

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

Case No. 1:22-cv-22483-Gayles/Torres

EXPRESS FREIGHT INTERNATIONAL, et al.,

Plaintiffs

v.

HINO MOTORS, LTD., et al.,

Defendants.

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**CLASS ACTION SETTLEMENT  
AGREEMENT**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
1. THE PROPOSED SETTLEMENT .....	1
2. DEFINITIONS.....	1
3. PRELIMINARY APPROVAL ORDER .....	8
4. SETTLEMENT CLASS MEMBER COMPENSATION AND REMEDIES .....	9
5. SETTLEMENT CLASS CLAIMS PROCESS AND ADMINISTRATION .....	11
6. DISCOVERY PROVIDED .....	12
7. REQUESTS FOR EXCLUSION.....	13
8. OBJECTIONS TO THE SETTLEMENT.....	14
9. NOTICE PROGRAM.....	16
10. FINAL APPROVAL ORDER .....	18
11. RELEASE AND WAIVER .....	18
12. ESCROW ACCOUNT.....	22
13. QUALIFIED SETTLEMENT FUND.....	22
14. ATTORNEYS' FEES AND EXPENSES.....	23
15. PROPOSED SCHEDULE FOR APPROVAL OF SETTLEMENT .....	24
16. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT.....	25
17. MODIFICATION OR TERMINATION OF THE CLASS ACTION AGREEMENT .....	25
18. REPRESENTATIONS AND WARRANTIES.....	27
19. GENERAL MATTERS AND RESERVATIONS.....	28

## **1. THE PROPOSED SETTLEMENT**

This Class Action Agreement is entered into by and between Plaintiffs Express Freight International, EFI Export & Trading Corp., Marders, and Redlands Office Cleaning Solutions, LLC (collectively, the “Settlement Class Representatives”), on behalf of themselves and the Settlement Class (as defined below), on the one hand, and Defendants Hino Motors Ltd., Hino Motors Manufacturing U.S.A., Inc., and Hino Motors Sales U.S.A., Inc. on the other (together, the “Parties”).

The Settlement Class Representatives and Defendants separately have conducted an investigation of the facts and have analyzed the relevant legal issues in regard to the claims and defenses asserted in the Action (as defined below); the Settlement Class Representatives and their counsel believe that the claims asserted in the Action have merits; and Defendants deny all claims asserted in the Action.

The Parties have concluded that continued litigation could be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms set forth in this Agreement in order to limit further expense, inconvenience, and uncertainty. The Parties intend for this Agreement to supersede all other agreements between the Parties that may exist. Therefore, the Settlement Class Representatives, the Settlement Class, and Defendants, themselves and through their undersigned counsel, agree to settle the Action, subject to Court approval, under the following terms and conditions.

## **2. DEFINITIONS**

As used in this Class Action Agreement, including the attached exhibits, the terms defined herein have the following meanings, unless this Class Action Agreement specifically provides otherwise:

2.1. “Action” means the proposed class action filed in the U.S. District Court for the Southern District of Florida, Miami Division, captioned *Express Freight International, et al., v. Hino Motors, Ltd., et al.*, No. 22-cv-22483-Gayles/Torres (S.D. Fla.).

2.2. “Claim” or “Claims” means any and all actual or potential claims, counterclaims, cross claims, third-party claims, actions, causes of action, suits, liabilities, monetary relief, damages (whether actual, nominal, punitive, exemplary, statutory, or otherwise), injunctive relief, restitution, disgorgement, costs, fees, attorneys’ fees, or penalties of any kind. For the avoidance of doubt, “Claim” includes but is not limited to any cause of action asserted in the Action.

2.3. “Class Action Agreement” or “Agreement” means this settlement agreement and the exhibits attached hereto.

2.4. “Complaint” means the Class Action Complaint filed in the Action on August 5, 2022.

2.5. “Court” means the United States District Court for the Southern District of Florida.

2.6. “Defendants” means Hino Motors, Ltd., Hino Motors Manufacturing U.S.A., Inc., and Hino Motors Sales U.S.A., Inc.

2.7. “Defendants’ Counsel” means responsible attorneys at the law firms of Covington & Burling LLP and Wicker Smith O’Hara McCoy & Ford, P.A.

2.8. “Effective Date” means the date on which all of the following events have occurred: (a) the Court has entered both the Final Approval Order and the Judgment, and (b) either: (i) the time to appeal from the Judgment and all orders entered in connection with the Judgment has expired and no appeal has been taken; or (ii) if a timely appeal of the Judgment and all orders entered in connection with that Judgment is taken, the date on which the Judgment and all orders entered in connection with that Judgment are no longer subject to further direct appellate review if the Judgment and all orders entered in connection with that Judgment have not been reversed in any way. If Settlement Class Counsel and Defendants agree in writing, the “Effective Date” can occur on any other earlier agreed date.

2.9. “Escrow Account” means the escrow account managed by the Escrow Agent, which shall be the sole source of funds for compensation of Settlement Class Members under the Class Action Agreement.

2.10. “Escrow Agent” means the agreed-upon entity to hold for distribution the funds identified in this Class Action Agreement pursuant to Section 12. The Parties agree that Citi Private Bank shall serve as Escrow Agent, subject to approval by the Court.

2.11. “Extended Warranty” means the warranty offered through this Class Action Agreement, as described in Section 4.2.

2.12. “Fairness Hearing” means the hearing held by the Court for the purpose of determining whether to approve this Class Action Agreement as fair, reasonable, and adequate. The Parties agree to recommend that the Fairness Hearing be set 150 days after the entry of the Preliminary Approval Order, as set forth in Section 15.

2.13. “Final Approval Order” means the order that is entered by the Court granting final approval of the Settlement and this Class Action Agreement and directing its consummation pursuant to its terms and conditions, approving the Release, and dismissing the claims asserted in the Action with prejudice. The Parties agree to submit a mutually-agreed proposed Final Approval Order for the Court’s consideration in connection with the Motion for Final Approval and/or the reply memorandum in support of the Motion for Final Approval.

2.14. “Judgment” means the Judgment to be entered by the Court. The Parties agree to submit a mutually agreed proposed Judgment for the Court’s consideration in connection with the Motion for Final Approval and/or the reply memorandum in support of the Motion for Final Approval.

2.15. “Long Form Notice” means the Court-approved form of notice of the terms of the Settlement that shall be made available to Settlement Class Members in the manner contemplated by Section 9 of this Class Action Agreement.

2.16. “Motion for Attorney’s Fees” means the motion for an award of fees and nontaxable costs filed by Settlement Class Representatives and/or Settlement Class Counsel pursuant to Rule 23(h) of the Federal Rules of Civil Procedure.

2.17. “Motion for Final Approval” means the motion filed pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure.

2.18. “Motion for Preliminary Approval” means the motion to be filed by the Settlement Class Representatives pursuant to Rule 23(e)(1) of the Federal Rules of Civil Procedure, which shall be filed on or before October 27, 2023.

2.19. “New Parts Warranty” means the warranty made available through this Class Action Agreement, as described in Section 4.3.

2.20. “Notice Date” means the date on which the Settlement Class Notice Program commences, which the Parties anticipate will occur as soon as practicable following the entry of the Preliminary Approval Order.

2.21. “Objection Deadline” means the last day a Settlement Class Member may submit, file, or mail any objection to the Class Action Agreement, which shall be 115 days after the entry of the Preliminary Approval Order, as set forth in Section 15.

2.22. “Opt-Out Deadline” means the last day a Settlement Class Member may opt out of the Class Action Agreement, which shall be 115 days after the entry of the Preliminary Approval Order, as set forth in Section 15.

2.23. “Parties” means the Settlement Class Representatives and Defendants, collectively, as each of those terms is defined in this Class Action Agreement.

2.24. “Preliminary Approval Order” means the order that is entered by the Court approving notice to the Settlement Class and concluding that the Court will likely be able to approve the Class Action Agreement and certify the proposed Settlement Class as outlined in Section 3.1 of this Class Action Agreement. The Parties agree to submit a mutually-agreed proposed Preliminary Approval Order for the Court’s consideration in connection with the Motion for Preliminary Approval.

2.25. “Qualified Settlement Fund” or “QSF” has the meaning set forth in Section 13 of this Class Action Agreement.

2.26. “Release” means the release and waiver described in Section 11 of this Class Action Agreement and in the Final Approval Order.

2.27. “Released Claims” means any and all Claims based in any way on conduct that occurred prior to the date of the execution of this Agreement that the Settlement Class Representatives or any member of the Settlement Class ever had, now have, or may have in the future, arising out of or in any way relating to the purchase, lease, use, service, repair, or maintenance of any of the Settlement Class Trucks, and also, relating in any way to (a) certification testing, fuel economy, emissions, or OBD monitors; (b) any of the alleged violations of the Clean Air Act, federal regulations, or state laws or regulations cited in the Complaint in this Action, (c) any of the marketing representations identified in the Complaint filed in this Action, including but not limited to the failure to disclose any information about certification testing, fuel economy, emissions, and OBD monitors, (d) any acts or omissions that were raised or could have been raised within the scope of the facts asserted in the Complaint filed in the Action; or (e) any event, matter, dispute, or thing that in whole or in part, directly or indirectly, relates to or arises out of said events specified in (a), (b), (c), or (d) of this paragraph.

2.28. “Released Party” or “Released Parties” means Hino Motors, Ltd., Hino Motors Manufacturing U.S.A., Inc., and Hino Motors Sales U.S.A., Inc., with their predecessors, successors (including, without limitation, acquirers of all or substantially all of their assets, stock, or other ownership interests) and assigns; the past, present, and future, direct and indirect, parents, subsidiaries, and affiliates; any entity involved in the supply chain of the manufacturing, distribution, and sale of the Settlement Class Trucks, including authorized dealers; and the past, present, and future principals, trustees, partners, officers, directors, employees, agents, attorneys, shareholders, advisors, predecessors, successors, assigns, representatives, heirs, executors, and administrators of any of the foregoing.

2.29. “Releasing Parties” means the Settlement Class Representatives and each Settlement Class Member (other than those who have timely and validly excluded themselves from the Settlement Class), on behalf of themselves and any other legal or natural persons and entities who or which may claim by, through or under them, and any agents, representatives, trustees, trusts, executors, administrators, heirs, beneficiaries, estates, administrators, advisors, assigns, predecessors and successors of any of the foregoing.

2.30. “Settlement” means the settlement contemplated by the terms of this Agreement.

2.31. “Settlement Administration Costs” means all fees, costs, and other expenses, without limitation, relating to the Settlement Administrator’s implementation and administration of this Agreement.

2.32. “Settlement Administrator” means the third-party agent agreed to by the Parties and appointed by the Court to (1) oversee and administer the Settlement Claims process and (2) implement and consult on the Settlement Class Notice Program as described in Sections 5 and 9 of this Class Action Agreement, respectively. The Parties agree that JND Legal Administration shall serve as Settlement Administrator, subject to approval by the Court.

2.33. “Settlement Cash Benefits” means funds paid to Settlement Class Members who submit timely and valid Settlement Claims, which in the aggregate shall not exceed the Settlement Cash Value less any amounts to be drawn from the Settlement Cash Value under the terms of this Agreement.

2.34. “Settlement Cash Value” means the total cash consideration of \$237,500,000, which, as described in Section 4.6, is the total amount Defendants will pay in connection with this Agreement, other than any payments made by Defendants to satisfy their obligations under Sections 4.2 and 4.3 of this Class Action Agreement.

2.35. “Settlement Claim” means a claim to receive Settlement Cash Benefits.

2.36. “Settlement Claim Form” means the electronic and/or paper form(s) that Settlement Class Members must use to submit a Settlement Claim under this Class Action Agreement.

2.37. “Settlement Claims Deadline” means the deadline by which Settlement Class Members must submit a Settlement Claim Form to the Settlement Administrator to receive Settlement Cash Benefits, as proposed in Section 15 of this Class Action Agreement. The Settlement Claims Deadline is 75 days after the Final Approval Order but may be extended by agreement of the Parties.

2.38. “Settlement Claims Period” means the time period during which Settlement Class Members may submit a Settlement Claim under the Class Action Agreement. The Settlement Claims Period begins on or before the Notice Date and concludes on the Settlement Claims Deadline.

2.39. “Settlement Class” means, for purposes of this Class Action Agreement only, a settlement class under 23(b)(3) and 23(e) defined as: “All persons or entities that purchased a Settlement Class Truck, or leased a Settlement Class Truck, through the date of the Preliminary Approval Order.” The following entities and individuals are excluded from the Settlement Class:

- (a) Defendants’ officers, directors, and employees; Defendants’ affiliates and affiliates’ officers, directors, and employees; Defendants’ distributors and distributors’ officers, directors and employees; Released Parties;
- (b) Judicial officers and their immediate family members and associated court staff assigned to this case; and
- (c) All those otherwise in the Settlement Class who or which timely and properly exclude themselves from the Settlement Class as provided in this Class Action Agreement.

2.40. “Settlement Class Counsel” means attorneys of record in the action representing the Settlement Class Representatives from the law firms Lieff Cabraser Heimann & Bernstein, LLP, Baron & Budd P.C., and Podhurst Orseck, P.A.

2.41. “Settlement Class Counsel Attorneys’ Fees and Costs” means any attorney’s fees and nontaxable costs awarded at the discretion of the Court to Settlement Class Counsel, to be paid exclusively from the Settlement Cash Value.

2.42. “Settlement Class Member” means a member of the Settlement Class.

2.43. “Settlement Class Notice Program” means the program for distributing information about the Class Action Agreement to Settlement Class Members contemplated by Section 9 of this Agreement.

2.44. “Settlement Class Representative” means Plaintiffs Express Freight International, EFI Export & Trading Corp., Marders, and Redlands Office Cleaning Solutions, LLC.

2.45. “Settlement Class Truck” means any on-road vehicle equipped and originally sold or leased in the United States with a Hino engine from engine Model Year 2010 through and including engine Model Year 2019. Eligibility for Settlement Cash Benefits will be determined by VIN, but for illustrative purposes, the Parties expect that this definition includes most or all of the Hino trucks included in Exhibit A of this Class Action Agreement.

2.46. “Settlement Website” means the website that shall be created for settlement administration purposes by the Settlement Administrator in the manner contemplated by Sections 5.2 and 9.1 of this Class Action Agreement.

2.47. “Unclaimed Funds” means any amounts remaining of the Settlement Cash Value after all Settlement Cash Benefits, Settlement Class Counsel Attorney’s Fees and Costs, and Settlement Administration Costs have been paid, allocated, or distributed.

2.48. Other capitalized terms used in this Class Action Agreement but not defined in this Section shall have the meanings ascribed to them elsewhere in this Class Action Agreement.

2.49. The term “he or she” and “his or her” include “it” or “its” where applicable.

### **3. PRELIMINARY APPROVAL ORDER**

3.1. On or before October 27, 2023, Plaintiffs shall file a Motion for Preliminary Approval of the Class Action Agreement pursuant to Federal Rule of Civil Procedure 23(e)(1)(b). That Motion shall, among other things, ask the Court to provisionally certify the Settlement Class for Settlement purposes only, to appoint the Settlement Class Representatives as representatives of the provisionally certified Settlement Class, to appoint Settlement Class Counsel as counsel for the provisionally certified Settlement Class, to appoint the Settlement

Administrator, and to enter the proposed preliminary approval order. Certification of the Settlement Class shall be for settlement purposes only, and Defendants do not waive any arguments that they may have that class certification for any other purpose would be improper.

3.2. Defendants may, but are not required to, submit a memorandum in connection with the Motion for Preliminary Approval.

3.3. The Parties agree to take all actions and steps reasonably necessary to obtain a Preliminary Approval Order from the Court and to fully implement and effectuate this Class Action Agreement.

#### **4. SETTLEMENT CLASS MEMBER COMPENSATION AND REMEDIES**

##### **4.1. Settlement Cash Benefits.**

4.1.1. **Allocation per Settlement Class Truck.** After deducting Settlement Class Counsel Attorneys' Fees and Costs and Settlement Administration Costs, the remaining Settlement Cash Value will be allocated evenly, on a per-capita basis, among all Settlement Class Trucks for which the Settlement Administrator has received a valid Settlement Claim.

4.1.2. **Payments to Settlement Class Members.** If more than one Settlement Class Member submits a valid Claim for the same Settlement Class Truck, then the original owner who purchased that Settlement Class Truck new shall receive 60% of the funds allocated to that Settlement Class Truck, and the remaining 40% will be distributed evenly to or among the remaining Settlement Class Member(s) that submit a valid Claim on that Settlement Class Truck. Thus, assuming for example that each Settlement Class Truck is allocated \$2,000, if an original owner, a subsequent owner, and a lessee all submit valid claims on the same vehicle, the original owner would receive \$1,200, and the lessee and subsequent owners would each receive \$400. The Settlement Administrator, in consultation with Settlement Class Counsel and

Defendants' Counsel, may adjust the allocation for Settlement Class Members, if any, that owned or leased their Settlement Class Trucks for less than six months.

4.2. **Extended Warranty.** Defendants shall offer an Extended Warranty to Settlement Class Members in accordance with the terms set forth in Exhibit B.

4.3. **New Parts Warranty.** If, within three years of the date of this Agreement, Defendants provide a government-mandated or a government-recommended emissions system recall or repair campaign, Defendants will provide a new parts warranty covering any parts repaired, replaced, or modified by the recall or repair. The New Parts Warranty will last for five years from the date the Settlement Class Truck is repaired under an emissions system recall or repair campaign. Defendants shall notify Settlement Class Members and authorized dealers of the New Parts Warranty in connection with any recall or repair campaign.

4.4. **Warranty Transfer.** The Extended Warranty and New Parts Warranty described herein shall transfer with the Class Trucks for the entire duration of the warranty periods.

4.5. **Warranty Implementation.** Defendants shall (a) educate and inform their authorized dealers about the Extended Warranty and, if applicable, New Parts Warranty, including by providing them copies thereof, and (b) update their dealer interface systems, internal warranty databases, and claims management systems to reflect the warranty coverage available under the Extended and New Parts Warranties for each of the Settlement Class Trucks.

4.6. **Allocation of Unclaimed Funds.** The Settlement shall be non-reversionary, meaning that no amount of the Settlement Cash Value will revert to Defendants. If there are any Unclaimed Funds remaining in the Settlement Cash Value the Parties will attempt a second distribution of Settlement Cash Benefits to all Settlement Class Members who received Settlement Cash Benefits as part of the initial distribution, if economically feasible to do so in the opinion of the Settlement Administrator. If it is not feasible and/or economically reasonable to attempt a second distribution of Settlement Cash Benefits to Settlement Class Members who already submitted Settlement Claims, then the remaining Settlement Cash Value shall be

distributed to *cy pres* recipients recommended by the Parties, subject to the Court's approval. The Parties agree to work together to identify mutually agreeable *cy pres* candidates and will not unreasonably withhold approval of any candidates proposed by each other.

4.7. **Tax Implications.** Settlement Class Members should consult their personal tax advisor for assistance regarding any tax ramifications of this Class Action Agreement. Neither Settlement Class Counsel nor Defendants and their counsel are providing any opinion or advice as to the tax consequences or liabilities of Settlement Class Members as a result of any payments or benefits under this Class Action Agreement.

4.8. **Deceased, Divorced, Dissolved, or Bankrupt Claim Members.** Nothing in the Class Action Agreement shall prevent Settlement Cash Benefits from being provided, upon appropriate proof, to, or for the benefit of, an otherwise eligible Settlement Class Member, or that Settlement Class Member's estate or legal representative, notwithstanding that Settlement Class Member's death, divorce, dissolution, or bankruptcy (whether discharged or ongoing), in accordance with applicable law.

## 5. SETTLEMENT CLASS CLAIMS PROCESS AND ADMINISTRATION

5.1. The process for submitting a Settlement Claim is designed to be as simple and convenient to Settlement Class Members as possible, while ensuring that only valid Settlement Claims are paid.

5.2. **Settlement Claims Process.** The Settlement Claims process will involve four steps.

**Step 1:** Subject to Court approval, the Parties agree that as soon as practicable, the Settlement Administrator will launch a page on the Settlement Website through which Settlement Claims can be submitted electronically. Settlement Class Members will also be able to download a paper Settlement Claim Form from Settlement Website at that time.

**Step 2:** Settlement Class Members will be required to submit a Settlement Claim Form as agreed by the Parties. Settlement Class Members may be asked to submit supporting

documentation, including but not limited to proof of ownership and/or lease. The Settlement Claim Form must be postmarked or submitted electronically by the Settlement Claims Deadline.

**Step 3:** Upon receipt of a timely submitted Settlement Claim Form, the Settlement Administrator will review the Settlement Claim to determine whether it meets all qualifications for payment (including any need for supporting documentation). If the Settlement Claim is incomplete or otherwise insufficient, the Settlement Administrator shall contact the Settlement Class Member regarding these deficiencies and provide the Settlement Class Member thirty days to provide the missing information. In the event of a disagreement between the Parties, the Settlement Administrator shall have complete and final authority to determine whether individual Settlement Claims are valid or not under the terms of this Class Action Agreement.

**Step 4:** The Settlement Administrator shall calculate the payment amount for each timely and valid and complete Settlement Claim, which shall be paid after the Effective Date.

5.3. **Settlement Administrator.** The Settlement Administrator shall be responsible for overseeing the implementation and administration of the Settlement Claims process, including validation of eligibility and approval of payments to Settlement Class Members. The reasonable and necessary fees and costs incurred by the Settlement Administrator for administration of this Class Action Agreement will be paid exclusively out of the Settlement Cash Value.

5.4. **The Court's Ongoing and Exclusive Jurisdiction.** The Court retains ongoing and exclusive jurisdiction and independent case management authority under Federal Rule of Civil Procedure 23 regarding the general operation of the Settlement Claims process and those appointed to implement and oversee it.

## 6. **DISCOVERY PROVIDED**

6.1. The Parties have engaged in extensive discovery and information exchanges regarding Plaintiffs' claims and Defendants' defenses, including both formal discovery pursuant to the Federal Rules of Civil Procedure and additional confirmatory discovery. The Parties will

not exchange any further discovery during the process of obtaining preliminary or final approval of the Settlement, whether formal or informal, unless mutually agreed by the Parties or otherwise ordered by the Court.

## **7. REQUESTS FOR EXCLUSION**

7.1. **Manner of Opting Out.** The Parties agree that, to opt out validly from the Settlement Class, a Settlement Class Member must personally sign (electronic signatures, including DocuSign, are invalid and will not be considered personal signatures) and send a written request to opt out stating “I wish to exclude myself from the Settlement Class in *Express Freight International, et al., v. Hino Motors, Ltd., et al.*, No. 22-cv-22483-Gayles/Torres (S.D. Fla.) (or substantially similar clear and unambiguous language) to the Settlement Administrator that is postmarked or emailed no later than the Opt-Out Deadline. The Settlement Class Member must either (i) mail the signed written request to an address provided by the Settlement Administrator; or (ii) e-mail a complete and legible scanned copy or photograph of the signed written request to an e-mail address provided by the Settlement Administrator. For the opt-out to be valid, that written request must include the Settlement Class Member’s name, address, telephone number, and VIN(s) of the Settlement Class Truck(s) forming the basis of the Settlement Class Member’s inclusion in the Settlement Class, and the date(s) of the Settlement Class Member’s ownership or lease of the Settlement Class Truck(s) (*i.e.*, start date and, if applicable, end date of possession). Opt-out requests that are signed by an attorney but not by the Settlement Class Member are invalid, except in the case of an attorney employed by a Settlement Class Member that is not a natural person signing on behalf of that Settlement Class Member. The Settlement Administrator will provide copies of all opt-out requests to Settlement Class Counsel and Defendants’ Counsel within seven days of the receipt of each such request. The Settlement Administrator and the Parties shall promptly after receipt provide copies of any requests for exclusion, objections and/or related correspondence to each other.

7.2. **Consequences of Failure to Opt Out in a Timely and Proper Manner.** All Settlement Class Members who do not timely and properly opt out of the Settlement Class will in

all respects be bound by all terms of this Class Action Agreement and the Final Approval Order upon the Effective Date. The Court shall have authority to determine, in connection with the Motion for Final Approval, which Settlement Class Members have timely and validly opted out of the settlement.

7.3. **Opting Out and Objecting Are Mutually Exclusive Options.** Any Settlement Class Member who elects to opt out pursuant to this Section may not also object to the Settlement. Any Settlement Class Member who elects to object pursuant to Section 8 herein may not also opt out pursuant to this Section.

7.4. **Defendants' Right to Terminate Based on Opt-Out Volume.** Defendants may terminate and rescind this Class Action Agreement, at their own discretion (which shall not be subject to any challenge by Settlement Class Counsel, the Settlement Class Representatives, or any other Settlement Class Member), if more than 100 Settlement Class Members validly opt out of the Settlement. Defendants may exercise this right by, within 30 days after receiving notice that the number of timely and valid opt outs exceeds the agreed upon threshold, giving notice to Settlement Class Counsel that Defendants are terminating and rescinding this Class Action Agreement and voiding the Settlement *ab initio*.

## 8. OBJECTIONS TO THE SETTLEMENT

8.1. **Manner of Objecting.** Any Settlement Class Member who has not submitted a written request to opt out, as set forth in Section 7, may present written objections, if any, explaining why he or she believes the Class Action Agreement should not be approved by the Court as fair, reasonable, and adequate. No later than the Objection Deadline, a Settlement Class Member who wishes to object to any aspect of the Class Action Agreement must deliver to Settlement Class Counsel and to Defense Counsel, and file with the Court, or as the Court otherwise may direct, a written statement of the objection(s). The written statement of objection(s) must include a detailed statement of the Settlement Class Member's objection(s), as well as the specific reasons, if any, for each such objection, including all evidence, argument, and legal authority the Settlement Class Member wishes to bring to the Court's attention. That

written statement also must contain: the case name, *Express Freight International, et al., v. Hino Motors, Ltd., et al.*, (or substantially similar clear and unambiguous language); the Settlement Class Member's printed name, address, telephone number, and VIN(s) of the Settlement Class Truck(s) forming the basis of the Settlement Class Member's inclusion in the Settlement Class; the dates of the Settlement Class Member's ownership or lease of the Settlement Class Truck(s); a statement that the Settlement Class Member has reviewed the Settlement Class definition and has not opted out of the Settlement Class; dates within 30 days of the objection on which the Settlement Class Member is available to be deposed; and all other supporting papers, materials, or briefs (if any) the Settlement Class Member wishes the Court to consider when reviewing the objection.

8.2. **Objecting Through Counsel.** A Settlement Class Member may object on his or her own behalf or through a lawyer hired at that Settlement Class Member's own expense, provided the Settlement Class Member has not submitted a written request to opt out, as set forth in Section 7. Settlement Class Members objecting through counsel must include in their written statement of objection(s) the items set forth in Section 8.1 and: the number of times the objecting Settlement Class Member has objected to a class action settlement within the five years preceding the date of the objection, the caption of each case in which the objecting Settlement Class Member has made such objection, and a statement of the nature of the objection. Lawyers asserting objections on behalf of Settlement Class Members must: (1) file a notice of appearance with the Court by the date set forth in the Preliminary Approval Order, or as the Court otherwise may direct; (2) file a sworn declaration attesting to his or her representation of each Class Member on whose behalf the objection is being filed or file (in camera) a copy of the contract between that lawyer and each such Class Member, and specify the number of times during the prior five-year period that the lawyer or their law firm has objected to a class action settlement; (3) disclose any agreement, formal or informal, with other attorneys or law firms regarding the objection; and (4) comply with the procedures described in this Section 8.

8.3. Settlement Class Counsel or Defendants' Counsel may notice the deposition of an objecting Settlement Class Member and/or seek the production of documents and tangible things relevant to the objections on an expedited basis, including agreements (formal or informal) between the objector's counsel and other attorneys related to the objection. The Parties agree that any such deposition may take place remotely, or at an agreed upon location at an agreed upon date and time, but, in no event more than 21 days following service of a deposition notice. Any objections to the scope of a deposition notice or a request to produce documents or other tangible things issued or served in connection with this provision shall be brought before the Court for resolution on an expedited basis.

8.4. **Intent to Appear at the Fairness Hearing.** A Settlement Class Member (or counsel individually representing him or her, if any) seeking to make an appearance at the Fairness Hearing must file with the Court, by the date set forth in the Preliminary Approval Order, a written notice of his or her intent to appear at the Fairness Hearing, in accordance with the requirements set forth in the Preliminary Approval Order, or by such time and in such manner as the Court may otherwise direct.

8.5. **Consequences of Failure to Object in a Timely and Proper Manner.** Unless the Court directs otherwise, any Settlement Class Member who fails to comply with the provisions of this Section will waive and forfeit any and all rights he, she, or it may have to object to the Class Action Agreement and/or to appear and be heard on said objection at the Fairness Hearing. Failure to object waives a Settlement Class Member's right to appeal the Final Approval Order.

## 9. NOTICE PROGRAM

9.1. **Settlement Class Notice and Claims Administration.** Subject to Court approval, the Parties agree that as soon as practicable after entry of the Preliminary Approval Order, the Settlement Administrator will provide the Settlement Class with notice of this Settlement and Class Action Agreement in a manner consistent with Due Process and Federal Rule of Civil Procedure 23. All aspects of the proposed Settlement Class Notice Program will be

mutually agreed upon by the Parties. The proposed Settlement Class Notice Program will be detailed in the Motion for Preliminary Approval and supporting declarations from the Settlement Administrator. The Parties anticipate that it will include, at a minimum, the following features, all of which will be created, sent, and/or maintained by the Settlement Administrator: (a) a dedicated Settlement Website that will include, among other things, the Long Form Notice; (b) a toll-free helpline; (c) direct notice sent via mail and/or e-mail, to the extent practicable; and (d) notice provided via internet search platforms and other online advertisements.

9.2. **CAFA Notice.** At the earliest practicable time, and no later than ten days after the Parties file the Motion for Preliminary Approval with the Court, the proposed Settlement Administrator shall cause to be sent to each appropriate state and federal official the materials specified in 28 U.S.C. § 1715 and otherwise comply with its terms.

9.3. **Payment of Notice Administration Costs.** All reasonable and necessary costs of the Settlement Class Notice Program and the fees and costs of the Settlement Administrator will be paid exclusively out of the Settlement Cash Value. In connection with the Motion for Final Approval, the Settlement Administrator shall supply to Settlement Class Counsel a declaration to be filed with the Court that (i) identifies those persons who have opted out of the Settlement, (ii) the details outlining the scope, method, and results of the Settlement Class Notice Program.

9.4. **Non-Substantive Modification of Notice Documents.** Subject to Court approval, the Parties shall be permitted to make agreed, non-substantive revisions to the notice documents described in this Class Action Agreement without further individual approval by the Court.

9.5. **Contact Between Defendants and Settlement Class Members.** The Settlement Class Representatives and Settlement Class Counsel do not object to any Settlement Class Member and Defendant, or any Settlement Class Member's counsel and Defendants' Counsel, communicating about this settlement in a manner consistent with the Parties' obligations under section 10.3. Defendants' Counsel agree to promptly identify for Settlement Class Counsel the Settlement Class Members with which Defendants' Counsel have discussed the Settlement.

## **10. FINAL APPROVAL ORDER**

10.1. Plaintiffs shall file a Motion for Final Approval of the Settlement pursuant to Federal Rule of Civil Procedure 23(e)(2). That Motion shall, among other things, ask the Court to certify the Settlement Class for Settlement purposes only, to appoint the Settlement Class Representatives as representatives of the certified Settlement Class, to appoint Settlement Class Counsel as counsel for the certified Settlement Class, to enter the proposed final approval order and judgment. Certification of the Settlement Class shall be for settlement purposes only, and Defendants do not waive any arguments that they may have that class certification for any other purpose would be improper.

10.2. Defendants may, but are not required to, submit a memorandum in connection with the Motion for Final Approval or in response to any Objection submitted in connection with the Settlement.

10.3. The Parties agree to take all actions and steps reasonably necessary to obtain a Final Approval Order and Judgment from the Court and to fully implement and effectuate this Class Action Agreement.

## **11. RELEASE AND WAIVER**

11.1. The Parties agree to the following release and waiver (as defined above, the Release), which shall take effect upon entry of the Final Approval Order and Final Judgment. The terms of the Release are a material term of the Class Action Agreement and will be reflected in the Final Approval Order.

11.2. **Release by Releasing Parties.** Upon entry of the Final Approval Order and accompanying Judgment, the Releasing Parties release all Released Claims against the Released Parties, as each of those terms are defined in this Class Action Agreement. The Releasing Parties covenant and agree that they will not take any step whatsoever to assert, sue on, continue, pursue, maintain, prosecute, or enforce any Released Claim, directly or indirectly, against any of the Released Parties.

11.3. **Possible Future Claims.** For the avoidance of doubt, Settlement Class Members expressly understand and acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true, related to the Action and/or the Release herein. Nevertheless, it is the intention of the Settlement Class Representatives in executing this Class Action Agreement through Settlement Class Counsel to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Released Claims, except as described below. The Settlement Class Representatives represent and warrant that, as of the execution date of this Class Action Agreement, other than a potential future buyback claim as described in Section 11.6, they are unaware of any additional Claims relating to their Settlement Class Trucks—regardless of topic—that they have against Defendants.

11.4. **Additional Representations by Settlement Class Counsel.** Settlement Class Counsel represent that they intend to work towards approval of this Class Action Agreement and that, as of the date of the execution of this Class Action Agreement, they do not represent any client besides the Settlement Class Representatives who intends to assert any Claims against Defendants relating to the Action or the Released Claims. Settlement Class Counsel further represented that they (i) have not encouraged and will not encourage any Settlement Class Member to opt out of this Settlement, provided that they may present Settlement Class Members with the fact that they have the option to seek to exclude themselves from the Settlement Class, and (ii) shall not offer to represent any Settlement Class Member that submits a request for exclusion in connection with any Released Claim, provided that they may represent any such Settlement Class Members who submit a request for exclusion and ask Settlement Class Counsel to represent them.

11.5. **Waiver of California Civil Code Section 1542 and Analogous Provisions.** Settlement Class Representatives, on behalf of themselves and the Settlement Class, expressly

acknowledge certain principles of law applicable in some states, such as Section 1542 of the Civil Code of the State of California, which provides as follows: “A general release does not extend to claims that the Creditor or releasing party does not know or suspect to exist in his/her favor at the time of executing the Release and that, if known by him or her, would have materially affected his/her settlement with the Debtor or released party.” Settlement Class Representatives, on behalf of themselves and the Settlement Class, hereby knowingly and voluntarily waive and relinquish the provisions of Section 1542 and all similar federal and state laws, rights, rules, and legal principles. Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of each and all the Released Parties from the Released Claims, Settlement Class Representatives (on behalf of themselves and the Settlement Class) expressly acknowledge that this Settlement is intended to include in its effect (without limitation) all claims Settlement Class Representatives or any Settlement Class Member knows or suspects to exist in their favor, and all claims Plaintiffs or any member of the Settlement Class does not know or suspect to exist in their favor at the time this Class Action Agreement is executed, which contemplates the extinguishment of any such claims.

**11.6. Exclusion from Release of Claims Relating to Potential Future Buyback Program.** Notwithstanding any of the provisions in this Section 11, the Release does not limit, prejudice, or otherwise affect Settlement Class Members’ rights or abilities to participate in or pursue rights or remedies in relation to any future buyback or repurchase of any Settlement Class Truck that the Department of Justice, the Environmental Protection Agency, the California Air Resources Board or any other federal or state government entity recommends or orders Defendant(s) to buyback or repurchase for reasons relating to the Released Claims. For avoidance of doubt, this provision does not entitle any Settlement Class Member to pursue such rights or remedies for a Settlement Class Truck that a federal or state government entity does not independently order or recommend Defendant(s) to buyback or repurchase, or pursue any relief

whatsoever against Defendants regarding which Settlement Class Trucks are included in any federal or state government order.

11.7. **Total Satisfaction of Released Claims.** Any benefits pursuant to the Class Action Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Released Parties. Such benefits are sufficient and adequate consideration for each and every term of this Release, and this Release shall be irrevocably binding upon Settlement Class Representatives and Settlement Class Members who do not opt out of the Settlement Class.

11.8. **Release Not Conditioned on Claim or Payment.** The Release shall be effective with respect to all Releasing Parties, including all Settlement Class Members who do not opt out, regardless of whether those Settlement Class Members ultimately submit a Settlement Claim under this Class Action Agreement.

11.9. **Basis for Entering Release.** Settlement Class Counsel acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Class Action Agreement and that they execute this Class Action Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Class Action Agreement. Settlement Class Representatives acknowledge, agree, and specifically represent and warrant that they have discussed with Settlement Class Counsel the terms of this Class Action Agreement and have received legal advice with respect to the advisability of entering into this Class Action Agreement and the Release, and the legal effect of this Class Action Agreement and the Release.

11.10. **Material Term.** Settlement Class Representatives and Settlement Class Counsel hereby agree and acknowledge that this Section 11 in its entirety was separately bargained for and constitutes a key, material term of the Class Action Agreement that shall be reflected in the Final Approval Order.

11.11. **Additional Releases Relating to Litigation Conduct.** Upon the Effective Date, the Settlement Class Representatives, Settlement Class Counsel, Defendants, and Defendants'

Counsel release and forever discharge each other from any and all claims relating to the institution or prosecution of the Action.

11.12. **Jurisdiction.** The Court shall retain continuing jurisdiction over all Parties, the Action, and this Class Action Agreement to resolve any dispute that may arise regarding this Class Action Agreement or in relation to this Action, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Class Action Agreement, and no Party shall oppose the reopening and reinstatement of the Action on the Court's active docket for the purposes of effecting this Section.

## **12. ESCROW ACCOUNT**

12.1. No later than seven days after the parties move for preliminary approval, Defendants will deposit into the Escrow Account funds sufficient to cover the reasonable costs of providing CAFA Notice, as contemplated in Section 9.2. Settlement Class Counsel will provide Defendants' Counsel with the necessary wiring information in advance.

12.2. No later than seven days after the Court enters the Preliminary Approval Order, Defendants will deposit into the Escrow Account funds sufficient to cover the reasonable costs of implementing the Settlement Class Notice Program.

12.3. Defendants will fund the remainder of the Settlement Cash Value into the Escrow Account no later than ten days after the Court enters the Final Approval Order.

12.4. In the event that the Class Action Agreement is terminated or invalidated for any reason, any funds in the Escrow Account, including all interest accrued, shall be returned to Defendants within seven days of any such triggering event.

## **13. QUALIFIED SETTLEMENT FUND**

13.1. The Parties, through their respective counsel, shall establish a Qualified Settlement Fund ("QSF"), with the QSF to be held by the Escrow Agent. Unless directed otherwise from Settlement Class Counsel and Defendants' Counsel, the Escrow Agent shall invest the payments in a money market mutual fund, money market deposit account, a demand deposit account, and/or a similar account, with a stated preference for investments in

conservative financial instruments, including, but not limited to, short-term United States Agency or Treasury Securities. The account shall collect and reinvest any and all interest accrued thereon, if applicable, unless costs and fees and/or interest rates are such that they would effectively preclude investment in interest-bearing instruments as defined herein. All: (a) taxes on the income of the Escrow Account; and (b) expenses and costs incurred with taxes paid from the Escrow Account (including, without limitation, expenses of tax attorneys, accountants, and the Tax Administrator) (collectively, "Taxes") shall be timely paid out of the Escrow Account. The Parties agree that the Tax Administrator, Miller Kaplan Arase LLP, with the assistance of the Escrow Agent, shall be responsible for filing tax returns for the QSF and paying from the Escrow Account any Taxes owed with respect to the QSF. The Parties agree that the Account shall be treated as a QSF from the earliest date possible and agree to any relation-back election required to treat the Account as a QSF from the earliest date possible.

13.2. Certain of the Settlement Class Notice Program Settlement Administration Costs will be accrued before the Effective Date. The Parties agree that the funds deposited in the QSF may be used to cover those initial Settlement Administration Costs as they are accrued and invoiced, and that such funds actually paid to the Settlement Administrator will not be returned to the Defendants in the event that the Class Action Agreement is terminated or invalidated for any reason.

#### **14. ATTORNEYS' FEES AND EXPENSES**

14.1. Defendants and Settlement Class Counsel represent that they have not discussed the amount of fees and expenses to be paid prior to agreement on the material terms of this Class Action Agreement.

14.2. On or before the date that Settlement Class Counsel files the Motion for Final Approval, Settlement Class Counsel shall file a Motion for Attorney's Fees for work performed in connection with the Action pursuant to Rules 23(h) and 54(d)(2). Defendants reserve the right to oppose Settlement Class Counsel's motion. Any fees and expenses ordered or approved by the Court will be paid from the total Settlement Cash Value and wired from the Escrow Account

to an account specified by Settlement Class Counsel either (1) within two business days of the full funding of the Escrow Account under Section 12.3 if the Court has already issued an Order approving fees and expenses, or (2) within two business days of such Order, if entered after full funding of the Escrow Account. If the Class Action Agreement is terminated or invalidated for any reason, or if the fee award is reversed on appeal, any attorneys’ fees paid to Class Counsel will be returned to Defendants within seven days of such termination or entry of an order on appeal reversing final approval or the fee award.

**15. PROPOSED SCHEDULE FOR APPROVAL OF SETTLEMENT**

15.1. A comprehensive potential schedule for the approval of this Settlement is set forth below, subject to Court approval. The Parties will use their best efforts to advance the Settlement along the lines outlined in the proposed schedule set forth below, recognizing it is subject to change, as required by Court order and/or by agreement of the Parties.

Date	Event
October 27, 2023	Motion for Preliminary Approval
<i>TBD</i>	Entry of Preliminary Approval Order
1 day after entry of Preliminary Approval Order	Settlement Class Notice Program begins
75 days after entry of Preliminary Approval Order	Substantial Completion of Direct Notice Component of Settlement Class Notice Program
82 days after entry of Preliminary Approval Order	Motion(s) for Final Approval and Attorneys’ Fees and Expenses
115 days after entry of Preliminary Approval Order	Objection and Opt-Out Deadline
136 days after entry of Preliminary Approval Order	Reply Memoranda in Support of Final Approval and Fee/Expense Motion(s)
150 days after entry of Preliminary Approval Order	Fairness hearing

75 days after entry of Final Approval Order	Settlement Claims Deadline
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**16. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT**

16.1. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Class Action Agreement. The persons signing this Class Action Agreement on behalf of each Party warrant that he or she is authorized to sign this Class Action Agreement on behalf of that Party.

16.2. The Parties and their respective counsel will cooperate with each other, act in good faith, and use their best efforts to effectuate the implementation of the Class Action Agreement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Class Action Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Class Action Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

16.3. The Parties further agree to make all reasonable efforts to ensure the timely and expeditious administration and implementation of the Class Action Agreement and to minimize the costs and expenses incurred therein.

**17. MODIFICATION OR TERMINATION OF THE CLASS ACTION AGREEMENT**

17.1. The terms and provisions of this Class Action Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Final Approval Order, the Parties may by written agreement effect such amendments, modifications, or expansions of this Class Action Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court’s Final Approval Order and do not limit the rights of Settlement Class Members under this Class Action Agreement.

17.2. If the Court for any reason enters a Preliminary Approval Order or Final Approval Order that modifies or excludes any material part of the Class Action Agreement, including the Releases contained therein, or if any of the Orders entered by the Court (with the exception of any provision of those Orders relating to the Settlement Class Counsel Attorneys' Fees and Costs) is materially modified, reversed, or set aside on further judicial review, or if for any other reason the Settlement does not become final, or if the Court or a reviewing court takes any action to expand, impair, or reduce the scope or effectiveness of the Releases set forth in Section 11 or to impose greater financial or other burdens on Defendants than those contemplated in this Agreement, then either Party shall have the option of terminating this Agreement. Defendants shall also have the right to terminate this Agreement if the number of timely and valid opt-outs excludes the threshold set forth in Section 7.4. If either Party exercises their right to terminate, this Agreement shall become null and void *ab initio* without prejudice to the *status quo ante* rights, positions, and privileges of the Parties, except as otherwise expressly provided herein. In the event of a termination, this Agreement shall have no force or effect and the Parties will return to the *status quo ante* in the Action as it existed prior to the execution of the Memorandum of Settlement. The Parties will also be prohibited from using this Settlement and any settlement or mediation communications as evidence in the Action. The Parties further agree to cooperate in asking the Court to set a reasonable schedule for the resumption of the Action.

17.3. All reasonable and necessary costs incurred by the Settlement Administrator in connection with the implementation of this Class Action Settlement up until its termination shall be paid out of the Settlement Cash Value. Defendants shall not have any additional responsibility for any payments to the Settlement Administrator. Neither the Settlement Class Representatives nor Settlement Class Counsel shall be responsible for any such Settlement-related costs.

17.4. If an option to withdraw from and terminate this Class Action Agreement arises under Sections 7.4 or 17.2 above, neither Defendants nor Settlement Class Representatives are required for any reason or under any circumstance to exercise that option and any exercise of that option shall be in good faith.

**18. REPRESENTATIONS AND WARRANTIES**

18.1. Settlement Class Counsel represents that: (1) they are authorized by the Settlement Class Representatives to enter into this Class Action Agreement with respect to the claims asserted in the Action and any other claims covered by the Release; and (2) they are seeking to protect the interests of the Settlement Class.

18.2. Settlement Class Representatives and Settlement Class Counsel represent and warrant that they will not seek from the Court an incentive or service award above and beyond the Settlement Cash Benefits available to other Settlement Class Members under the terms of this Class Action Agreement, unless allowed under governing law at the time the Motion for Final Approval is filed.

18.3. The Settlement Class Representatives represent that they: (1) have agreed to serve as representatives of the Settlement Class proposed to be certified herein; (2) are willing, able, and ready to perform all of the duties and obligations of representatives of the Settlement Class; (3) have read the pleadings in the Action, including the Complaint, or have had the contents of such pleadings described to them; (4) have consulted with Settlement Class Counsel about the obligations imposed on representatives of the Settlement Class; (5) understand that they are entitled only to the rights and remedies of Settlement Class Members under this Class Action Agreement and not to any additional compensation by virtue of their status as Settlement Class Representative; and (6) shall remain and serve as representatives of the Settlement Class until the terms of this Class Action Agreement are effectuated, this Class Action Agreement is terminated in accordance with its terms, or the Court at any time determines that said Settlement Class Representatives cannot represent the Settlement Class.

18.4. Defendants represent and warrant that the individual(s) executing this Class Action Agreement are authorized to enter into this Class Action Agreement on behalf of Defendants.

18.5. The Parties acknowledge and agree that no opinion concerning the tax consequences of the proposed Settlement to Settlement Class Members is given or will be given

by the Parties, nor are any representations or warranties in this regard made by virtue of this Class Action Agreement. In addition, the Parties acknowledge and agree that no tax ruling from any governmental tax authority in relation to a Settlement Class Member's tax consequences will be requested by Defendants. The Parties further acknowledge and agree that nothing in this Agreement should be relied upon by any Settlement Class Member as the provision of tax advice. Each Settlement Class Member's tax consequences or liabilities, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that each Settlement Class Member's federal, state, or foreign tax consequences or liabilities may vary depending on the particular circumstances of each individual Settlement Class Member. Settlement Class Members shall hold Defendants and their counsel harmless from any federal, state, or foreign tax assessments, interest, and/or penalties that result for any amounts paid or benefits provided under this Agreement, and Defendants shall not be liable for the payment of any additional amounts now or in the future for any amount related to a Settlement Class Member's tax consequences.

#### **19. GENERAL MATTERS AND RESERVATIONS**

19.1. This Class Action Agreement will be binding upon, and inure to the benefit of, the successors, transferees, and assigns of Defendants, the Settlement Class Representatives, and Settlement Class Members.

19.2. The Parties agree and acknowledge that (1) no government or governmental entity is a party to the Action or to this Class Action Agreement, but such entities are not excluded from the Settlement Class; (2) each Party is entering into this Class Action Agreement of its own volition, and no Party is entering into this Class Action Agreement at the direction of a government or governmental entity, or otherwise compelled by a government or governmental entity to do so; and (3) the payments made to Settlement Class Members under this Class Action Agreement are for the purpose of settling claims for restitution, compensation or/and remediation for harm or damage alleged in the Complaint.

19.3. Defendants' obligations under Section 4 in this Class Action Agreement are and shall be contingent upon each of the following:

- 19.3.1. Entry by the Court of the Final Approval Order approving the Class Action Agreement;
- 19.3.2. The occurrence of the Effective Date; and
- 19.3.3. The satisfaction of any other conditions set forth in this Class Action Agreement.

19.4. The Parties and their counsel agree to keep the contents of this Class Action Agreement confidential until the date on which the Class Action Agreement is filed. However, this Section shall not prevent Defendants, at their sole discretion and without approval of form or content from Plaintiffs or Settlement Class Counsel, from disclosing such information, prior to such date, to state and federal agencies, other relevant government authorities, stock exchanges, independent accountants, actuaries, advisors, financial analysts, insurers, lawyers, or business affiliates, or from making a public statement referring to the Settlement in order to comply with legal or regulatory obligations as described in Section 19.29. The Parties and their counsel may also disclose the contents of this Class Action Agreement to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Class Action Agreement.

19.5. Settlement Class Representatives and Settlement Class Counsel agree that confidential information was made available to them solely through the settlement process provided pursuant to a mediation confidentiality agreement and the protections of Federal Rule of Evidence 408 and any equivalent rule in other states or territories, and was made available on the condition that it not be disclosed to third parties (other than experts or consultants retained by Settlement Class Representatives in connection with the Action) or used for any purpose other than settlement of this Action.

19.6. The Parties agree that confidential information was exchanged in this Action pursuant to the Federal Rules of Civil Procedure and the terms of the Stipulated Protective Order

(Dkt. 101) and/or as confidential mediation information. For avoidance of doubt, and in the interest of working in good faith towards resolution of the Action through this Class Action Agreement, the Parties agree that such information shall not be disclosed without a court order or the producing party's prior specific written consent to any third parties not specifically enumerated in the Stipulated Protective Order, including but not limited to any third parties (or their counsel) who have filed or are considering filing claims against Defendants in other jurisdictions.

19.7. Defendants, Defendants' Counsel, Settlement Class Representatives, and Settlement Class Counsel agree to destroy all confidential materials received or produced in connection with the Action and this Class Action Agreement no later than seven days following the Effective Date.

19.8. Information provided by Defendants and/or Defendants' counsel to Settlement Class Representatives, Settlement Class Counsel, any individual Settlement Class Member, counsel for any individual Settlement Class Member, and/or administrators, pursuant to the negotiation and implementation of this Class Action Agreement, includes trade secrets and highly confidential and proprietary business information and shall be deemed "Highly Confidential" pursuant to the protective orders that have been or will be entered in the Action, and shall be subject to all of the provisions thereof. Any materials inadvertently produced shall, upon any Defendants' request, be promptly returned to the requesting Defendants' counsel, as appropriate, and there shall be no implied or express waiver of any privileges, rights, and defenses.

19.9. This Class Action Agreement, complete with its exhibits and all documents filed with the Court, sets forth the entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument executed by Settlement Class Counsel and Defendants' Counsel. The Parties expressly acknowledge that no other agreements, arrangements, or understandings regarding the Settlement Class Trucks or the engines contained in them not expressed in this Class Action Agreement or the documents

filed with the Court exist among or between them, and that in deciding to enter into this Class Action Agreement, they have relied solely upon their own judgment and knowledge. This Class Action Agreement and the accompanying documents filed with the Court supersede any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Class Action Agreement, including the Parties' Memorandum of Settlement.

19.10. This Class Action Agreement and any amendments thereto, and any dispute arising out of or related to this Class Action Agreement, shall be governed by, and interpreted according to the Federal Rules of Civil Procedure, federal law, and applicable jurisprudence relating thereto.

19.11. Any disagreement between the Settlement Class Representatives and Defendants and/or action to enforce this Class Action Agreement on behalf of the Settlement Class Representatives or Defendants shall be commenced and maintained only in the United States District Court for the Southern District of Florida, Miami Division.

19.12. Whenever this Class Action Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays, and Federal Holidays) express delivery service as follows:

If to Defendants, then to:

Andrew Soukup  
Stephen Petkis  
COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, D.C. 20001  
Email: asoukup@cov.com  
spetkis@cov.com

If to the Settlement Class, then to:

David Stelling  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
250 Hudson Street, Fl. 8  
New York, NY 10013  
Email: dstellings@lchb.com

Roland Tellis  
BARON & BUDD, P.C.  
15910 Ventura Boulevard, Suite 1600  
Encino, CA 91436  
E-mail: rtellis@baronbudd.com

Peter Prieto  
Podhurst Orseck, P.A.  
SunTrust International Center  
One S.E. 3rd Ave, Suite 2300  
Miami, Florida 33131  
E-mail: pprieto@podhurst.com

19.13. All time periods in this Class Action Agreement shall be computed in calendar days unless otherwise expressly provided. In computing any period of time in this Class Action Agreement or by order of the Court, the day of the act or event shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a Federal Holiday, or, when the act to be done is the filing of a paper in court, a day on which the court is closed, in which case the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Class Action Agreement, “Federal Holiday” includes holidays designated in Federal Rule of Civil Procedure 6(a) or by the Clerk of the United States District Court for the Southern District of Florida.

19.14. The Parties reserve the right, subject to the Court’s approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Class Action Agreement.

19.15. The Settlement Class, Settlement Class Representatives, Settlement Class Counsel, Defendants, and/or Defendants’ Counsel shall not be deemed to be the drafter of this Class Action Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree that this Class Action Agreement was drafted by counsel for the Parties during extensive arm’s-length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Class Action Agreement was made or executed.

19.16. The various headings used in this Class Action Agreement are solely for the convenience of the Parties and shall not be used to interpret this Class Action Agreement.

19.17. The Parties expressly acknowledge and agree that this Class Action Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, related notes, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state or territory.

19.18. The Settlement Class Representatives expressly affirm that the allegations contained in the Complaint were made in good faith, but consider it desirable for the Action to be settled and dismissed as to the Settlement Class Truck(s) only because of the substantial benefits that the Settlement will provide to Settlement Class Members.

19.19. The Parties agree that the Class Action Agreement was reached voluntarily after consultation with competent legal counsel and arms-length settlement negotiations before the Honorable Layn Phillips (ret.).

19.20. Neither this Class Action Agreement nor any act performed or document executed pursuant to or in furtherance of this Class Action Agreement is or may be deemed to be or may be used or construed as an admission of, or evidence of, (i) the validity of any of the Released Claims, or of any wrongdoing or liability of any Released Parties or (ii) any fault or omission of any Released Parties in any civil, criminal, regulatory, or administrative proceeding in any court, administrative agency or other tribunal. Nor shall this Class Action Agreement be deemed an admission by any Party as to the merits of any claim or defense.

19.21. Any of the Released Parties may file this Class Action Agreement and/or the Final Approval Order in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

19.22. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Class Action Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Class Action Agreement.

19.23. The waiver by one Party of any breach of this Class Action Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Class Action Agreement.

19.24. If one Party to this Class Action Agreement considers another Party to be in breach of its obligations under this Class Action Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Class Action Agreement.

19.25. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Class Action Agreement and to use their best efforts to implement this Class Action Agreement.

19.26. This Class Action Agreement may be signed with an electronic or facsimile signature and in counterparts, each of which shall constitute a duplicate original.

19.27. This Agreement shall be effective upon its execution by the Settlement Class Representatives, Settlement Class Counsel, Defendants, and Defendants' Counsel, except for those provisions that require Court approval to be effective, and those provisions shall become effective upon their approval by the Court.

19.28. If any one or more of the provisions contained in this Class Action Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Defendants' Counsel on behalf of Defendants, and Settlement Class Counsel, on behalf of Settlement Class Representatives and Settlement Class Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Class Action

Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

19.29. The Parties will cooperate with respect to any public statements regarding this Settlement. The contents of press releases or public statements regarding the Action or this Settlement must be approved by all Parties; provided, however, that such approval will not be unreasonably withheld. In no event shall the Parties or their counsel make any public statements that disparage the business or reputation of the other (or their counsel in this action) based on the subject matter or the conduct of the Action. Nothing within this Settlement prohibits Defendants from making any public statements necessary to comply with legal or regulatory obligations (including, without limited to, disclosures that might be required under applicable stock exchange rules and securities laws) without seeking advance approval on the form or substance of any statement from the Settlement Class Representatives or Settlement Class Counsel. Nothing in this paragraph, or elsewhere in this Class Action Agreement, shall prevent Settlement Class Counsel from: discharging their duties to Settlement Class Members; discussing the Class Action Agreement with the Settlement Class Representative, Settlement Class Members, or the Court; disclosing public information about the case on a resume, curriculum vitae, firm website, in other promotional materials, or in future legal filings; or responding to government inquiries.

Agreed to by:

For Hino:

By: 小曾 聡  
Satoshi Ogiso  
On behalf of Hino Motors, Ltd.

10/25/2023  
Date

By: [Signature]  
Davey Jung  
On behalf of Hino Motors Manufacturing U.S.A., Inc.

10.20.2023  
Date

By: [Signature]  
Glenn Ellis  
On behalf of Hino Motors Sales U.S.A., Inc.

10/23/23  
Date

By: [Signature]  
Andrew Soukup  
Covington & Burling LLP  
Counsel for Hino Motors, Ltd.

10/23/23  
Date

**For Plaintiffs and the Settlement Class:**

By: Roberto Lopez Oct-23-2023  
DocuSigned by: Roberto Lopez  
 Roberto Lopez  
 President  
 On behalf of Express Freight International  
 Date

By: Roberto Lopez Oct-23-2023  
DocuSigned by: Roberto Lopez  
 Roberto Lopez  
 President  
 On behalf of EFI Export & Trading Corp.  
 Date

By: Charles Marder 10/20/23  
 Charles Marder  
 Owner  
 On behalf of Marders  
 Date

By: Alan Perez Oct-20-2023  
DocuSigned by: Alan Perez  
 Alan Perez  
 Owner  
 On behalf of Redlands Office Cleaning Solutions, LLC  
 Date

By: David S. Stellings 10/20/2023  
 David S. Stellings  
 Lief, Cabraser, Heimann & Bernstein, LLP  
 Counsel for Plaintiffs and the Settlement Class  
 Date

By: Roland Tellis 10/20/23  
 Roland Tellis  
 Baron & Budd, P.C.  
 Counsel for Plaintiffs and the Settlement Class  
 Date

By: Peter Phileo October 23, 2023  
 Peter Phileo  
 Podhurst Orseck, P.A.  
 Counsel for Plaintiffs and the Settlement Class  
 Date