

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN RE SOUTH AFRICAN 02 MDL No. 1499 (JES)
APARTHEID LITIGATION
_____X

THIS DOCUMENT RELATES TO:

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LUNGISILE NTSEBEZA; :
MANTOA DOROTHY MOLEFI, : CLASS ACTIONS
(individually and on behalf of her deceased :
son); :
MNCEKELELI HENYN : CIVIL ACTION # 03 Civ. 1024 (JES)
SIMANGENTLOKO; : CIVIL ACTION # 02 Civ. 6218 (JES)
TOZAMILE BOTHA; : CIVIL ACTION # 02 Civ. 4712 (JES)
MPUMELELO CILIBE; :
WILLIAM DANIEL PETERS; :
SAMUEL ZOYISILE MALI; :
MSITHELI WELLINGTON :
NONYUKELA; : **NTSEBEZA AND DIGWAMAJE**
JAMES MICHAEL TAMBOER; : **CONSOLIDATED AND AMENDED**
NOTHINI BETTY DYONASHE : **COMPLAINT**
(individually and on behalf of her deceased :
son); :
NONKULULEKO SYLVIA :
NGCAKA, (individually and on behalf of :
her deceased son); :
HANS LANGFORD PHIRI; :
MIRRIAM MZAMO, (individually and on :
behalf of her deceased son), :
:
Plaintiffs, :
vs. :
:
DAIMLER AG, FORD MOTOR :
COMPANY; BARCLAYS BANK PLC; :
INTERNATIONAL BUSINESS :
MACHINES CORPORATION; :
GENERAL MOTORS CORPORATION; :
and CORPORATE DOES NOS. 1 – 100 :
and their predecessors, successors and/or :
assigns, :
Defendants. :
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Plaintiffs, by and through their attorneys, bring this action on behalf of themselves and all others similarly situated. Plaintiffs hereby allege, on information and belief, except for information based on personal knowledge, which allegations are likely to have evidentiary support after further investigation and discovery, as follows:

INTRODUCTION

1. Plaintiffs bring this class action to vindicate violations of the law of nations as authorized by the Alien Tort Statute (ATS) on behalf of themselves and all black South African citizens (and their heirs and beneficiaries) who during the period from 1973 to 1994 suffered injuries as a result of Defendants' violations of law of nations by their complicity in such violations caused by South African state officials, employees or agents or by their actions in replicating the apartheid system in their own internal operations.

2. Apartheid was an institutionalized regime of racial segregation and systematic oppression implemented in South Africa for the purpose of securing the white minority's hold on power over the country's government and wealth. The international community universally condemned the apartheid system in South Africa and its systematic discrimination and brutality against blacks (used throughout to refer to black Africans, coloured and Indian individuals) which constituted violations of international law at all times material to the allegations in this complaint.

3. Apartheid, itself a crime against humanity, was enforced by means of international crimes and other violations of the law of nations, including prolonged arbitrary detention, forced exile, forced relocation, revocation of citizenship, forced and exploited black labor and extrajudicial killings, torture and other cruel treatment of opponents. Exploitation of

labor was an essential aspect of the apartheid system. Black workers were denied access to certain classes of jobs and deprived of the right to organize and protest their conditions.

4. This system would not have been possible without the active and on-going collaboration of private actors, like Defendants, in every sector of society. Indeed, apartheid's survival was dependent on the resources, products and expertise of foreign corporations.

5. Defendants did not merely do business in apartheid South Africa but rather acted directly or purposefully and/or knowingly provided substantial and/or practical assistance to and acted in concert with the South African government, especially its security forces, including police, military, intelligence, "Special Branch" personnel, all of whom were integral parts of the apartheid security state, in violating Plaintiffs' human rights and the human rights of other similarly situated victims of apartheid. The apartheid system, supported by the military power of the state and many corporations, including Defendants, systematically discriminated and facilitated violent acts against blacks in violation of international law.

6. Defendants Barclays Bank PLC (Barclays), Ford Motor Company (Ford), General Motors Corporation (GM), Daimler AG (Daimler) and International Business Machines Corporation (IBM) (collectively "Defendants") committed human rights violations in South Africa during apartheid directly and/or were complicit in the human rights violations committed by the apartheid government.¹

7. Defendant IBM actively implemented apartheid by purposefully and/or knowingly producing race-based identity documents used to: (1) strip Plaintiffs of their

¹ This *Ntsebeza* and *Digwamaje* consolidated and amended complaint include the claims made in *In re South Africa Apartheid Litigation*, MDL Docket No. 1499; *Ntsebeza, et al. v. Citigroup, Inc. et al.*, Civ. Action No. 02-CV-4712 (JES) and *Ntsebeza, et al. v. Holcia, Ltd., et al.*, Civ. Action No. 03 Div 1024 (JES); and *Digwamaje, et al. v. Bank of America Inc., et al.*, Civ. Action No. 02-CV-6218 (JES). Plaintiffs herein were members of the putative classes in those cases.

nationality and citizenship; (2) restrict their travel in and out of South Africa; and (3) facilitate discrimination and the geographic separation and segregation of the races into impoverished and isolated tribal areas known as homelands or “Bantustans.”

8. In contravention of the principles of international law and United Nations Security Council sanctions, Defendant automobile companies Daimler, GM and Ford manufactured security force vehicles, in whole or in part, for the apartheid state. These included specialized vehicles, some of them armored, known by various names, including Hippos, Casspirs, Buffels, and UNIMOGs. Defendants thus assisted the state’s security forces, which used these vehicles to suppress opposition to the apartheid system and to inflict widespread violence associated with the suppression of anti-apartheid protests protected under international law. The violent suppression inflicted grievous injuries against Plaintiffs and the classes they represent, including the extrajudicial killings of numerous civilians.

9. Defendant automobile companies, Daimler, GM, and Ford also actively retaliated against employees, including Plaintiffs and the classes they represent, who participated in community organizations and unions that opposed apartheid or expressed anti-apartheid views and subjected them to dismissal, arrest, intimidation, detention, and torture in collaboration with the South African security forces. In violation of international sanctions, these companies manufactured for the government and security forces military vehicles that were widely known to be used in suppressing the human rights of black South Africans as alleged in this complaint.

10. Defendant Barclays purposefully and/or knowingly participated in the promotion of apartheid’s goal to separate the races geographically by systematically denying black employees and applicants, including Plaintiffs and the classes they represent, the opportunity to work in or transfer to offices in predominately white areas.

11. Defendants Daimler, GM and Ford directly violated the human rights of Plaintiffs and the classes they represent by creating their own internal system of apartheid imposing within Defendants' operations systematic discrimination against blacks, and ongoing, routine humiliation and assaults on their personal dignity by: 1) maintaining segregated facilities and a humiliating work environment for black employees; 2) grossly underpaying blacks for equal work; and 3) institutionalizing grossly unequal conditions of employment. These conditions actively and intentionally replicated in Defendants' operations the racial separation and white superiority at the heart of the apartheid system. Although some aspects of Defendants' operations were theoretically governed by apartheid laws, these Defendants engaged in these acts in an effort to support and actively participate in the apartheid system based on their own desire to profit from the system and their support of the apartheid government's ideology. In addition, Defendants imposed and maintained an internal apartheid system because of their active collaboration with agents of the security forces and other state officials for the purpose of suppressing anti-apartheid union and political activities and to maintain white minority rule in South Africa.

12. The allegations brought here address claims exclusively between private persons and corporations and do not involve claims against or on behalf of the government of South Africa. The government of South Africa expressly reserved such claims to the courts during the Truth and Reconciliation process. Indeed, the Truth and Reconciliation Commission (TRC) Chairperson, Archbishop Desmond Tutu and other members of the TRC stated that:

Litigation seeking individual compensation against multinational corporations for aiding and abetting the commission of gross human rights abuses during apartheid does not conflict, in any manner, with the policies of the South African government, or the goals of the South African people, as embodied in the TRC. To the contrary, such litigation is entirely consistent with these policies and with the findings of the TRC.

South Africa did not enact a general amnesty statute. No relief from civil or criminal liability was enacted for those who did not apply for an obtain amnesty from the TRC. None of the Defendants in this action sought and obtained amnesty by the TRC.

13. These victims of apartheid deserve to receive fair compensation for the atrocities committed against them by Defendants for financial gain.

JURISDICTION AND VENUE

14. The Court has jurisdiction over this case under 28 U.S.C. § 1331 (Federal Question Jurisdiction) and 28 U.S.C. § 1350 (Alien Tort Statute). All of Plaintiffs' claims for relief arise under the law of nations.

15. Venue is proper under 28 U.S.C. § 1391(a) in this Court because the Defendant corporations, their subsidiaries, affiliates, alter egos or agents are doing business in this district.

PARTIES

PLAINTIFFS

16. Plaintiff LUNGISILE NTSEBEZA is a South African citizen and a resident of Cape Town, South Africa. In 1973, when Ntsebeza first inquired about a position with Barclays in Cape Town, he was told that because he was a Xhosa person (a "Bantu"), he could only apply in the Eastern Cape (a predominately black area). Thus, to obtain gainful employment with Barclays, Ntsebeza was forced to work in the Eastern Cape in a Bantustan branch. This hiring practice, not mandated by law at the time, reinforced apartheid's goal of geographically separating the races. Thus, Ntsebeza and other Barclays employees were subjected to employment practices that replicated the systematic exclusions, humiliation and degradation of blacks in the apartheid system.

17. Plaintiff TOZAMILE BOTHA is a South African citizen and a resident of Centurion, South Africa. He worked for Defendant Ford in Port Elizabeth from approximately 1978-1980 as a work-study technician. After he became Chairman of the Port Elizabeth Black Civic Organization (PEBCO), an anti-apartheid community organization, Ford intimidated and retaliated against him solely because of his anti-apartheid activities and views, thus actively participating in and assisting the state's repression of anti-apartheid movements. Because of his political activities, Botha was arrested, detained, questioned and tortured by the security forces. Eventually, Botha was forced into exile. At Ford, Botha was subjected to apartheid practices within the Ford plant including segregation and exploitation of his labor as well as other discriminatory and humiliating treatment.

18. Plaintiff MPUMELELO CILIBE is a South African citizen and a resident of New Brighton near Port Elizabeth, South Africa. Despite his qualifications for a higher position, because of his race, he was forced to accept a position as a laborer to gain employment at Defendant Ford, where he worked from 1974-1984. During this period he was subjected to apartheid practices within the Ford plant including segregation and other blatantly discriminatory and humiliating treatment, including training less-qualified whites to be his superior. As treasurer of a union with a strong anti-apartheid position, Cilibe was harassed and intimidated by Ford management and government forces. He was also subjected to racial discrimination, including experiencing grossly inferior advancement opportunities and pay, as Ford effectively implemented its own system of apartheid within its plants.

19. Plaintiff WILLIAM DANIEL PETERS is a South African citizen and a resident of Bethelsdorp near Port Elizabeth, South Africa. He worked as a material handler and later as a checker for Defendant Ford from 1980-1985. As chairman of the National Automobile and

Allied Workers Union (NAAWU), a union with anti-apartheid positions, Peters was arrested, interrogated and tortured by the security forces, including Special Branch, which pursued him based upon information they had received from Ford regarding his anti-apartheid community and union activities. He was also subjected to segregation, humiliation and racial discrimination and grossly unequal pay, as Ford implemented its own system of apartheid within its plants.

20. Plaintiff JAMES MICHAEL TAMBOER is a South African citizen and a resident of Bethelsdorp near Port Elizabeth, South Africa. From 1977-1986, he worked for Defendant GM as a laborer. Because of his activities in NAAWU and his anti-apartheid views and union activities, Tamboer was arrested, interrogated, tortured and otherwise abused by security forces, including Special Branch officers who collaborated with Defendant GM and had visited the GM plant on multiple occasions. As a result, he sustained severe injuries including long-term brain damage from the torture and other abuse. At GM, Tamboer was subjected to apartheid practices within the GM plant including segregation and exploitive labor practices as well as other blatantly discriminatory and humiliating treatment.

21. Plaintiff SAMUEL ZOYISILE MALI is a South African citizen and resident of Kwamagxaki near Port Elizabeth, South Africa. He worked for Defendant Ford from 1973-1982, and for Defendant GM from 1982-1986. After speaking with a Life Magazine reporter and expressing anti-apartheid sentiments that were published, Mali was called in to speak with his GM supervisors, who asked him about the article and his political opinions. When Mali confirmed what he said to the reporter, GM retaliated against him for his anti-apartheid opinions, effectively firing him by transferring him to a department that was being closed.

22. Plaintiff MSITHELI WELLINGTON NONYUKELA is a South African citizen and a resident of Zwelitsha near King William's Town, South Africa. He worked for Defendant

Daimler from 1983-1987, including as a security guard. While at Daimler, he was involved in union activities, youth organizing and political activities which continued through the end of the apartheid era. As a consequence of his union and political activities, Nonyukela was arrested, detained, interrogated and tortured by the South African security forces, including Special Branch, which acted upon information provided by Daimler in the course of its active collaboration with South African security services. His union was identified with the anti-apartheid struggle. Daimler's head of security and Nonyukela's manager played a role in at least one Special Branch interrogation. At the session where Nonyukela was tortured, the manager entered the interrogation room and threatened Nonyukela's dismissal from Daimler if he did not cooperate with the Special Branch.

23. Plaintiff MANTOA DOROTHY MOLEFI brings a claim on behalf of herself and the estate of her son, Hector Zolile Pieterse. Molefi is a South African citizen and a resident of Soweto, South Africa. Hector Pieterse, a twelve-year-old schoolboy, was shot and killed by South African security forces on June 16, 1976, during a protest led by schoolchildren. The provision of vehicles for security forces manufactured by Ford, GM and/or Daimler provided substantial and essential assistance to the security force's violent campaign to suppress peaceful opposition to apartheid, and facilitated the extrajudicial killing of Pieterse and many others.

24. Plaintiff NOTHINI BETTY DYONASHE brings a claim on behalf of herself and the estate of her deceased son, Vuyani Adonis. Dyonashe is a South African citizen and a resident of Duncan Village near East London, South Africa. In August 1985, South African security forces shot and killed her son, Vuyani Adonis. The thirteen-year-old school boy was making an unannounced visit to see his mother in Duncan Village from Chalumn, where he stayed with his grandmother and attended school. When he arrived from Chalumn, the home

was locked, forcing him to remain outside in the street. Security forces that had arrived in vehicles supplied by one of the Defendants shot him without justification. The provision of vehicles manufactured by Ford, GM and/or Daimler provided substantial and essential assistance to the security forces as they conducted a violent campaign against the community, and facilitated the extrajudicial killing of Adonis and many others.

25. Plaintiff NONKULULEKO SYLVIA NGCAKA brings a claim on behalf of herself and the estate of her deceased son, Thembekile Ngcaka. She is a South African citizen and a resident of Duncan Village, South Africa. In August 1985, South African security forces shot Thembekile, a nine-year-old school boy who was playing outside with friends. He was shot by soldiers who fired from a military vehicle manufactured by Defendants Ford, Daimler and/or GM. After suffering from his wounds for approximately a year, he died from these injuries. The provision of vehicles manufactured by Ford, GM, and/or Daimler provided substantial and essential assistance to the security forces as they conducted a violent campaign against the community, and facilitated the extrajudicial killing of Thembekile and many others.

26. Plaintiff MIRRIAM MZAMO brings a claim on behalf of herself and the estate of her deceased son, Bubele Mzamo. She is a South African citizen and a resident of Duncan Village near East London, South Africa. In March 1986, South African security forces shot and killed her son, Bubele Mzamo, a fifteen-year-old school boy while he was playing in the street. He was shot from an armored security forces vehicle manufactured by Defendants Daimler, Ford, and/or GM. The provision of vehicles manufactured by Ford, GM, and/or Daimler provided substantial and essential assistance to the security forces as they conducted a violent campaign against the community, and facilitated the extrajudicial killing of Bubele and many others.

27. Plaintiff MNCEKELELI HENYN SIMANGENTLOKO is a South African citizen and a resident of Jongilanga, Kuelerlig, South Africa. While participating in a peaceful march to commemorate International Youth Year in May 1985, in East London, Simangentloko was shot in the arm by security forces, suffering a severe injury that prevented him from working for 23 years. The security forces relied on vehicles manufactured, in whole or in part, by Defendant automobile companies, Ford, Daimler and/or GM, for transportation and protection. These vehicles were essential to the security forces' violent suppression of the peaceful protesters.

28. Plaintiff HANS LANGFORD PHIRI is a South African citizen and a resident of Mafikeng, South Africa. As part of the apartheid government's campaign to create "independent countries" within South Africa, Phiri was stripped of his South African citizenship, which was replaced by Bophuthatswana citizenship. His South African ID was declared invalid, and he was assigned a Bophuthatswana ID document. The latter was produced using IBM machines and software designed to facilitate the government's illegal revocation of the citizenship of large numbers of black South African citizens. As a result of this loss of citizenship, Phiri lost the benefits of South African citizenship.

DEFENDANTS

29. Defendant BARCLAYS BANK PLC (Barclays) is a banking entity with its headquarters at 1 Churchill Place, London, United Kingdom, and a principal place of business at 200 Park Avenue, New York, New York. Barclays does business in the United States and within this jurisdiction through subsidiaries, affiliates and agents, including Barclays Capital Corporation. At all times relevant to the facts alleged in this complaint, Barclays operated in South Africa directly and through its subsidiaries, affiliates, alter egos and agents in South Africa, including Barclays National Bank of South Africa.

30. Defendant FORD MOTOR COMPANY (Ford) is an automobile company incorporated under the laws of Delaware with its headquarters at 1 American Road, Dearborn, Michigan. Ford does business in the United States and within this jurisdiction through subsidiaries, affiliates and agents. Ford operated in South Africa directly and through its subsidiaries, affiliates, alter egos and agents in South Africa.

31. Defendant GENERAL MOTORS CORPORATION (GM) is an automobile company incorporated under the laws of Delaware with its headquarters at 300 Renaissance Center, Detroit, Michigan. GM does business in the United States and within this jurisdiction through subsidiaries, affiliates, alter egos and agents. At all times relevant to the facts alleged in this complaint, GM operated in South Africa directly and through its subsidiaries, affiliates, alter egos and agents in South Africa, including GM South Africa (Pty) Ltd.

32. Defendant DAIMLER AG (Daimler) is a publicly traded automobile corporation with its headquarters at 137 Mercedesstrasse, Stuttgart, Germany. Daimler was formed and incorporated under the laws of the Federal Republic of Germany. Daimler does business in the United States and within this jurisdiction, and elsewhere through subsidiaries, affiliates, alter egos and agents. Daimler's U.S. headquarters are 1000 Chrysler Drive, Auburn Hills, Michigan. At all times relevant to the facts alleged in this complaint, Daimler operated in South Africa directly and through its subsidiaries, affiliates, alter egos and agents in South Africa, including Daimler South Africa (Pty) Ltd.

33. Defendant INTERNATIONAL BUSINESS MACHINES CORPORATION (IBM) is an information technology company and manufacturer of computer systems, hardware, software, networking systems, hosting systems, and storage devices. It was incorporated under the laws of New York with its headquarters at 1 New Orchard Road, Armonk, New York. IBM

does business in the United States and within this jurisdiction through subsidiaries, affiliates, alter egos and agents. At all times relevant to the facts alleged in this complaint, IBM did business in South Africa directly and through its subsidiaries, affiliates, alter egos and agents in South Africa, including IBM South Africa (Pty) Ltd and IBM South Africa Group Ltd.

GENERAL ALLEGATIONS

34. At all relevant times, the Defendants' actions were part of a pattern and practice of systematic and widespread attacks and human rights violations against the black population of South Africa.

35. At all relevant times, Defendants knew, or should have known, that their actions, as alleged herein, provided assistance to the government of South Africa and its agents that had a substantial effect on the perpetration of the human rights violations alleged in this complaint.

36. The actions by Defendants described herein were inflicted under the color of law or official authority or in a conspiracy or a joint criminal enterprise with government officials. With respect to the internal replication of the apartheid system within their operations, Defendants Daimler, Ford, GM and Barclays acted in concert with government officials to suppress anti-apartheid union and political activities and to institutionalize white supremacy. State officials insinuated themselves into the Defendants' operations to help ensure that apartheid ideology and practices were maintained in the automobile Defendants' internal operations.

37. Defendants are responsible for Plaintiffs' injuries and the injuries of the Plaintiff classes because: (1) they were directly responsible for the alleged human rights violations by their own actions; (2) their agents committed these violations within the scope of their authority; (3) their co-conspirators or co-participants in joint criminal enterprises committed such violations; (4) they or their agents actively participated in such violations; and/or (5) they or their

agents aided and abetted such violations. Defendants worked jointly with state officials, employees and agents in perpetuating apartheid and in committing the violations alleged herein. The Defendants maintained control over their subsidiaries and agents in South Africa at all times relevant to Plaintiffs' allegations and had knowledge of the human rights violations alleged herein and the Defendants direct involvement or complicity in these violations. In particular, Defendants maintained such control over the actions of its subsidiaries in South Africa that they should be considered as alter egos, joint enterprises and/or as jointly controlled, and it would be unfair to recognize their separate corporate existence vis-à-vis the claims made by Plaintiffs in this complaint.

38. As a direct and proximate result of Defendants' actions, Plaintiffs or those they represent suffered harm, including death, pain and suffering, personal injuries, lost wages and opportunities, and extreme emotional distress and mental anguish and other injuries.

39. Equitable tolling applies to any of Plaintiffs' claims not within the applicable statute of limitations because there was no practical, or safe or effective way for Plaintiffs to bring these claims without risk of retaliation by the apartheid state prior to 1994. In addition, Defendants refusal to cooperate with the TRC and provide a full accounting of their connection to the violations alleged in this complaint tolls the running of the statute of limitations with respect to Plaintiffs' claims.

40. Although there is no exhaustion of domestic remedies requirement for ATS claims, there were and are no effective domestic remedies for Plaintiffs to exhaust in South Africa against these Defendants for these claims.

HISTORICAL CONTEXT

A. International Condemnation of the Apartheid System and Corporate Involvement

41. In 1950, shortly after the inception of the apartheid regime, the international community began to condemn the government and its policies as antithetical to the human rights and fundamental freedoms guaranteed by the United Nations Charter and international law. The United Nations and many of its members, including the United States, took joint and separate action against the apartheid system. This included restrictive arms embargoes as early as 1963 and various forms of economic sanctions.

42. International condemnation grew in the wake of the Sharpeville Massacre of March 21, 1960 when police killed 69 unarmed individuals, including women and children and those attempting to flee the scene. Several hundred were injured.

43. In 1970, the Security Council, in Resolution 282, condemned South Africa's continuing disregard for international law and reaffirmed its policy of withholding the supply of all vehicles and equipment to South African armed forces and paramilitary organizations.

44. In 1977, UN Security Council Resolution 418 underscored the mandatory nature of the arms and military vehicle embargo, which applied to the provision of arms and related materials of all types.

45. Embargoes on providing vehicles and parts to the South African security forces remained in place at all times material to the allegations in this complaint.

46. Further condemnation came from the International Labour Organization (ILO) as early as 1953. That year, ILO's Ad Hoc Committee on Forced Labour described apartheid and its legislative system that created barriers for the black population as "a system of forced labor of significance to the national economy."

B. Grand Apartheid: Geographic Separation of the Races

47. “Grand Apartheid” was a broad scheme designed to prevent black South Africans from accessing political rights and land by uprooting and forcibly relocating millions to make South Africa a white-majority nation. The scheme culminated in four of the original ten tribal areas (or “Bantustans”), Bophuthatswana, Ciskei, Transkei, and Venda, becoming “independent countries” within South Africa between 1976 and 1981. No country, other than South Africa, recognized these territories as independent states, viewing them as transparent attempts to deny black South Africans the benefits of citizenship.

48. A necessary feature of Grand Apartheid was the pass system, which enabled the apartheid regime to restrict and control the movement of black South Africans. Various pass documents were used to control the movement of black South Africans between the Bantustans and white South Africa. Blacks with invalid pass documents were subject to arrest, imprisonment and/or banishment to the homeland territory assigned to them and their ethnic group.

C. Militarization of Apartheid in the 1970s and 1980s

49. The student-led Soweto Uprising on June 16, 1976, to protest the required use of Afrikaans in schools led to violent suppression by the security forces. Women and children were shot and killed. The violence precipitated a wave of demonstrations throughout the country opposing apartheid. During a six month period, an estimated one thousand black South Africans were killed by security forces, and between ten and twenty thousand were arrested as demonstrations and boycotts touched urban areas throughout the country.

50. In response, beginning in the late 1970s, the South African government implemented the “total strategy” to coordinate repressive measures in all fields—military,

psychological, economic, political, sociological, technological, diplomatic, ideological and cultural. This strategy relied on extensive cooperation with the private sector, including Defendants, and led to widespread killings, detentions, and the suppression of any perceived dissent to the apartheid system.

51. Some industries were also designated as National Key Points, and as such, there was a particularly close relationship between such corporations and South African security forces. Plaintiffs believe that Defendant automobile corporations were National Key Points.

DEFENDANTS' PARTICIPATION IN APARTHEID

52. As recognized by the TRC (Vol. 4, Ch. 2), "business played a central role in helping to design and implement apartheid policies," and apartheid depended on the active support and assistance of the corporate sector. The corporate sector benefitted greatly because the system provided a perpetual supply of cheap, acquiescent black labor. Both by destroying economic opportunities for blacks and by separating them from their families, Grand Apartheid made blacks dependent on white employers, including these Defendants. Moreover, corporations seeking to exploit black workers could rely on the state and its security apparatus to silence protests by workers and their representatives.

53. In turn, many corporations, including Defendants, provided essential assistance to the apartheid state, beyond what was strictly required by law and practice, knowing that such assistance would lead directly to the violation of the human rights of black South Africans. For example, Defendants retaliated against members of unions and community organizations that opposed apartheid and they actively trained and promoted white employees with less qualifications and seniority than black employees.

AUTOMOBILE DEFENDANTS' PARTICIPATION IN APARTHEID

54. Security forces, including the Special Branch, coordinated their suppression of anti-apartheid labor and political activities with key senior management personnel within Defendant automobile companies. Coordination was particularly close between the human resource managers and/or senior security personnel at the plants and the security forces of the apartheid state. Human resource managers and senior security personnel at the Defendant automobile companies were often former or active military officers and/or members of the Broederbond. The Broederbond (“association of brothers”), an elite and powerful Afrikaner organization in South Africa, was dedicated to preserving permanent white, and in particular, supremacy Afrikaner dominance in South Africa and espoused an ideology of radical racism that demanded the exclusion of blacks from white South Africa.

DEFENDANT DAIMLER'S PARTICIPATION IN APARTHEID

55. In 1954, Defendant Daimler opened an office in South Africa. Beginning in 1958, Defendant Daimler, then known as Daimler-Benz AG, contracted with Car Distributors Assembly (CDA), a South African company, to produce Mercedes vehicles in South Africa. In 1966, CDA became a wholly-owned subsidiary of United Car and Diesel Distributors (UCDD), a South African company. In 1967, UCDD acquired a site in the West Bank area of East London, South Africa, and, at all relevant times, built Mercedes vehicles in the plant. In 1984, Defendant Daimler acquired majority ownership and control over UCDD, and then renamed the company Daimler South Africa (Pty) Ltd. During all relevant times, Defendant Daimler purposefully and/or knowingly controlled and/or oversaw operations at the Mercedes plant located in the West Bank area of East London, South Africa. Indeed, Daimler's management in Germany was involved in and aware of the activities material to the allegations in this complaint.

A. **Daimler's Active Collaboration with the Apartheid Regime to Target Trade Union Leaders and Community Organizers**

56. At all relevant times, South African security forces collaborated with Defendant Daimler's managers and personnel to suppress peaceful labor and anti-apartheid political activities.

57. While employed at Daimler, Plaintiff Nonyukela was subjected to arbitrary arrest, detention, torture and other cruel, inhuman and degrading treatment by the security forces acting in close collaboration with the management of Defendant Daimler. Daimler management provided information about his anti-apartheid union activities to the security forces and facilitated his arrest, detention and ill-treatment in order to suppress those activities. Daimler's head of security asked Plaintiff Nonyukela to spy on fellow employees, but he refused; other employees however did provide information to the head of security.

58. One particularly grave example of collaboration between Daimler management and the Special Branch occurred in East London in 1985. Special Branch officers tortured Plaintiff Nonyukela, and the head of Daimler security was involved in the interrogation. Special Branch officers had detained Plaintiff Nonyukela and later taken him to Daimler premises, where Daimler's head of security accompanied them to get documents from Plaintiff Nonyukela's locker. Returning to the Special Branch station in East London, the officers placed a bag containing water over his head to simulate sensations of suffocation. The Special Branch officers questioned him about the location of other Daimler shop stewards who had allegedly left the country. They said that his job was at risk if he did not comply with their demands. Then, the head of security at Daimler entered the interrogation room where torture instruments, including the bag used to simulate suffocation, were plainly visible. The Daimler head of security then restated the threat to Plaintiff Nonyukela's job if he did not provide the information

sought by the Special Branch. After Daimler's head of security left, Special Branch officers then resumed torturing Plaintiff Nonyukela. That evening, they forced Plaintiff Nonyukela into a car, where they further tortured him. The Security Branch officials took Plaintiff Nonyukela to a dam where they then threatened to kill him by dropping him off a cliff over the reservoir. They told him that no one would know of his murder because there would be no evidence.

59. Security forces frequently questioned Plaintiff Nonyukela at his home and elsewhere about union activities. Officers interrogated Nonyukela and his wife in their home, and they attempted to intimidate him from engaging in union and anti-apartheid activities. Security forces also raided the homes of other Daimler employees, especially other union leaders.

60. Plaintiff Nonyukela was a leading union member at Daimler in the mid 1980s. On occasion, Plaintiff Nonyukela would take time to travel to undertake his union duties, and the union would write to Daimler in advance to provide notice. On at least one occasion, members of senior Daimler management demanded information from the union and later from Plaintiff Nonyukela in person about, *inter alia*, his travel plans. On this occasion, security forces detained and interrogated Plaintiff Nonyukela about the trip.

61. Daimler's senior management, including those in human resources and the security department, collaborated with state security forces, including members of the Special Branch, with respect to Plaintiff Nonyukela and many other employees involved in union and anti-apartheid activities. For example, during some Special Branch interrogations, questioners would quote statements Plaintiff Nonyukela had made in closed meetings to senior Daimler managers related to his union responsibilities.

62. Around 1987, prior to a planned trip by Plaintiff Nonyukela to Germany on union business, he was interrogated by Special Branch who warned him against speaking of work conditions in South Africa. Ignoring this warning, he spoke both about the conditions at Daimler, including the production of vehicles for the security forces, and about living in South Africa. Other shop stewards were shown a video of Nonyukela's statements and asked to disavow them but they refused.

63. At other times in the 1980s, there were anti-apartheid union protests at the Daimler plants. On at least one occasion, senior Daimler management armed and instructed a group of employees to ambush the union members inside the plant. Special Branch members were nearby and observed without attempting to stop it. Many of the unarmed protestors sustained injuries. After one such ambush, Daimler retaliated against numerous injured union members and shop stewards, including Plaintiff Nonyukela, who had not been involved. Although eventually Daimler agreed to reinstate the other shop stewards, they refused to reinstate Plaintiff Nonyukela because of his union and political activities. Daimler claimed that he was too political to be employed at Daimler.

B. Daimler's Production of Military Vehicles for the Apartheid Regime: Specialized Military Vehicles.

64. Daimler supported the apartheid regime through the provision of vehicles to the South African security forces. At all relevant times, Defendant Daimler manufactured specialized vehicles, in whole or in part, for the South African security forces in its South African plants, including its East London plant. Such vehicles included heavy trucks, designed for military purposes and armored personnel carriers.

65. Daimler created paperwork that identified these vehicles as being intended for the South African security forces. Some vehicles were painted in the plant to meet security forces'

specifications. Officials from security forces, sometimes in uniform, visited the plants on a regular basis to inspect the vehicles. At all relevant times, Defendant Daimler knew that its products would be used to violently suppress non-violent opponents of apartheid, including Plaintiffs and the classes they represent. The use of Daimler's vehicles to violate human rights was widely known.

66. Daimler's vehicles regularly patrolled the townships. Security forces used them to intimidate, suppress and control both strikers and anti-apartheid activities. The use of Daimler's vehicles by the security forces resulted in injuries and deaths to numerous South Africans. By at least the 1980s, Daimler employees had begun to express opposition to being forced to manufacture the vehicles that were used to suppress anti-apartheid activity in black communities. Daimler management responded by emphasizing that it was a duty of all South Africans to support the security forces.

67. At all relevant times, Daimler knew that the South African security forces violently repressed the rights of blacks in the country, and that the security forces used Daimler vehicles in violating the human rights of black South Africans.

68. In June 1976, a student protest began in Soweto against the use of Afrikaans as the official language of instruction. The protesting school children were met with a violent response by the security forces, who arrived in Soweto in vehicles produced for them by Defendants Ford, GM and/or Daimler. Plaintiff Molefi's twelve-year-old son, Hector Pieteron, was shot and killed by the security forces.

C. International Youth Year March

69. Plaintiff Simangentloko attended a march marking the launch of International Youth Year in May 1985. The march proceeded from East London toward Duncan Village.

When they approached the township, security forces were waiting for the marchers. The security forces stood in front of a line of military vehicles ready to fire and asked the marchers to disperse, but they did not. Then, the security forces opened fire without warning. Plaintiff Simangentloko and others had their arms up in surrender, but security forces still fired at them. Security forces shot Plaintiff Simangentloko in the arm, inflicting an injury which required surgery and the placement of an iron rod in his arm to hold the bones together. He was unable to work for 23 years because of this injury, and he is still unable to lift heavy objects.

D. The Duncan Village Massacre

70. In August 1985, the funeral of Mrs. Victoria Mxenge, a human rights attorney whose husband was a slain human rights lawyer, precipitated confrontations in Duncan Village. The security forces' violent response to the anti-apartheid unrest lasted through the month of August and became known as the Duncan Village Massacre. During that time, security forces shot and killed at least nineteen Duncan Village residents, and injured many more. The victims included children, including the sons of Plaintiffs Ngcaka and Dyonashe.

71. In the early morning during one day of the Duncan Village Massacre, workers arrived at the Daimler plant in East London to find a notice posted saying that the plant was closed for the day. At that time the road into Duncan Village was open. During the massacre, entrances to the township were sealed off, and, security forces in vehicles manufactured by Defendants Daimler, Ford and/or GM, patrolled the area.

72. At a mass burial service for the victims of the massacre held later in August, security forces once again opened fire on attendees resulting in additional injuries and death. Security forces continued to perpetrate violence against Duncan Village residents at least through

1986. Security forces relied on military vehicles manufactured by Defendants Daimler, GM, and/or Ford for transport and protection throughout this time period.

73. In August 1985, Plaintiff Ngcaka's nine-year-old son, Thembekile Ngcaka, and his friends were playing with small toys outside his home in Duncan Village. Security forces shot Thembekile and his friends as they drove past them in heavily armored military vehicles. Thembekile suffered numerous wounds to his stomach. Though he survived the initial shooting, Thembekile never fully recovered, and died approximately one year later from his wounds.

74. During the same month, Plaintiff Dyonashe's thirteen-year-old son, Vuyani Adonis, arrived unexpectedly in Duncan Village at his mothers' home to obtain school supplies. At that time, armored military vehicles, manned by South African soldiers, were patrolling the village. Security forces shot Adonis multiple times, and he staggered into a neighbor's house and collapsed. He died shortly thereafter from his wounds.

75. In March 1986, Plaintiff Mzamo's fifteen-year-old son, Bubele Mzamo, was playing in the street in Duncan Village when he was shot and killed by South African security forces. He was shot from an armored vehicle manufactured, in whole or in part, by Defendants Daimler, Ford and/or GM.

76. Others were shot while attempting to assist and transport the injured to obtain medical care.

E. Daimler's Collaboration with Apartheid Security Forces

77. South African security forces operated in coordination and conjunction with top Daimler managers and security personnel who were or had been high-ranking officials in the South African security forces. At times, armed senior Daimler personnel would enter the plant in their security forces uniforms.

78. South African security forces conducted armed patrols outside and inside Defendant Daimler's East London plant. The security forces coordinated these patrols with Defendant Daimler's security managers. South African security forces were at times stationed inside Defendant Daimler's East London plant at night.

79. White employees of Defendant Daimler, including the head of security, also served in the South African security forces and patrolled outside the plant in the townships surrounding East London in military vehicles as members of the security forces. At times, white employees would either leave or arrive at Daimler's plant wearing South African military uniforms.

80. Workers protested against apartheid practices within the plants from the 1970s through the end of apartheid. On numerous occasions when strikes occurred, Daimler management called the security forces, who sometimes arrived within minutes of the initiation of the strike. They were often transported in vehicles produced by Defendants Daimler, Ford and/or GM, and were armed. Security forces beat union members. Dogs and tear gas were also used by the security forces to attack and subdue striking union members.

F. Daimler's Active Replication of Apartheid within its Plants

81. Daimler took advantage of the apartheid system to engage in pervasive discrimination against black workers in order to maintain a constant supply of cheap labor. Defendant Daimler systematically discriminated against its black employees by maintaining segregated facilities, paying black employees vastly inferior wages and benefits for equal work, and promoting white employees more quickly and at a substantially faster rate than black South African employees.

82. Defendant Daimler forced black workers to use separate dining halls and toilets. Black employees routinely trained unskilled or illiterate white employees who were then promoted above them. Defendant Daimler maintained a racially hostile work environment in which black workers were subjected to daily humiliation and degradation. White employees and supervisors would refer to blacks using derogatory racial slurs, such as “dogs”, “Kaffirs” and “coons.”

83. Defendant Daimler systematically treated its black workers in a grossly discriminatory manner in every area of its operations and in its black employees’ terms and conditions of work, including salary, promotions, benefits, and human dignity. This systematic discrimination went beyond what was required by law and practice. Defendant Daimler’s management in cooperation with government officials took advantage of apartheid law and practice to impose their own harsh brand of apartheid in Daimler’s internal operations.

DEFENDANT GM’S PARTICIPATION IN APARTHEID

84. GM ran its South African operations through its agent, GM South Africa (Pty) Ltd (GM). GM was incorporated in 1926 in South Africa. Senior management in South Africa included American personnel at all times material to Plaintiffs’ allegations.

A. GM’s Production of Military Vehicles

85. GM’s operations at its factory in Port Elizabeth included the assembly and marketing of vehicles for the government, including thousands annually to the security forces in the mid-1980s. GM supported the apartheid regime with the provision of these vehicles. At all relevant times before GM divested, Defendant GM manufactured specialized vehicles, in whole or in part, for security forces in its South African plants. Such vehicles included heavy trucks designed for military purposes and armored personnel carriers.

86. GM created paperwork identifying these vehicles as intended for the South African security forces. Some vehicles were painted in the plant to meet security forces' specifications. Officials from security forces, sometimes in uniform, visited GM's plants on a regular basis to inspect the vehicles. At all relevant times, Defendant GM knew that its products would be used to violently suppress non-violent opponents of apartheid, including Plaintiffs and the classes they represent.

87. GM's vehicles regularly patrolled the townships. Security forces used them to intimidate, suppress and control both strikers and anti-apartheid activities. The use of GM's vehicles by the South African security forces resulted in injuries and deaths to numerous South Africans. Employees protested at being forced to manufacture the vehicles that were used to suppress anti-apartheid activity in black communities. When this occurred, GM management stated that anyone who protested the production of such vehicles would be assumed to be members of the African National Congress (ANC), even without any other evidence, and that anyone who was an ANC member would be fired.

88. At all relevant times, GM knew that the South African security forces violently repressed the rights of blacks in the country, and that the security forces used GM vehicles in violating the human rights of thousands of black South Africans. For example, Defendant GM was well aware that its vehicles were used in the state violence at Soweto and Duncan Village and many other similar incidents; the paragraphs 68-76 are thus realleged herein.

B. Suppression of Trade Unionism and Community Organizing

89. GM denied black employees their freedom to assemble and promoted the apartheid regime by relying on the South African security forces to harass and assault its black employees to prevent them from unionizing. Even when black employees did unionize, GM

management prohibited salaried employees from participating in union activities that supported anti-apartheid political organizations. GM allowed security forces onto its premises to help suppress lawful union activities. These security forces worked closely with GM management in suppressing union activities. They collaborated in the arrest of black GM employees who participated in union activity. GM human resources employees reported black GM employees involved with unions to the security forces, who in turn arrested certain GM employees at the GM facilities. Employees were arrested, interrogated and tortured because of their union and anti-apartheid activities.

90. Plaintiff Tamboer was a shop steward in NAAWU. He was required to inform GM when he left work for union activities. He was arrested on numerous occasions as a result of providing such notification because of GM's collaboration with the government. For example, on one occasion in 1982 Tamboer was arrested and detained for weeks. During his detention he was interrogated and tortured because of his union's activities at GM. Tamboer was also interrogated about the NAAWU's relationship with MACWUSA, a separate union comprised largely of Xhosa workers. Special Branch officers who participated in the post-arrest interrogations and torture of Tamboer visited the GM plant on multiple occasions. Tamboer saw these individuals on GM's premises speaking to GM's head of personnel. On more than one occasion, GM managers summoned Tamboer and allowed Special Branch officers to question Tamboer about his union activities on GM premises.

91. GM shared information about union leaders at its plants with the security forces, knowing that the security forces would detain and torture such leaders as a direct result. During interrogations, security forces regularly quoted statements made by Tamboer in discussions with GM management, sometimes verbatim.

92. Also in the mid-1980s, GM employees went on strike to demand their pensions before GM's planned divestment from South Africa. GM invited security forces into its premises, where they arrested workers and used dogs and whips to break up strikes. Many of those arrested were interrogated and tortured to elicit information about their union and anti-apartheid activities.

93. Many members of the union leadership were fired as a result of the strike. Plaintiff Tamboer was among those arrested because of his involvement in the strike as a shop steward for NAAWU. He remained imprisoned for three to four months. During his imprisonment, Tamboer was repeatedly questioned by security forces about strike activity at GM. They choked him and bashed his head against a wall. Security forces also kicked him in the ribs and stomped on his ankles as part of their torture techniques. Tamboer suffered permanent brain damage and epilepsy as a result of injuries suffered during his arrest and imprisonment.

94. On another occasion, after Tamboer spoke about poor working conditions at GM at a political meeting, security forces arrived at his mother's house, arrested him, and verbally assaulted his mother, declaring that she would never see her son again. She suffered a heart attack as a result of this shock. Then, security forces took Tamboer in a Special Branch car and told him that he would be disappeared. However, the officers were interrupted by an order to return to the station before they could carry out their threat.

95. GM also retaliated against employees with anti-apartheid views. For example, GM officials required that Plaintiff Mali accompany a reporter from Life Magazine around the Eastern Cape in 1985. Mali complied and provided information on the effects of apartheid on black South Africans, as well as information about working conditions at GM. When Life

Magazine published the article, GM management questioned Mali about his political beliefs and expressed their distaste for the ANC. Mali said that he agreed with the ANC's policies because they supported racial equality and fairness for all. GM subsequently retaliated against Mali for the content of the article and his belief in equality by transferring him to a department that was in the process of being shut down. As a result, Mali lost his job approximately one month later.

96. Senior management in GM included members of the Broederbond. When workers challenged the employment of these individuals, GM management ignored these complaints and accused the employees of being ANC members. Management warned them that they could not be members of groups such as PEBCO or join trade unions.

C. GM's Replication of Apartheid within its Plants

97. GM took advantage of the apartheid system to engage in pervasive discrimination and exploitation of black South African workers in order to maintain a constant supply of cheap labor. GM violated the human rights of its black South African workers by cooperating with the apartheid regime in systematically and consistently segregating their work facilities, employing them at lower wages for the same work, offering them the lowest positions, and denying them promotions regardless of skill, training, or experience.

98. GM segregated the facilities at its plants by race at least through 1985. These facilities included canteens and restrooms, GM designated the segregated facilities with signs for "Europeans" and "non-Europeans."

99. GM consistently hired black South Africans for the lowest positions and refused to promote them. On the line, laborer positions were generally filled only by blacks. Upper level positions – group leaders, foremen, general foremen and other "senior" positions – were overwhelmingly filled by white employees. Defendant GM maintained systematic humiliating

and discriminatory practices in all of its employment practices toward blacks. Even though it implemented some changes in the 1980s and 1990s, at all times materials to Plaintiffs' allegations, Defendant GM continued these practices going beyond what was required by law and practice. Defendant GM's management, in cooperation with government officials, took advantage of apartheid law and practice to impose their own harsh brand of apartheid in GM's internal operations.

D. GM "Divestment"

100. As part of an effort to claim divestiture, around January 1, 1987, GM "sold" its operations to a group of investors headed by local management. This effort at "divestiture" was a scam. The local management included no blacks or persons of mixed race. As part of the deal, GM agreed to pay the subsidiary's creditors and likely agreed to delay payment on the sale for 18 months. The sale terms included a buy-back option. When GM began divesting from South Africa, GM management told Plaintiffs Tamboer and Mali, as well as others that the company was "changing names only." During the transfer period, GM management prohibited black employees from speaking with reporters. GM was subsequently renamed Delta Motor Corporation. GM licensed use of its trademark to Delta Motor Corporation and continued to sell its product through Delta Motor Corporation. The boxes and all the parts supplied continued to include the GM logo. GM transferred one of its senior management employees, an American with many years of experience at GM, to run Delta. He had been a GM vice president in the United States shortly before assuming his post as head of Delta. Delta refused to sign the Sullivan Principles,² although it stated that it would follow nondiscriminatory employments

² The Sullivan Principles were a voluntary code of corporate conduct developed by African-American preacher Robert Sullivan in 1977 to demand equal treatment for blacks employed by American companies operating in South Africa.

practices and exercise social responsibility. The new ownership also said that it would “not preclude” sales to military and police. GM repurchased Delta in 1997. The “divestment” program was a purposeful attempt to evade international sanctions and to allow the maintenance of GM’s system of internal apartheid.

DEFENDANT FORD’S PARTICIPATION IN APARTHEID

101. Ford’s South African operations were conducted through Ford Motor Co. of South Africa (Pty) Ltd (Ford South Africa). Ford South Africa was formed in 1933. It was a wholly-owned subsidiary of Ford Motor Company of Canada, Ltd. (“Ford Canada”), which was itself 76% owned by Ford U.S. Ford South Africa assembled Ford vehicles from parts obtained locally as well as parts shipped from Ford Canada and Ford England. These shipments were intended in part to avoid U.S. sanctions that did not permit supplying U.S.-made parts to South Africa.

102. Senior top management in Ford in South Africa included American personnel. Senior management in Ford included members of the Broederbond. When workers challenged the employment of these individuals, Ford management ignored these complaints.

103. In 1985, Ford Motor Co. of South Africa (Pty) Ltd merged with Amcar Motor Holding, the vehicles operations of Anglo American Corporation. The resulting entity was called South African Motor Corporation (SAMCOR). As a result of the merger, Ford became a minority owner of the new company, with roughly a 42% interest. At all relevant times, Ford Motor Co. and SAMCOR acted as agents of Defendant Ford.

A. Manufacture of Vehicles for Security Forces

104. In its South African plants, Defendant Ford manufactured specialized vehicles for security forces, including large military trucks, armored vehicles and specialized sedans for the

Special Branch. Ford created paperwork identifying the vehicles as intended for security forces, some of which specifically identified the police or the military as the recipients. Some vehicles were painted in the plant to meet security forces' specifications. High-ranking officials from security forces, sometimes in uniform, visited Ford plants on a regular basis, consulted with Ford management and inspected the vehicles. At all relevant times, Defendant Ford knew that its products would be used to violently suppress blacks and opponents of apartheid, including Plaintiffs and the classes they represent. For example, Defendant Ford was well aware that its vehicles were used in the state violence such as at Soweto and Duncan Village and many other similar incidents; the paragraphs 68-76 are thus realleged herein.

105. Ford employees, including Plaintiff Peters, raised concerns with Ford management about Ford's production of security forces' vehicles because they saw these vehicles in black communities on a regular basis. On more than one occasion, Ford management retaliated against black employees who questioned its involvement with the South African security forces, *inter alia*, by shortening the work shifts of black employees.

B. Ford's Suppression of Anti-Apartheid Dissent

106. In October 1979, Plaintiff Botha became Chairman of the Port Elizabeth Black Civic Organization (PEBCO), an organization he helped launch. PEBCO was an anti-apartheid community organization seeking to improve the living conditions of township residents in and around Port Elizabeth. PEBCO received widespread media attention throughout South Africa at the time of its creation, as a result of which Plaintiff Botha was frequently referred to and quoted in newspapers throughout the country.

107. Shortly after PEBCO was launched, a white Ford supervisor called Plaintiff Botha into his office. The supervisor was holding a newspaper and stated that he, as well as the white

management and other white employees at the plant, were unhappy at the publicity about his work with PEBCO. Despite having a good work record, the supervisor told Plaintiff Botha that he was too political and could either continue working at Ford or go and serve his community by working with PEBCO. When he refused to cease working with PEBCO, he was dismissed from his job at Ford. Only after hundreds of workers at Ford went on strike to demand Botha's reinstatement was he allowed to return to work. During the strike over Botha's dismissal, several employees established a new committee to deal with labor issues, believing that registered unions had collaborated with Ford management.

108. Plaintiff Botha and others formed this committee, which later became known as the Metal and Allied Component Workers Union of South Africa (MACWUSA). Plaintiff Botha was Chair of MACWUSA's Executive Board. Plaintiff Cilibe became treasurer of MACWUSA shortly after its formation. Upon its founding, a senior manager in human resources, a member of the Broederbond, declared that Ford would not recognize MACWUSA as a multiracial union that was in line with the principles of the ANC. Defendant Ford took action to suppress the multiracial union and its activities because of Ford's own desire to impose an apartheid-like system within its own workplace.

109. Ford continued to deny black employees' full freedom to assemble and promoted the apartheid regime. Ford called in the South African security forces to harass and assault its black employees to limit and prevent union organizing, especially unions seen as anti-apartheid. Ford's ongoing discriminatory policies prompted another strike soon after in 1979. Workers demanded that Ford comply with the Sullivan Principles' non-discriminatory provisions. Defendant Ford had committed itself to the Sullivan Principles, which included guarantees to

ensure racial equality, equal pay for equal work and the removal of job reservations but it had flagrantly breached those principles.

110. On the same evening the strike was settled, Plaintiff Botha was arrested and detained by the South African security forces. The security forces interrogated Botha about the strike at Ford and about who was behind the strike. During his detention, he was subjected to torture, including sleep deprivation, and other physical and mental abuse.

111. Upon his release, following several months of detention and abuse, the South African government placed Botha under a banning order, preventing him from working, attending university, meeting with more than one person at any time, or leaving the house between 6pm and 6am or on weekends or public holidays. As a result of these restrictions imposed upon him by the banning order, he was driven into exile in Lesotho.

112. Along with Plaintiff Botha, other politically active workers, with good employment records, were dismissed in the early 1980s by Defendant Ford; some lost their work permits and had to return to the homelands as a result. Even those who were not tortured or driven into exile during the 1979 strikes were severely discriminated against in their employment because of their union and anti-apartheid activities.

113. There were other strikes at Ford in the early to mid-1980s to protest discrimination by Ford. Security forces were called on some occasions. During at least one strike security forces set vicious dogs on the workers. Other employees who participated in the 1979 strikes, as well as later strikes were harassed at home, arrested, detained and questioned about PEBCO or anti-apartheid activities.

114. Union meetings were monitored by members of the Special Branch and/or police, as well as by informants who were in some instances Ford employees. After meetings, security

forces would arrive at the homes of union members, including Plaintiff Cilibe's, to question them about union and strike activities. For example, the officers who interrogated Cilibe in his home made clear that they knew Cilibe worked at Ford in an effort to intimidate him.

115. Plaintiff Peters became the Chairman of NAAWU in the early 1980s at Ford. On occasion, Plaintiff Peters would travel because of his duties as a union representative. Ford received notice of his travel in advance. Ford collaborated with the Special Branch and informed its members of Peters' travel plans. As a result, members of the Special Branch detained Plaintiff Peters to question him about these union activities.

116. During interrogations, the security forces attempted to intimidate and pressure Plaintiff Peters, as Chairman of NAAWU, to intervene with workers in order to prevent and end strike actions. When he refused to do so, he was threatened and tortured. When security forces interrogated Plaintiff Peters about his union activities, they regularly quoted statements he had made to Ford management in meetings he attended as part of his union responsibilities, sometimes verbatim. This reflected the ongoing close cooperation between Ford and the government in suppressing black political activity of any kind.

117. On at least two occasions, Plaintiff Peters was subjected to a form of torture known as "the helicopter": his hands were handcuffed to his ankles, a broomstick was inserted between the wrists and ankles, and he was spun around violently. Some of his torturers were the same Special Branch officials he saw regularly inside the Ford plant speaking with Ford management. During interrogations at the Special Branch office, Plaintiff Peters observed on occasion the head of Ford security inside the building.

118. Some members of Ford management were part of the Broederbond. They flaunted their comprehensive insider knowledge of upcoming security forces activities and

collaboration with security officers. At least one Ford manager who was a member of the Broederbond was informed as part of his Ford responsibilities about Plaintiff Peters' union travels.

119. The head of Ford security often rode through black communities with Special Branch officers in Ford company vehicles as well as Special Branch cars. Some of these officers, who were regularly inside the Ford plants speaking with Ford management, were involved in the torture and arbitrary detention of union leaders, including Plaintiffs Peters and Tamboer. Ford facilitated the torture and arbitrary detention of its own workers.

120. On at least two occasions, Plaintiff Peters was interrogated on Ford premises with Ford's cooperation. In addition to members of the Special Branch, sometimes Ford managers interrogated Peters during these sessions. Several human resources and industrial relations members of management participating in these joint Ford-Special Branch interrogations were also members of the Broederbond.

121. Special Branch officers worked with Ford management to coordinate efforts to intimidate workers to not get involved in political or union activities. For example, on one occasion a union leader's brother who worked at Ford had been interrogated and detained overnight, and he was brought to a plant the following morning. Accompanied by Special Branch into the plant, he was paraded in handcuffs to deter workers from involvement in political or union activities.

122. Members of the class, including Plaintiff Peters, were arrested, detained and tortured by South African security forces as a result of information provided to these forces by Defendant Ford. Ford employees also knew when black employees had been interrogated, even when that information was not public.

C. Ford's Internal Replication of Apartheid

123. Ford continuously subjected its black workers to race-based discrimination and humiliation at its plants, such as segregated facilities, grossly unequal pay for equal work, and lack of opportunity for training and promotion. Plaintiffs Botha, Cilibe and Peters each experienced the severe discriminatory, humiliating and degrading internal apartheid system at Ford. These internal apartheid practices went beyond what was required by official apartheid laws and practices.

124. Facilities in Ford plants, including bathrooms, showers, changing rooms, kitchens and cafeterias, were strictly segregated. In all respects, black employees were given vastly inferior conditions of employment. This segregation was strictly enforced by Ford's management.

125. Ford maintained segregated and unequal facilities into the 1980s. Ford engaged in exploitative practices against black workers beyond what was required by law. For example, class members including Plaintiff Cilibe trained white employees with fewer qualifications, who soon became their superiors. White employees performing the same jobs as black employees were given a higher title in order to justify higher pay and benefits. Black employees, including Plaintiff Botha, who completed courses with distinction would not be promoted, when whites with poorer marks, or who were illiterate, would be. This was done on a systematic basis and in a humiliating manner.

126. White workers, including storemen, would obtain three times or more pay for the same work. If black employees did gain a more senior position they were systematically paid much less than their white colleagues at the same level, regardless of ability or experience.

These differences were maintained systematically and were based upon the same systematic degradation and humiliation of blacks at the core of apartheid ideology.

127. While employed at Ford, Plaintiff Mali was denied promotions in favor of white employees with less education, although he applied to open vacancies. Mali's supervisors also intentionally frustrated his efforts to further his education and advancement. Black workers were systematically relocated to manual labor and other less desirable jobs.

D. Ford "Divestment"

128. While Ford agreed to sell its interest in SAMCOR in 1987, it continued to supply SAMCOR with vehicles, components, management and technical assistance and continued to license the Ford trademark to SAMCOR. Ford transferred 57% of its stake to local employees and the remaining 43% of its stake to Anglo American Corporation. Ford also transferred tens of millions from the payment it received from the sale directly to SAMCOR. Thus, Ford effectively continued to exercise control over its agent, SAMCOR.

DEFENDANT IBM'S PARTICIPATION IN APARTHEID

A. IBM's Active Participation in Maintaining the Apartheid System

129. IBM South Africa (Pty) Ltd was incorporated in 1952 in South Africa as a subsidiary of IBM. IBM's largest client in South Africa was the South African government, accounting for about one third of its sales there.

130. At all times relevant to Plaintiffs' allegations, Defendant IBM provided computer technology, systems, software, training and support to facilitate the apartheid governments' control of the majority black population. The maintenance of the complex apartheid system of population control organized by racial classification required sophisticated computer technology and knowledge of the kind provided by Defendant IBM.

131. In particular, Defendant IBM supplied the technology, know how and support for a key identity document used in South Africa, known as the “Book of Life.” Such documents contained, among other things, racial classification, name, sex, date of birth, residence, photos, marital status, driver license number, dates of travel/exit from and/or return to the country, place of work or study and finger prints. The Book of Life worked in conjunction with the influx control system by providing affirmative confirmation of racial classifications beyond simple black or white classifications. It thereby enabled the authorities to identify persons who were classified as Indian, coloured or otherwise, determine their rights in accordance with movement and labor controls, and execute any suppressive force deemed necessary.

B. IBM’s Production of the Homeland Identity Documents to Facilitate Apartheid’s Goals of Racial Separation and De-Naturalization

132. Bophuthatswana was a designated homeland – essentially excluding blacks from white South Africa under apartheid. It was accorded nominal independence, as a putatively sovereign state, in 1977.

133. Bophuthatswana established some of the indicia of statehood. Among these were the capacity to have “citizens,” a designation forced upon black South Africans of the Tswana tribe as part of the exercise of de-nationalization that was the basis of Grand Apartheid. The Bophuthatswana government imposed identity documents and passports among the victims of de-nationalization, a process that was the ultimate culmination of the system of Grand Apartheid.

134. For this purpose, the Bophuthatswana government used IBM computers and systems, including both hardware and software. Bophuthatswana government employees working with IBM computers and systems were trained in an IBM-specific programming language. IBM ran training courses for government employees in Johannesburg and Bophuthatswana. These courses also covered the IBM-specific programming language and the

proper use of IBM machines. Programmers who attended these courses were government employees. Some computer programs run by the Bophuthatswana government on IBM machines were developed and written in-house with the assistance of IBM employees. When government employees encountered difficulty with their machines or with the programs, IBM employees would assist them in troubleshooting and repairing any problems.

135. At least by 1978, IBM actively participated in creating a new ID book for the Bophuthatswana government by wholly developing a sub-system to produce the ID book. IBM developed both the hardware and software – both a machine and a program – used to create the Bophuthatswana ID books. Once IBM had developed the system, it was transferred to the Bophuthatswana government for implementation. IBM employees trained Bophuthatswana employees to use the machine and program to produce ID documents. IBM was contacted when problems arose with the ID book system and IBM employees would attend to fix such problems. The IDs produced for the Bophuthatswana government contained the name, sex, racial classification, ethnic origin and residential address/postal address of the individual. Bophuthatswana residents were required to carry the IDs produced by the Bophuthatswana government with the active participation of IBM.

136. Plaintiff Phiri suffered as a result of the South African government's campaign to create nominally "independent countries" within South Africa. Phiri was stripped of his South African citizenship, which was replaced by Bophuthatswana citizenship. Officials declared his South African ID invalid, and he was assigned a Bophuthatswana ID document. IBM machines and software were used to produce the Bophuthatswana ID. Black individuals, including Plaintiff Phiri, were told that they had to apply, or they would lose privileges, such as employment opportunities in Bophuthatswana. Many were forced to return their South African

IDs when they applied for the new Bophuthatswana ID. Individuals feared punishment, even jail, or the loss of existing employment if they did not get the new ID. As a result of his loss of citizenship, Plaintiff Phiri also lost the benefits of South African citizenship, including the right to live and work in his own country.

137. Other homeland governments, including but not limited to Gazankulu, KwaZulu, Lebowa, Transkei and Venda, also used IBM hardware and software to produce ID documents.

138. IBM also actively participated in developing the book-keeping and salary system used by the Bophuthatswana government for all employees, including the police and security forces.

C. IBM Attempts to Conceal its Active Support of Apartheid

139. Defendant IBM knew exactly how its substantial assistance to the apartheid government was used and how it facilitated the human rights violations alleged herein. Defendant IBM engaged in subterfuges to disguise its violations of international and U.S. sanctions against South Africa so that it could continue to assist the apartheid regime and continue to profit greatly from that collaboration.

140. After the U.S. Commerce Department banned the export of all U.S.-origin products to South African security forces, IBM circumvented that embargo by delivering products to South African security forces that were produced outside the United States, and therefore were not subject to the embargo. Given the widespread media coverage of atrocities committed by apartheid security forces in defense of apartheid, IBM knew that it was substantially assisting the South African government in committing massive human rights violations, as alleged in this complaint, against its people.

D. IBM “Divestment”

141. In 1987, IBM “sold” its South African subsidiary to a company created for the benefit of white IBM South Africa employees. However, IBM stated that it would provide a loan allowing local investors to buy the subsidiary. IBM retained a buy-back option to the new company as a term of the sale. The new entity was run by the person who was the general manager of IBM South Africa prior to the sale. IBM continued to sell its products, parts and services through the new company and continued to be the top supplier of computers to South Africa after the “divestiture”. Around 1992, IBM purchased a 24% stake in the local distributor of IBM products.

DEFENDANT BARCLAYS’ PARTICIPATION IN APARTHEID

142. Barclays Bank of Britain purchased the National Bank of South Africa in 1924. It subsequently ran its South Africa operations through this bank, which was renamed Barclays National Bank of South Africa, until it divested in late 1986 or early 1987. Barclays National Bank of South Africa was a wholly-owned subsidiary of Barclays Bank of Britain until at least 1973. Barclays Bank of Britain subsequently reduced its holdings but remained a majority shareholder Barclays National Bank of South Africa until approximately August 1985.

A. Barclays’ Enforcement of Grand Apartheid’s Geographic Separation of the Races

143. Defendant Barclays actively supported and perpetuated the forced geographic separation of the races which epitomized apartheid. Black employees were routinely sent to work in branches in the Bantustans and were largely denied opportunities to work in, or transfer to, offices in major and predominantly white cities, like Cape Town and Johannesburg.

144. In 1973, Plaintiff Ntsebeza was in Cape Town (a predominately white area) with a student pass when he inquired about employment at a Barclays Bank branch in Cape Town.

Ntsebeza was told that because he was a Xhosa-speaking person (a “Bantu”) he should apply in the Eastern Cape (a predominately black area) and that his application would be sent to a Bantustan branch. As instructed, Ntsebeza applied in the Eastern Cape and was hired and then worked as a clerk for Barclays in Mthatha, in the Transkei Bantustan, from 1973-1974, initially in the savings department and subsequently in the ledgers department.

145. Defendant Barclays systematically denied training and advancement opportunities to black employees who were employed in white areas. Defendant Barclays maintained segregated facilities in the major cities by staffing branches in black areas solely with black personnel. As a result of Barclays’ internal replication of the apartheid system within its facilities, and its refusal to employ black South Africans in predominately white areas, Barclays facilitated the apartheid system and committed widespread systematic discrimination against its black employees and job applicants. As a result of Barclays’ active replication of the apartheid system at its facilities and in its employment practices, Plaintiff Ntsebeza suffered gross humiliation and degrading treatment.

B. Barclays’ “Divestment”

146. In November 1986, Barclays announced that it was withdrawing from South Africa and selling its subsidiary, Barclays National Bank of South Africa, to a consortium of local mining and insurance companies that were minority owners at the time of the announced sale, including Anglo American, De Beers and Southern Life Association.

147. At the time of the announced sale, Barclays South Africa employed approximately 25,000 people and had hundreds of branches throughout the country. Its employees represented approximately 25% of all banking employees in the country and included more than 40% of all black banking employees in South Africa.

148. After the sale, Barclays continued to treat its former South African affiliate as a correspondent bank. Barclays had not repatriated the funds obtained for the sale of its shares in Barclays National Bank of South Africa as of at least March 1987.

CLASS ACTION ALLEGATIONS

149. This action is brought and may properly be maintained as a class action pursuant to the provisions of Fed. R. Civ. P. 23. Plaintiffs bring this class action as authorized by the Alien Tort Statute (ATS) on behalf of themselves and all black South African citizens (and their heirs and beneficiaries) who during the period from 1973 to 1994 suffered injuries as a result of Defendants' violations of the law of nations by their complicity in such violations caused by South African state officials, employees or agents or by their actions in replicating the apartheid system in their own internal operations. Excluded from the class are Defendants, any entity in which Defendants have a controlling interest, and any of Defendants' subsidiaries, affiliates, officers or directors, or the families of any such officers or directors.

150. Plaintiffs and class members were tortured; extrajudicially killed; stripped of their South African nationality and/or citizenship; suppressed and retaliated against for expressing anti-apartheid sentiments or beliefs or for participating in anti-apartheid organizations or movements; suppressed and retaliated against for their union activities; offered jobs conditioned on moving to another geographic region because of their race; and/or forced to work in an employment environment that replicated the apartheid system by the Defendants acting alone and/or in complicity with the apartheid state.

151. The class for whose benefit this action is brought is so numerous that joinder of all class members is impracticable. Plaintiffs believe that there are many thousands of members

of the class as described above, although the number and identities of individual class members are presently unknown and can be ascertained only through discovery.

152. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members.

153. Among the questions of law and fact common to the class are the following:

- a. Whether Defendants actively participated in extrajudicial killing of those who opposed and/or protested against the South African apartheid state, or subjected them to other forms of physical violence;
- b. Whether Defendants actively participated in the torture of those who opposed or protested against the South African apartheid state or against working conditions as members of union organizations;
- c. Whether the Defendants suppressed and retaliated against those who participated in anti-apartheid political movements or union activities or expressed similar views;
- d. Whether the Defendants implemented apartheid by facilitating or participating in the geographic separation of the races;
- e. Whether Defendants implemented apartheid through de-nationalization;
- f. Whether Defendants internally replicated the system of apartheid in their offices and/or plants; and
- g. Whether these actions against the class members were committed by the apartheid state with the complicity of Defendants, either by aiding and abetting or engaging in a conspiracy or joint criminal enterprise; or whether the actions were

committed directly by the Defendants themselves; or whether each Defendant and the state acted as the agent of the other.

154. Plaintiffs' claims are typical of the claims of the other members of the class, since all such claims arise out of Defendants' actions in actively providing support for the apartheid system and for the elimination of anti-apartheid employees or others and their activities in exploiting the apartheid system to replicate apartheid in their own internal operations. Plaintiffs have no interest antagonistic to the interests of the other members of the class.

155. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel with extensive experience in the prosecution of human rights actions and class actions. Accordingly, Plaintiffs are adequate representatives of the class and will fairly and adequately protect the interests of the class.

156. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for the Defendants in this action.

157. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

158. Although most class members are located in South Africa, this will not hamper the ability to pursue this case as a class action since communication with class members can be made with the assistance of various attorneys and non-governmental organizations operating in South Africa.

CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF
(APARTHEID AS A CRIME AGAINST HUMANITY)
(AGAINST ALL DEFENDANTS)

159. The allegations set forth in the above paragraphs are realleged and reincorporated by reference as if fully set forth below.

160. All Plaintiffs, on behalf of themselves and the classes they represent, seek relief from crimes against humanity committed by the apartheid state with the complicity of Defendants, either by aiding and abetting or engaging in a conspiracy or joint criminal enterprise or as agents or committed directly by the Defendants themselves.

161. The crimes against humanity for which Defendants are liable are acts which were knowingly committed as part of widespread or systematic attacks directed against a civilian population.

162. The acts which form the basis of Defendants' liability for crimes against humanity include apartheid itself as well as murder, deportation or forcible transfer of population, revocation of nationality, imprisonment or other severe deprivation of physical liberty in violation of international law, torture, the persecution against any identifiable group or collectivity on political, racial, national, or ethnic grounds, and/or other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

163. Each single act constitutes a crime against humanity because it was committed within the context of widespread or systematic attacks against a civilian population. In addition, apartheid itself has been long recognized as a crime against humanity.

164. Plaintiffs and the members of the class or classes they represent suffered injuries as a result of Defendants' actions.

165. The Defendants' actions were committed with knowing and callous disregard for Plaintiffs' rights. As a result, Plaintiffs are entitled to an award of punitive damages against each Defendant.

SECOND CLAIM FOR RELIEF
(DENIAL OF THE RIGHT TO A NATIONALITY)
(AGAINST DEFENDANT IBM)

166. The allegations set forth in the above paragraphs are realleged and reincorporated by reference as if fully set forth below.

167. Plaintiff Phiri on behalf of himself and the class he represents seeks relief from the denial of the right to a nationality committed against him by the apartheid state with the complicity of Defendant IBM, either by aiding and abetting or engaging in a conspiracy or joint criminal enterprise. Defendant IBM conspired with state actors. Defendant IBM and the state each acted as the agent of the other.

168. Plaintiff Phiri and the class he represents were stripped of their South African nationality and citizenship, were restricted in their ability to travel in to, out of and around South Africa, and were discriminated against by being forcibly geographically separated and segregated into homelands on the basis of race.

169. Plaintiff Phiri and the class he represents suffered injuries as a result of Defendant IBM's actions.

170. Defendant IBM's actions were committed with knowing and callous disregard for Plaintiffs' rights. As a result, Plaintiffs are entitled to an award of punitive damages against Defendant IBM.

THIRD CLAIM FOR RELIEF

(EXTRAJUDICIAL KILLING)

(AGAINST DEFENDANTS DAIMLER, FORD, AND GM)

171. The allegations set forth in the above paragraphs are realleged and reincorporated by reference as if fully set forth below.

172. Plaintiffs Molefi, Ngcaka, Dyonashe and Mzamo on behalf of themselves and their murdered sons, Hector Pieterse, Thembekile Ngcaka, Vuyani Adonis, and Bubele Mzamo, and the classes they represent, seek relief from extrajudicial killings committed against them by the apartheid state with the complicity of Defendants, either by aiding and abetting or engaging in a conspiracy or joint criminal enterprise. Each Defendant conspired with state actors. Each Defendant and the state acted as the agent of the other.

173. These Plaintiffs and the class, or classes, they represent suffered injuries as a result of these Defendants' actions.

174. These Defendants' actions were committed with knowing and callous disregard for Plaintiffs' rights. As a result, Plaintiffs are entitled to an award of punitive damages against each Defendant.

FOURTH CLAIM FOR RELIEF

(TORTURE)

(AGAINST DEFENDANTS DAIMLER, FORD, AND GM)

175. The allegations set forth in the above paragraphs are realleged and reincorporated by reference as if fully set forth below.

176. Plaintiffs Botha, Peters, Tamboer, Nonyukela, and Simangentloko, on behalf of themselves and the class, or classes, they represent, seek relief from torture committed against them by the apartheid state with the complicity of these Defendants, either by aiding and abetting or engaging in a conspiracy or joint criminal enterprise. Each Defendant conspired with state actors. Each Defendant and the state acted as the agent of the other.

177. The tortures described herein were inflicted deliberately and intentionally for purposes that included, among others, punishing the victims or intimidating the victim or third persons.

178. Plaintiffs and the class, or classes, they represent suffered severe mental and physical injuries as a result of these Defendants' actions.

179. These Defendants' actions were committed with knowing and callous disregard for Plaintiffs' rights. As a result, Plaintiffs are entitled to an award of punitive damages against each of these Defendants.

FIFTH CLAIM FOR RELIEF

(CRUEL, INHUMAN OR DEGRADING TREATMENT)

(AGAINST ALL DEFENDANTS)

180. The allegations set forth in the above paragraphs are realleged and reincorporated by reference as if fully set forth below.

181. All Plaintiffs and the class, or classes, they represent suffered injuries as a result of Defendants' actions that constitute cruel, inhuman or degrading treatment (CIDT).

182. The acts described herein had the intent and the effect of grossly humiliating and debasing the Plaintiffs, forcing them to act against their will and conscience, inciting fear and anguish, and/or breaking their physical or moral resistance.

183. The acts described herein constitute CIDT committed against the Plaintiffs by the apartheid state with the complicity of Defendants, either by aiding and abetting or engaging in a conspiracy or joint criminal enterprise; or committed directly by the Defendants themselves. Each Defendant conspired with state actors. Each Defendant and the state acted as the agent of the other.

184. All Plaintiffs and the classes they represent suffered injuries as a result of Defendants' actions.

185. The Defendants' actions were committed with knowing and callous disregard for Plaintiffs' rights. As a result, Plaintiffs are entitled to an award of punitive damages against each Defendant.

PRAYER FOR RELIEF

186. WHEREFORE, each and every Plaintiff prays for judgment against each Defendant as follows:

- i. for compensatory damages, including general and special damages;
- ii. for punitive damages;
- iii. for disgorgement of profits;
- iv. for costs of suit, including attorneys fees; and
- v. for such other and further relief as the Court deems appropriate.

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