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September 4, 2025

The Honorable Chief Justice Patricia Guerrero
and Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: *Ortiz v. Daimler Trucks North America LLC*, No. S292265

To Chief Justice Guerrero and Associate Justices:

We write on behalf of the Alliance for Automotive Innovation, the National Association of Manufacturers, the American Coatings Association, and the American Tort Reform Association to urge this Court to grant the petition for review filed by Daimler Truck North America LLC.

A. Introduction

Last year, in *Gilead Tenofovir Cases* (2024) 98 Cal.App.5th 911, the Court of Appeal became the first court in the country to hold that drugmakers have a tort duty to immediately commercialize drugs that might be safer than their existing offerings. Before and after this Court granted review in *Gilead*, a long list of amici, including this group, warned that *Gilead* is a roadmap for similar suits against manufacturers of all stripes, not just drugmakers. These amici specifically noted that *Gilead* threatens liability for efforts to improve vehicle safety. They explained that "[w]henever carmakers rolled out new safety technology—for example, a new lane-keeping system to prevent drivers from drifting off the road or a new braking system to shorten stopping distances and prevent crashes—they could be sued for not doing it sooner, or for doing it only for some models and not others." (Amicus Br. of National Assn. of Manufacturers et al. (No. S283862, Nov. 4, 2024).) Just as Gilead was accused of delaying the launch of a new drug to make more money, "[c]armakers could be accused of doing the same thing by making new safety technology available only in

flagship models," and if that theory were viable, "manufacturers might make *only* the premium product with all the latest features—which would price many consumers out of the market—or avoid innovation altogether—which would prevent the development of important new safety features." (*Ibid.*) Sure enough, the Court of Appeal has now endorsed the theory that a vehicle manufacturer, Daimler Truck North America, can be held liable for not making an advanced braking system mandatory equipment on all its trucks.

Gilead and the decision below together stand for the proposition that California law imposes a tort duty not just to commercialize new safety-related innovations, but also to force customers to adopt them. If manufacturers do not rush an innovation to market, or if they permit their customers to decline to pay for the innovation, significant judgments in personal-injury cases may be in store.

That prospect will warp manufacturers' incentives, encouraging them to forgo safety-related innovations. It is also impossible to square the decision below with the reality that the adoption of new innovations, safety-related or not, rarely happens overnight. Manufacturers alter their product lines in light of a constellation of factors, including regulatory review (which rarely happens swiftly) and consumer tastes (which can also be slow to change). Under the decision below, neither regulatory review nor the marketplace would mean anything. Instead, juries would be empowered to decide whether a manufacturer should have, years before any trial, made an indisputably safe product even safer. The arbitrariness of that decisionmaking, and the potential difficulty of defeating a suit before trial, would endow even fanciful suits with settlement value. With the decision below as a roadmap, every potentially safety-related innovation could be a basis for arguing that earlier iterations of the same product, or products from the same manufacturer that lack the new feature, are defective. That novel theory would upend products-liability law and, by discouraging safety-related improvements, endanger the very people it is meant to protect.

This Court should grant review and decide this case on the merits as a companion to *Gilead*. At the very least, the Court should grant the petition and hold it pending the disposition of *Gilead*.

B. Interest of these amici

Four amici urge this Court to grant review and reverse:

1. **The Alliance for Automotive Innovation** is the leading advocacy group for the auto industry, representing 45 automobile manufacturers and value chain partners who together produce approximately 95 percent of all light-duty vehicles sold in the United States. The Alliance is directly involved in regulatory and policy matters affecting the light-duty vehicle market across the country. Members include motor vehicle manufacturers, original equipment suppliers, and technology and other automotive-related companies.

2. **The National Association of Manufacturers** is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

3. **The American Coatings Association** is a voluntary, nonprofit trade association representing more than 170 manufacturers of paints and coatings, raw materials suppliers, distributors, and technical professionals. As the preeminent organization representing the coatings industry in the United States, a principal role of ACA is to serve as an advocate for its membership on legislative, regulatory, and judicial issues at all levels. In addition, ACA undertakes programs and services that support the paint and coatings industries' commitment to environmental protection, sustainability, product stewardship, health and safety, corporate responsibility, and the advancement of science and technology. Collectively, ACA represents companies with greater than 90% of the country's annual production of paints and coatings, which are an essential component to virtually every product manufactured in the United States.

4. **The American Tort Reform Association** is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation.

Amici together represent the interests of tens of thousands of American businesses, both large and small, that have an interest in stability and predictability in the law governing their operations. In *Gilead* and now *Ortiz*, the Court of Appeal has upended long-settled products-liability law by holding that manufacturers have a tort duty to innovate and then to force widespread adoption of that innovation. Those rulings are out of step with longstanding law and widely accepted market practices, and they invite meritless litigation over products that are responsibly designed, manufactured, and sold to the public. This Court already granted review in *Gilead*, and now it should grant review in *Ortiz*.

C. This Court should grant review.

The decision in this case and the decision in *Gilead* together (1) create unexpected new sources of tort liability for manufacturers, (2) will discourage innovation and imperil public safety, (3) are impossible to square with the practical and regulatory realities of designing a product line, and (4) will lead to a wave of lawsuits triggered by manufacturers' own safety-related innovations.

1. The decision below, in combination with the decision in *Gilead*, threatens a radical expansion of tort liability for manufacturers.

Under the Court of Appeal's decision in *Gilead*, manufacturers have a duty to rapidly commercialize any new product that might be safer than an existing product. (See *Gilead Tenofovir Cases* (2024) 98 Cal.App.5th 911, 922, 931, 945.) So even though Gilead made a drug that was by all accounts safe, the Court of Appeal decided the company could be liable to tens of thousands of plaintiffs for not immediately rolling out a second drug that the plaintiffs claim is safer. (See *id.* at pp. 916-917, 931.) The decision below takes the logic of *Gilead* a step further. There can be liability not just for taking too long to commercialize innovations, but for not immediately forcing consumers to adopt those innovations. The plaintiffs here do not claim that

Daimler's truck is unsafe, that its braking system malfunctioned, or that Daimler should have warned everyone on the road of the possibility that a truck driven negligently could harm others. Nor do the plaintiffs claim that Daimler developed but sat on a new technology, as supposedly happened in *Gilead*. Instead, the plaintiffs effectively praise Daimler for developing a new safety-related feature and making that feature available to customers—but in the same breath condemn the company for not immediately *requiring* all customers to adopt it. (See, e.g., Opn. at pp. 6-7.) Taken together, then, *Gilead* and the decision below stand for the proposition that a manufacturer's own safety-related innovation triggers liability unless the manufacturer both immediately commercializes the innovation and mandates it across the manufacturer's entire product line.

That new legal rule is a sea change. Before *Gilead*, no court had ever endorsed the theory that there is a tort duty to commercialize new products, and before this case, courts had rejected the theory that there is a tort duty to force customers to adopt those products. The Tenth Circuit, for example, affirmed summary judgment in a similar lawsuit over a rear-end collision, holding that Daimler was not liable for failing to equip all its trucks with forward-collision-warning and emergency-braking systems. (*Butler v. Daimler Trucks N. Am., LLC* (10th Cir. 2023) 74 F.4th 1131, 1137.) "The truck driver was prosecuted and sentenced to prison for his misconduct" in causing the accident, but Daimler was not responsible. (*Ibid.*) And in yet another lawsuit over a rear-end collision, the Court of Appeal held that Apple had no tort duty to install on every iPhone software that would lock drivers out of features like texting and FaceTime. (*Modisette v. Apple Inc.* (2018) 30 Cal.App.5th 136, 140-141, 152.) The court explained that holding Apple liable (in addition to the negligent driver who caused the accident) would be no different from "'making a car manufacturer stop selling otherwise safe cars because the car might be negligently used in such a way that it causes an accident.'" (*Id.* at p. 149.) And yet the court below held that Daimler might be liable for selling an otherwise safe truck that everyone agrees was driven negligently. (Pet. at pp. 14-15; Opn. at p. 2.)

2. The decision below creates perverse incentives and will discourage safety-related innovation.

What triggered Daimler's potential liability in this case, the Court of Appeal ruled, was not a failure to comply with positive law; the truck at issue

in the case was sold in 2018, and even today, no statute or regulation requires automatic-braking systems on heavy trucks. Nor was it the pace of innovation in the industry at large; the Court of Appeal nowhere suggests that Daimler was behind the times when it sold the truck. Instead, the Court of Appeal concluded that Daimler's *own* innovation was to blame; it would not even potentially be liable but for the fact that it gave customers the option to buy trucks equipped with its latest collision-avoidance technology, Detroit Assurance 4.0.

That theory of liability, especially in combination with the closely related theory of liability in *Gilead*, will discourage innovation. Devoting resources to research and development could trigger a duty under California tort law to completely change a manufacturer's product mix overnight. Once a manufacturer develops a new safety feature, it will have an obligation not only to commercialize the feature straightaway, but to force the feature's adoption across its customer base. In other words, by virtue of these two Court of Appeal decisions, manufacturers have gained the dangerous power to render their own existing product lines defective and the obligation to force their customers to switch to new products—even if those customers don't value the new feature and don't wish to pay extra for it.

It is difficult to imagine a policy more inimical to the promotion of public safety through innovation. In the name of promoting safety, these new theories of liability will inevitably undermine it.

3. The decision below does not account for the complexities and tradeoffs inherent in designing a product line.

About 40,000 people die on American roads every year. (*NHTSA Estimates 39,345 Traffic Fatalities in 2024* (Apr. 8, 2025) NHTSA <https://tinyurl.com/4dn8arjf>.) Driving is inherently dangerous. Drivers pilot multi-ton hunks of metal and plastic at extremely high speeds next to other people doing the same thing. Some of those people are driving impaired, some of them are texting, some of them are falling asleep, some of them make mistakes, and some of them run into trouble through no fault of their own, because of a blown tire, a refrigerator that fell off the back of a pickup truck, or any of a thousand other hazards that can cause a crash.

Every single one of those deaths is avoidable. Governments could outlaw private vehicle ownership altogether. (See, e.g., Mackinac Island

Muni. Code, § 66-33 [forbidding use of private vehicles].) Or they could drastically lower the speed limits on all roads; vehicles crashing into each other at single-digit speeds likely would not cause any serious injury. Or governments could require every vehicle to be radically overengineered and equipped with every passive and active safety system imaginable, from computerized driving aids to interlock systems designed to prevent impaired driving. These would not be popular measures. We live in a vast country with limited public transportation, people are used to being able to get where they want to go, and not everyone wants or can afford cars designed exclusively with safety in mind.

As a result, although vehicle manufacturers are steadfastly committed to reducing roadway fatalities, that has never been their *only* concern in designing their products. They instead have to balance a long list of considerations in determining what to produce and sell. Consider just four:

First, there are questions of demand and consumer preference. Some drivers will actively seek out the latest and greatest in safety-related features. That has long been a selling point for certain brands, especially Volvo, and certain models, including the Mercedes S-Class. But many drivers do not *want* new safety-related features. Some resent intrusive automated safety features. (See, e.g., Kobie, *Report: Automated ADAS Safety Features Are A "Nightmare" For Drivers* (Mar. 22, 2025) FORBES <https://tinyurl.com/ypuvwcys>.) Others may want models with limited features to save money not just on up-front costs but also on repair costs. (See, e.g., Leanse, *Crank Windows, No Touchscreen: This EV Truck Lets You Build It Your Way* (Aug. 20, 2025) MOTORTREND <https://tinyurl.com/3yttmhue>.) And still others want cars that are by their very nature more dangerous than the average car. For example, fatality rates are unusually high in muscle cars (*Latest driver death rates highlight dangers of muscle cars* (July 13, 2023) INSURANCE INSTITUTE FOR HIGHWAY SAFETY <https://tinyurl.com/7krrkare>), and a lightweight sports car like the Mazda Miata (four feet tall, under 2,400 pounds) may not fare well in a crash with a heavy SUV like the GMC Hummer EV (6.5 feet tall, about 9,000 pounds) (*2025 Mazda MX-5 Miata Sport Manual Features and Specs*, CAR AND DRIVER <https://tinyurl.com/yswujrr6>; *2026 GMC Hummer EV SUV*, CAR AND DRIVER <https://tinyurl.com/kzk3rs8h>). But many drivers buy those cars nevertheless.

Second, there are questions of supply and profitability. Developing new models and new safety features for existing models can be extremely expensive. (See, e.g., Pet. at p. 42.) Manufacturers must assess whether they will be able to recoup those research-and-development costs by selling more vehicles, selling them at a higher price, or both. If consumers do not value a safety-related innovation—or, worse, if it makes a vehicle *less* desirable—there will be no business case to develop it in the first place.

Third, vehicle manufacturers must take into account the regulations of the many jurisdictions where they market their products. Those jurisdictions are all constantly evaluating vehicle designs and features and assessing their safety profile. That work isn't easy. The Court of Appeal evidently believes juries are equipped to decide whether one vehicle model or feature is safer than another, but that theory is difficult to square with the years NHTSA generally takes to evaluate safety-related innovations, including automated-braking systems. NHTSA has been studying those systems for years and has yet to finalize any rule for heavy trucks. (See, e.g., Pet. at pp. 27, 34.) There is good reason for that caution. Regulators must ensure that new features actually promote safety—that they work as advertised and don't present hidden tradeoffs.

Analysis of safety measures often produces counterintuitive results. For example, although the *design* of convertibles is inherently less safe than the design of coupes (because convertibles lack a B-pillar and sacrifice the structural rigidity conferred by a fixed roof), in *practice* convertibles have slightly lower injury rates than their corresponding coupes. (See 37 HLDI Bulletin 4, *Convertibles versus coupes* (Apr. 2020) HIGHWAY LOSS DATA INSTITUTE <https://tinyurl.com/4xpap8k4>.) That result could be a function of "greater rear and side visibility" in convertibles, the fact that "the driver is more exposed and less likely to be engaged in aggressive behavior," or that convertibles are often "driven in more relaxed settings, such as on weekends and in nice weather." (*Id.* at p. 8.) Just as a supposedly more dangerous design might in practice yield fewer crashes, a supposedly safer design might yield more. It is possible, for example, that drivers will over-rely on safety features to their detriment. (See, e.g., Engineering Analysis (Apr. 25, 2024) Office of Defects Investigation, NHTSA <https://tinyurl.com/ye274u6s> [concluding overreliance on Tesla Autopilot may have "resulted in a critical safety gap between drivers' expectations of the . . . system's operating capabilities and the system's true capabilities"].)

Given these complexities, regulators might after extensive study determine that a proposed model or feature does not actually promote safety—but in the meantime, California juries could reach the opposite conclusion.

Fourth, vehicle manufacturers must also consider litigation risk. Traditionally, the concern was that commercializing a new vehicle design or feature would expose a manufacturer to lawsuits. Once a manufacturer knew that its product was safe, the litigation exposure would come from releasing a new product that might malfunction in unexpected ways. Now, through *Gilead* and the decision below, the Court of Appeal has created a new cause for concern: manufacturers might also find themselves in hot water for not acting quickly enough.

The decision below suggests that this concern about liability should be the overriding consideration guiding product planning for vehicle manufacturers. But it is impossible to reconcile that theory with the reality that product-planning decisions have always been driven by a long list of considerations, including those set out above, and not just speculation as to the development of tort law in a single state. The Court of Appeal has imposed an impossible standard on manufacturers; they are being asked to build a plane while they fly it—to conform their conduct to a maximally intrusive scheme of tort regulation even as they also try to cater to consumer tastes and comply with state, federal, and global regulations, both of which might change more slowly than the Court of Appeal or a jury may believe they should.

That mismatch between the work manufacturers must do and the legal reception for that work will lead to serious anomalies. Vehicles again illustrate the point. It appears that autonomous cars are already substantially safer than cars driven by human beings. (See, e.g., Lee, *After 50 million miles, Waymos crash a lot less than human drivers* (Mar. 27, 2025) ARS TECHNICA <https://tinyurl.com/mr42hrwz>.) But many people nevertheless insist they would not feel comfortable riding in an autonomous car. (See, e.g., Raine et al., *Americans cautious about the deployment of driverless cars* (Mar. 17, 2022) PEW RESEARCH CENTER <https://tinyurl.com/2m6ax9j8>.) Under the logic of the Court of Appeal's decision, any carmaker that produces both conventional vehicles, which will inevitably be driven by negligent humans, and autonomous vehicles, which

will likely get in fewer accidents, is open to suit for permitting any driver to get behind the wheel.

This case just so happens to weigh on a defendant that manufactures vehicles, but the decision below would also apply to a wide range of other manufacturers. Any new safety-related innovation could give rise to liability, even if regulators are still studying whether the innovation actually does promote safety and even if most consumers are at least initially unwilling to embrace that innovation.

4. The decision below is a blueprint for a new wave of litigation against manufacturers and contains no limiting principle.

The Court of Appeal concluded that Daimler should face this lawsuit because it "manufactured and sold a new Cascadia that lacked any collision avoidance system, despite Detroit Assurance 4.0 being readily available," and it knew "this truck would be put on the road," so its "conduct . . . had a sufficiently close connection" to the injuries caused by the crash. (Opn. at pp. 21-22.) But by that logic, just about anyone who has the misfortune to be involved in a crash has a potentially valid cause of action against just about any automaker. Every car on the road could be made safer in some way. Crumple zones could absorb more energy; passenger compartments could be toughened with stronger alloys; and high-tech features, such as lane-keeping assistance, driver-attention monitoring, blind-spot intervention, and adaptive cruise control, might make accidents less likely. If those features are available on some cars in an automaker's range but not others, a plaintiff would need to plead only that the manufacturer sold a car without one of those features and knew the car would end up on the road. Those facts are trivially easy to plead.

Nor would this alarmingly low pleading standard apply to claims against automakers alone. Any manufacturer that sells a range of products, with potentially safety-related features available only in some portion of the product line, could face the theory endorsed by the Court of Appeal in this case. If a medical-device manufacturer makes a high-end model out of superior materials or with improved software capabilities, it would risk liability if it did not use those same materials and that same software in its lesser models, too. If a supplier of construction materials offered more expensive products that are resistant to fire, it might be sued for not selling

only those materials to buyers in fire zones. Or if a sports-equipment maker invented a new batting helmet or football helmet that could reduce concussion risks, it might be sued for not selling *only* that helmet, even if there is some doubt about those safety claims and even if players resist adopting the new helmet for aesthetic or practical reasons.

The Court of Appeal nevertheless suggests its decision should not give manufacturers any pause for two reasons, neither of which will meaningfully limit the scope of its decision.

First, the court notes that the price of Detroit Assurance 4.0 "is a small fraction of a Cascadia's base price," and suggests that the buyer of the truck may have been willing to pay that "relatively low" cost if the system had been mandatory instead of optional. (Opn. at pp. 6, 30.) But the decision offers no guidance as to when a supposedly de minimis price increase might be significant enough to call into question the presumption that buyers would happily help defray the cost of developing a new safety feature.

Second, the court notes that manufacturers could still win cases like this one: "a jury could . . . , after accounting for case-specific facts, find the manufacturer before it did not breach this duty when deciding to omit [a] safety device." (Opn. at p. 29.) But manufacturers understandably want more coherence and predictability from the law than whatever they might glean from a patchwork of case-specific jury findings. And the possibility that a case like this one could be resolved *only* by a jury will multiply litigation costs, including the immense burdens of discovery and trial preparation, and give even marginal suits significant settlement value.

In short, nowhere in the opinion does the court articulate any serious impediment to bringing a case premised on the theory that the presence of a safety feature at the top end of a product range necessarily makes the rest of the range defective and dangerous.

D. Conclusion

The decision below presents the very problems these and other amici warned about in *Gilead*. This Court should grant review to decide whether there is a tort duty to mandate all new safety-related features across an otherwise safe product line. At the very least, it should grant and hold Daimler's petition in light of its forthcoming decision in *Gilead*.

Sincerely,

Theane Evangelis

PROOF OF SERVICE

I, Daniel R. Adler, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years, and I am not a party to this action. My business address is 333 South Grand Avenue, Los Angeles, CA 90071. On September 4, 2025, I served the following document:

LETTER FROM AMICI CURIAE IN SUPPORT OF DAIMLER TRUCK NORTH AMERICA LLC'S PETITION FOR REVIEW

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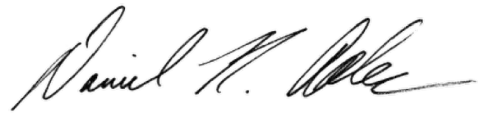
☑ **BY ELECTRONIC SERVICE**: I caused a copy of the attached document to be electronically served through TrueFiling, unless otherwise indicated on the service list.

☑ **BY MAIL SERVICE**: I caused a copy of the attached document to be mailed to the trial court.

☑ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 4, 2025.



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