be harmed by the certain exposure.

9 In March of 2018, Department of Labor and Industries forced defendants to install
10 certified personal monitoring devices for CO in each of their fleet FORD SUV's. at least 50
11 of the vehicles alarmed at the 35 PPM level and all of them were inspected and found to have
12 the same exhaust leaks which caused CO to intrude into the passenger compartment which
13 Defendants had full knowledge of well in advance of the placement of the new detectors as
14 evidenced by their collection of the defective parts stored in Fleet headquarters and supervised
15 by Steven Smeland. Defendants knew the cracks in the manifolds had nothing to do with any
16 after market additions or changes. Defendants still refused to take the vehicles out of use,
17 and refused to replace the vehicles even though Plaintiffs had subsequently filed grievances
18 requesting to be issued vehicles which would not kill them. Defendants denied those
19 grievances filed by Plaintiffs and continued to force Plaintiffs and the proposed class members
20 to operate the defective FORD Explorer SUV's. Plaintiffs and Proposed Class members were
21 told that there were no replacement vehicles and Chevrolet Tahoes were "*only for Troopers*
22 *above 6' tall*". At least 25 medical claims of CO exposure have been made and documented

1 by Plaintiffs and potential class members as a result of the Defendants intentional act to place
2 them in serious risk and absolute risk of serious physical injury and or death. Defendant WSP
3 placed into use and continues to use the defective FORD SUV's to the tune of 650 of these
4 defective vehicles. This intentional decision was made despite knowing that replacement of
5 the exhaust system and manifolds are only a temporary band-aid as the same defective
6 incompatible metal parts are being used to replace the old defective parts and over time, the
7 warping and catastrophic failure will occur and has occurred repeatedly in these vehicles.
8 This places Plaintiffs and potential class members in daily danger of being poisoned as the
9 vehicles cannot be fixed and the warping of exhaust manifolds will continue to release CO
10 gas, which in turn will intrude into the passenger compartment of these vehicles through the
11 ill placed HVAC intake system. According to Washington State Department of Labor and
12 Industries in their report sanctioning the WSP in August of 2018, "Instances or number of
13 times the hazard identified in the workplace: 629, plus 55 new Ford Interceptors are on order.
14 At this writing, 75 vehicles have been affected and 50 employees have reported exposures.
15 *All of the vehicles are expected to cause exposure to employees.*"²

16 VI. CLASS ACTION ALLEGATIONS

17 23. Plaintiffs bring this action pursuant to CR 23.
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22 ² WA Dept. Labor and Industries Report page 21
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1 Washington State Class: All persons who are employees or Troopers of the Washington
2 State Patrol who drove or rode in the defective vehicles which were part of the Defendant's
3 fleet. Classification as a class is appropriate because

4 (1) the class is so numerous that joinder of all members is impracticable; (2) there are
5 questions of law or fact common to the class; (3) the claims or defenses of the representative
6 parties are typical of the claims or defenses of the class; and (4) the representative parties will
7 fairly and adequately protect the interests of the class.

8 (b) Class Actions Maintainable. An action may be maintained as a class action if the
9 prerequisites of section (a) are satisfied, and in addition:

10 (1) The prosecution of separate actions by or against individual members of the class would
11 create a risk of:

12 (A) inconsistent or varying adjudications with respect to individual members of the
13 class which would establish incompatible standards of conduct for the party opposing the
14 class, or

15 (B) adjudications with respect to individual members of the class which would as a
16 practical matter be dispositive of the interests of the other members not parties to the
17 adjudications or substantially impair or impede their ability to protect their interest; or

18 (2) The party opposing the class has acted or refused to act on grounds generally
19 applicable to the class, thereby making appropriate final injunctive relief or corresponding
20 declaratory relief with respect to the class as a whole;

21 24. Excluded from the Class are Defendant WSP and Fleet manager Steven Smeland
22 who continued to order the inadequate CO detectors for Defendant WSP after being informed

1 they would not work in the patrol vehicles operated and rode in by Plaintiffs and potential
2 class members. On August 3, 2017, Steven Smeland notified then Acting Chief Barry, that
3 Home Safe would not sell them the hard wired carbon monoxide detectors due to potential
4 lawsuits because they were not designed to be used in vehicles. Steven Smeland notified
5 Acting Chief Barry on August 9, 2017 that he had found another vendor from California that
6 was willing to sell Defendants the inadequate detectors which would intentionally cause
7 physical harm to Plaintiffs and potential class members.³

8 25. Common questions of law and fact exist as to all members of the Proposed Class and
9 predominate over any issues solely affecting individual members of the Proposed Class. The
10 common and predominating questions of law and fact include, but are not limited to:

- 11 • Whether Defendants knew that defect in the FORD SUV's present a safety hazard and
12 that installing home carbon monoxide detectors in those vehicles was ineffective and their
13 continued use was a deliberate and intentional act on the part of the Defendant which caused
14 actual intentional harm to the Plaintiffs and potential class members;
- 15 • Whether Defendant had a duty to disclose to Plaintiffs and potential class members
16 that the carbon monoxide detectors they had been using in their patrol cars were ineffective

19 ³ **“The potentially fatal problems have been known by the Washington State Patrol and**
20 **Ford Motor Company have not been addressed with the seriousness they deserve. The**
21 **alarms installed by WSP fleet section are inadequate. The Washington State Patrol is**
22 **gambling with employee’s lives to save a few dollars.”** Labor and Industries report page 224.

1 and that Plaintiffs were being exposed to chronic release of carbon monoxide into the
2 passenger compartment of their patrol vehicles;⁴

- 3 • Whether Defendant WSP failed to properly supervise personnel responsible for the
4 purchase and installation of the inferior carbon monoxide detectors;
- 5 • Whether Defendant intentionally and knowingly concealed, suppressed and/or
6 omitted material facts concerning the exhaust fume defect, with knowledge that the presence
7 of such poisonous gas was in fact harming the Plaintiffs and potential class members;

8 Whether the intentional acts of the Defendant are an exception as proscribed in RCW
9 51.24.020 (The employee must demonstrate that the employer had actual knowledge that
10 injury would occur and the employer willfully disregarded this knowledge. *Birkliid v. Boeing*
11 *Co.*, 127 Wn.2d 853, 865–66, 904 P.2d 278 (1995)).

12 26. Plaintiffs’ claims are typical of the claims of the Proposed Class that Plaintiffs seek to
13 represent. As alleged herein, Plaintiffs and the Proposed Class sustained damages arising out
14 of the same illegal actions and conduct by Defendant.

15 27. Plaintiffs are willing and prepared to serve the Proposed Class in a representative
16 capacity with all of the obligations and duties material thereto. Plaintiffs will fairly and
17 adequately protect the interests of the Proposed Class and has no interests adverse to or in
18 conflict with the interests of the other members of the Proposed Class.

19 28. Plaintiffs’ interests are co-extensive with and are not antagonistic to those of absent
20 members within the Proposed Class. Plaintiffs will undertake to represent and protect the
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22 ⁴ Safehome products.com notice provision, pg 144 of Labor and Industries Report

1 interests of absent members within the Proposed Class and will vigorously prosecute this
2 action.

3 29. Plaintiffs have engaged the services of the undersigned counsel., will adequately
4 prosecute this action, and will assert and protect the rights of, and otherwise represent,
5 Plaintiffs and absent members of the Class

6 30. A class action is superior to all other available methods for the fair and efficient
7 adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the
8 management of this litigation that would preclude its maintenance as a class action.

9 31. Class action status is warranted under CR 23 because questions of law or fact common
10 to the members of the Proposed Class predominate over any questions affecting only
11 individual members, and a class action is superior to other available methods for the fair and
12 efficient adjudication of this controversy.

13 32. The interest of members within the Proposed Class in individually controlling the
14 prosecution of separate actions is theoretical and not practical. The Proposed Class have a
15 high degree of similarity and are cohesive, and Plaintiffs anticipate no difficulty in the
16 management of this matter as a class action.

17 33. The nature of notice to the Proposed Class is contemplated to be by direct mail upon
18 certification of the Proposed Class or, if such notice is not practicable, by the best notice
19 practicable under the circumstance including, inter alia, email, publication in major
20 newspapers and/or on the internet.

1 VII. CLAIMS FOR RELIEF

2 **COUNT I FRAUD**

3 **Intentional Misrepresentation**

4 **Fraudulent Omissions**

5 **Fraudulent Inducement**

6 **On Behalf of the Proposed Class or in the alternative, on behalf of Named Plaintiffs**

7 34. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth
8 herein.

9 35. Plaintiffs bring this count on behalf of themselves and the members of the potential
10 Class members

11 36. Plaintiffs allege Defendant Steven Smeland, acting in his official capacity, under color
12 of state law, conspired and participated in concert with Defendants and state officials to
13 commit fraud against the Plaintiffs and proposed class members by intentionally and
14 knowingly concealing, suppressing and/or omitting material facts including the standard,
15 quality and purpose of the carbon monoxide detectors placed in their Ford Explorer SUV's
16 which Defendants knew would expose drivers and occupants to noxious gases, fumes and
17 odors and/or an associated safety hazard from same, with the intent that Plaintiffs and
18 members of the proposed Classe relied on Defendants' material false representations that the
19 FORD SUV Explorers were safe to drive; that the carbon monoxide detectors placed in the
20 patrol vehicles were safe to operate and that Plaintiffs and proposed class members should
21 continue to operate or ride in the Ford Explorer vehicles. Steven Smeland and other agents of
22 the Washington State Patrol administration represented false material facts on the safety of the

1 FORD SUV; that the carbon monoxide detectors which had been installed would alarm if
2 poisonous CO gas was present in their patrol vehicles, when in fact Steven Smeland and
3 Defendants knew and had been told by the manufacturer that the carbon monoxide detectors
4 would not alarm or indicate the presence of CO levels which exceeded OSHA standards. As
5 a direct result of Defendant's conduct, Plaintiffs and members of the potential class relied on
6 this information, continued to drive the defective FORD Explorer SUV's, continued to be
7 chronically and acutely exposed to CO gas and have suffered actual damages in an amount to
8 be determined at trial. The actions are so egregious that punitive damages should be awarded.

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10 37. Defendant knew that the FORD Explorer SUV's contained Exhaust Fume Defects,
11 concealed the fact that they had improperly installed the wrong carbon monoxide detectors
12 and even knowing that carbon monoxide had intruded into the FORD SUV's, and that police
13 officers across the country were being physically injured by the intrusion of CO into the
14 passenger compartments, and knowing that their employees and Troopers would in fact be
15 injured, the continued to install and utilize the inadequate CO detectors which they knew
16 would not alarm and CO which then intruded the passenger compartment would cause harm
17 to the Plaintiffs and proposed class members.

18 38. The fact that the Exhaust Fume Defect exposes drivers and occupants to dangerous
19 gases including carbon monoxide is material because Plaintiffs and members of the Proposed
20 Class had a reasonable expectation that the vehicles would not expose them and other vehicle
21 occupants to such a safety hazard when their employer told them that they had no reason to
22 worry and intentionally gave their employees and members a false sense of security in

1 operating the unsafe FORD SUV's equipped with CO monitors that would not alarm or detect
2 the actual CO exposure which Defendants knew of and had proof was occurring on a wide
3 scale.

4 39. Plaintiffs and members of the Class would not have operated the FORD SUV's but for
5 Defendant's intentional omissions and intentional concealment of material facts regarding the
6 nature and quality of the carbon monoxide detectors the Defendants intentionally placed in the
7 vehicles knowing that the Plaintiffs and potential class members would be harmed and would
8 be exposed to carbon monoxide intrusion into their FORD SUV's

9 40. Defendant acted with malice, oppression and fraud.

10 41. Plaintiffs and members of the Proposed Class reasonably relied upon Defendant's
11 knowing intentional misrepresentations, concealment and omissions. As a direct and
12 proximate result of Defendant's intentional omissions and active concealment of material
13 facts regarding the Exhaust Fume Defect, inadequate CO Monitors, and associated safety
14 hazard, Plaintiffs and members of the proposed class have suffered actual damages in an
15 amount to be determined at trial.

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17 **COUNT II Intentional Infliction of Emotional Distress**

18 **On behalf of the Class or, alternatively, on behalf of the Named Plaintiffs**

19 42. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth
20 herein.

21 43. Plaintiffs bring this count on behalf of themselves and the members of the proposed
22 Class.

1 44. Defendant owed a duty to disclose the Exhaust Fume Defect and its corresponding
2 safety hazard to Plaintiffs and members of the Proposed Class because Defendants possessed
3 superior and exclusive knowledge regarding the defect, the inadequate CO detectors and the
4 certainty that harm would come to the Plaintiffs and proposed class.

5 45. The intentional actions of the Defendants to lie to the Plaintiffs and tell them that the
6 vehicles were safe; that there was no danger to the Plaintiffs and proposed class in operating
7 the unsafe, defective FORD Explorer SUV's and that they had taken the precaution of placing
8 working, effective CO monitors in their patrol vehicles was extreme and outrageous conduct
9 which caused intentional infliction of emotional harm to the Plaintiffs and the proposed class.
10 Upon learning of the betrayal of the intentional misrepresentations by their agency and the
11 continued exposure to CO and its resulting physical harm, Plaintiffs suffered and continue to
12 suffer extreme emotional distress by the deliberate betrayal of their employer. The conduct of
13 defendants conduct was so extreme, to allow the Plaintiffs, members of the Washington State
14 Patrol to be poisoned by their patrol vehicles goes beyond all possible bounds of decency and
15 is utterly intolerable in a civilized community.

16 46. As a direct and proximate result of Defendant's intentional misrepresentations and
17 omissions of material facts regarding the standard, quality or grade of the CO detectors it had
18 placed in their patrol vehicles, which they knew would not alarm or warn the Plaintiffs they
19 were being poisoned, despite Defendants' full knowledge of the Exhaust Fume Defect,
20 Plaintiffs and members of the Proposed Class have suffered an ascertainable loss and actual
21 damages in an amount to be determined at trial.

1 **COUNT III**

2 **TOXIC TORT**

3 **(On behalf of the Class or, alternatively, on behalf of the named Plaintiffs)**

4 47. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth
5 herein.

6 48. Plaintiffs bring this count on behalf of themselves and the Proposed Class.

7 49. Defendant told Plaintiffs that the defective FORD SUV's were safe vehicles and directed
8 Plaintiffs and the Proposed Class to operate and ride in them.

9 50. Defendants knew that the FORD Explorer SUV's were inherently defective and were
10 not safe to drive or ride in, at least absent a proper working CO monitor which would alert
11 the occupant to the presence of deadly CO gas;

12 51. Defendants knew the CO gas is deadly; that the Plaintiffs and Proposed Class would be
13 exposed to the deadly gas and have no warning due to the inadequate CO detectors that
14 Defendants intentionally placed in the Plaintiffs' vehicles which resulted in Plaintiffs and the
15 Proposed Class actually being exposed to CO gas and the CO gas caused actual injury to
16 Plaintiffs and the Proposed Class.⁵

17 52. As a direct and proximate result of Defendants' intentional acts, Plaintiffs and members
18 of the Proposed Class have been damaged in an amount to be determined at trial.

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⁵ Carbon Monoxide Poisoning Syndrome (Ex A)

1 **COUNT IV**

2 **Intentional Tort – Assault; Deliberate Indifference**

3 **Intentional Statutory Violations under**

4 **WAC 296-841-2005 (1)**

5 **WAC 296-901-14016 (1)**

6 **WAC 296-802-30005**

7 **(On behalf of the Class or, alternatively, on behalf of the named Plaintiffs)**

8 53. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth
9 herein.

10 54. Plaintiffs bring this count on behalf of themselves and the Proposed Class.

11 55. In February of 2018, Trooper Randall Cashatt, one of the named Plaintiffs in this case
12 filed a formal complaint with Washington State Department of Labor and Industries regarding
13 his repeated exposure to carbon monoxide (CO) gas in the workplace which had caused him
14 permanent and disabling injuries.. On August 30, 2018, The Washington State Patrol was
15 found to have violated WAC 296-841-2005(1) when the Defendant WSP failed to conduct an
16 exposure evaluation to determine whether employees were or could be exposed to an airborne
17 contaminant above the permissible exposure limit (PEL) listed in Table 3: Washington State
18 has three PEL levels for CO

- 19 1. 35 ppm, 8 hour time weighted average (TWA)
20 2. 200 ppm, 5 minute time weighted short term exposure limit (STEL)
21 3. 1500 ppm, Ceiling Limit (an instantaneous limit)

1 56. Department of Labor and Industries recorded that exposure to carbon monoxide
2 impedes the body’s ability to carry oxygen to body tissues and vital organs with symptoms
3 ranging from headache, nausea, rapid breathing, tachycardia, weakness, exhaustion, dizziness,
4 confusion, anxiety, depression, tremors, heart palpitations, mood swings, personality changes
5 irreversible neurological defects (brain damage) to seizures and death.⁶ The Defendants
6 committed assault upon the Plaintiffs and the Proposed Class when they intentionally and
7 deliberately exposed Plaintiffs and the Proposed Class to CO exposure for extended periods of
8 time, in some cases, years, and failed to install proper CO detectors in the vehicles they
9 ordered the Plaintiffs to drive or ride in. Defendants knew that the CO monitors that they had
10 installed in the vehicles would not, and could not measure CO exposure, or CO intrusion into
11 the defective FORD Explorer SUV’s and demanded that the Plaintiffs and proposed class
12 members operate the vehicles. In some cases, Defendants told Plaintiffs and Proposed Class
13 members – ***just drive with your windows down. Or if you smell something, just get out of***
14 ***the car and you will be fine.*** Washington Department of Labor and Industries also found that
15 the Washington State Patrol violated WAC 296-901-14016(1) in that the Defendants did not
16 provide the Plaintiffs and Proposed Class Members with information and training on
17 hazardous chemicals in their work areas and the employer failed to train employees on the
18 methods and observations which may be used to detect the release of CO in the work area;
19 they did not tell the Plaintiffs or the Proposed Class of the actual presence of CO in their work
20 area, and they deliberately and intentionally did not tell the Plaintiffs and the Proposed Class

21 ⁶ Cognitive and affective outcomes of more severe compared to less severe

22 Carbon Monoxide Poisoning (Ex. B)

23 COMPLAINT - 25

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1 what actions the Plaintiffs and the Proposed Class could take to protect themselves from the
2 CO exposure. At the time of the OSHA inspection, Washington State Patrol Troopers
3 (Plaintiffs) who were driving Ford Explorer SUV's were reporting to the Defendants signs
4 and symptoms of CO exposure. The vehicles being driven by the Plaintiffs were found to
5 have exhaust leaks which were in fact the cause of the exposure.

6 FAILURE TO TRAIN

7 57. Plaintiffs were not trained on the hazards of CO exposure nor where they trained on how
8 to operate the inadequate CO Home detectors which were placed in the defective vehicles.

9 The Defendants had not informed the Plaintiffs of the alarm activation set points, nor that they
10 were inadequate for employee protection when Defendants knew that they were inadequate to
11 protect the Plaintiffs from CO exposure. OSHA also found that the Defendants did not tell

12 Plaintiffs or the proposed Class members about their exposure records. So even when
13 Plaintiffs had been exposed, they were intentionally not told by the Defendants of the
14 exposure, the exposures were allowed to continue and the intentional and deliberate actions of
15 the Defendants caused actual harm to Plaintiffs and the proposed Class. According to OSHA

16 ***“Washington State Patrol Troopers relied on inadequate home CO alarms to gauge their***
17 ***exposure. Over the course of one year, these alarms rarely activated as they don't detect***
18 ***levels below 70 ppm and then may not even alarm for 4 hours, thus, giving troopers a false***
19 ***sense of security, while the CO exposure continued and Troopers continued getting sick.***
20 ***Most of the vehicles of Troopers who experienced signs and symptoms of CO exposure were***
21 ***found to have exhaust issues as the source of the exposure: cracked manifolds, warped***
22 ***manifolds, and leaks in the exhaust system.”*** What did Defendant Steven Smeland say when

1 questioned about the fact that Plaintiffs and the Proposed Class were not told that they could
2 download data readings from the inadequate monitors to at least review their exposure levels
3 over time?

4 *“We haven’t figured out how to download yet, and the Data collection piece is a work in
5 progress, Is it really that important?”*

6 58. This intentional and deliberate decision to completely ignore the warning given to them
7 by Home Safe, the original manufacturer who sold the home CO monitors who told the
8 Defendants – These do not work. They will not alarm and are not meant to be used in police
9 vehicles – we will not sell them to you because we do not want to be sued. Defendants
10 incredulously decided not to stop installing them, did not stop and reassess the proper course
11 of action, instead sought out an out of state vendor to sell them the exact same CO monitor for
12 homes which would not alarm, would not warn, would not protect the Plaintiffs and the
13 proposed class and they deliberately continually placed these inadequate monitors in the
14 defective FORD SUV’s and directed the Plaintiffs to drive them. Defendants poisoned the
15 Plaintiffs intentionally and with malice and forethought. Investigator Lynda Winter of
16 Washington State Department of Labor and Industries supported a warning poster labeled

17 **CARBON MONOXIDE POISONING OF LAW ENFORCEMENT PERSONNEL**

18 ***DRIVERS AT RISK***

19 *Workers in Washington State who drive Ford Explorer or Interceptor sedans or
20 utility vehicles, including law enforcement personnel, have been found to be at
21 high risk for carbon monoxide (CO) poisoning and symptoms. Air testing in
22*

1 *vehicles with no after-market modifications shows that CO in vehicle exhaust*
2 *can leak from damaged exhaust manifolds (see photos) and flow into the*
3 *vehicles' cab, potentially affecting occupants.*

4 *There is also evidence that damage to flex hoses and "Y joints" near the*
5 *manifold can occur during manifold replacement, creating new entry sites for*
6 *CO to leak directly into the vehicle's cab.*

8 **Prevention Guidance**

9 If you or your employees drive Ford Explorers or Interceptor sedans or utility vehicles, you
10 should take prompt action to minimize risk for CO poisoning.

11 Identify problem vehicles. Here are some ways you can do this:

- 12 • Inspect the manifold and other parts of the exhaust system for damage.
- 13 • Test for CO in the vehicle cab.
- 14 • Use appropriate CO detectors and position them as close as possible to the driver's
15 breathing zone. Be sure to follow the manufacturer's maintenance and care
16 instructions for continued reliability and accuracy.
- 17 • Take problem vehicles out of service until repaired. Make sure all openings and gaps
18 leading to the cab are sealed.
- 19 • Provide safety training to drivers. They need to know the signs and symptoms of CO
20 exposure and what to do if they experience symptoms.
- 21 • Create safety policies and procedures that will help prevent CO exposure and ensure
22 employees with exposure get prompt medical follow up (e.g., blood tests, treatment).

- Include CO safety information and procedures in your written Hazard Communication Program.

Resources

Visit L&I's Carbon Monoxide resource page to find safety rules and resources.

Get 1-on-1 assistance from L&I or visit L&I's Safety & Health webpage for other resources to help strengthen your safety program.

Share this bulletin with others in your industry and safety network.



1 59. Prior to the filing of their complaint, Plaintiffs have not seen this proposed bulletin by
2 OSHA, nor has it been posted for viewing by Defendants.

3 **COUNT VIII**

4 **NEGLIGENT SUPERVISION**

5 **(On Behalf of Plaintiffs and the Proposed Class)**

6 60. Plaintiffs incorporate by reference all allegations in the above preceding paragraphs
7 as if set forth fully in this count.

8 61. Plaintiffs assert this count on behalf of themselves and members of the Class.

9 **62. Defendants, including Steven Smeland, intentionally engaged in conduct which**
10 **caused serious physical injury to Plaintiffs and other proposed class members when it**
11 **disregarded the dangers of carbon monoxide exposure which was and is occurring on a**
12 **daily basis to operators of the defective Ford Explorers, who rely on operating their**
13 **emergency vehicles on a daily basis. Defendants failed to properly supervise its Fleet**
14 **management operations including the actions of Steven Smeland, who acted with callous**
15 **disregard for the health and welfare of Plaintiffs and proposed class members. Steven**
16 **Smeland intentionally disregarded necessary safety measures which could have**
17 **prevented serious physical harm from coming to Plaintiffs and proposed class members.**

18 **VIII. PRAYER FOR RELIEF**

19
20 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, bring
21 forward all causes of action known now or developed through discovery against the
22 intentional acts of the Defendants and respectfully requests that this Court enter judgment

1 against Defendants and in favor of Plaintiffs and the Proposed Class, and award the following
2 relief:

- 3 • An order certifying this action as a class action pursuant to Rule 23 of the, declaring
4 Plaintiffs as the representative of the Class and Plaintiff's counsel as counsel for the Class;
- 5 • An order awarding declaratory relief and enjoining Defendants from continuing the the
6 use of the defective FORD SUV Explorers years 2011-2018;
- 7 • Appropriate injunctive and equitable relief;
- 8 • A declaration that Defendants are financially responsible for all Class notice and the
9 administration of Class relief;
- 10 • An order awarding costs, restitution, disgorgement, punitive damages, statutory damages,
11 treble damages and exemplary damages under applicable law, and compensatory damages for
12 economic loss, medical care and monitoring, loss of consortium, and out-of-pocket costs in an
13 amount to be determined at trial;
- 14 • An order awarding any applicable statutory and civil penalties;
- 15 • An order requiring Defendant to pay both pre- and post-judgment interest on any
16 amounts awarded;
- 17 • An award of costs, expenses and attorneys' fees as permitted by law; and
- 18 • Such other or further relief as the Court may deem appropriate, just, and equitable.

19 **IX. DEMAND FOR JURY TRIAL**

20 Pursuant to local rule Plaintiffs demand a trial by jury of any and all issues in this action so
21 triable of right.
22

1 DATED: August 7, 2019 Respectfully submitted,
2
3

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