

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**
1200 New Jersey Avenue SE
Washington, DC 20590

In re: _____)
)
Hino Motors, Ltd.,)
Hino Motors Manufacturing U.S.A., Inc., and)
Hino Motors Sales U.S.A., Inc.)
_____)

SETTLEMENT AGREEMENT

This Settlement Agreement is between the National Highway Traffic Safety Administration (“NHTSA”), a component of the United States Department of Transportation (“DOT”), and Hino Motors, Ltd. (“HML”), and two of its subsidiaries, Hino Motors Manufacturing U.S.A., Inc. (“HMM”), and Hino Motors Sales U.S.A., Inc. (“HMS”) (collectively, “Defendants” or “Hino”), all of which together constitute the Parties to this Agreement.

This Settlement Agreement is part of a coordinated group of settlements (“Coordinated Settlements”) executed on behalf of Defendants, the People of the State of California (“California”), and the United States on behalf of the U.S. Environmental Protection Agency (“EPA”), the U.S. Customs and Border Protection (“CBP”), a component of the U.S. Department of Homeland Security, and NHTSA, to resolve criminal and civil claims pertaining to approximately 105,000 on-road heavy-duty diesel engines and approximately 6,000 off-road engines (“Subject Engines”) manufactured, and imported into and sold in the United States, by Defendants. One of the settlements in the Coordinated Settlements is a Consent Decree (“Federal Decree”), executed by the United States on behalf of EPA, California on behalf of the California Air Resources Board, and Defendants, lodged concurrently with the filing of a Complaint by the

United States on behalf of EPA against Defendants, in the United States District Court for the Eastern District of Michigan (“District Court”).

The subject matter of this Settlement Agreement is Defendants’ alleged misrepresentations, omissions, or submissions of inaccurate information pertaining to Defendants’ compliance with applicable MY 2017, 2018, and 2019 diesel engine fuel consumption requirements.

I. NATURE OF THE ACTION

1. Under 49 U.S.C. §§ 32902(b)(1)(C) and (k), NHTSA is authorized, via a delegation from DOT, to promulgate fuel consumption standards for commercial heavy-duty on-road vehicles, work trucks, and heavy-duty engines. Pursuant to this authority, NHTSA established and implemented test methods, measurement metrics, fuel consumption standards, and compliance and enforcement protocols for heavy-duty vehicles and engines. NHTSA’s implementing regulations were designed to conserve fuel by, among other things, establishing maximum levels for fuel consumption and increasing fuel efficiency of on-road vehicles with heavy-duty diesel engines.

2. NHTSA regulations specify different fuel consumption standards based on the type of vehicle or engine and model year. Each category of heavy-duty engine is required to have a fuel consumption value below the number enumerated in 49 C.F.R. § 535.5(d). In determining the applicable standards and compliance, manufacturers are required to “use the same options they use to comply with EPA in 40 CFR 1036.108 in terms of grouping engines.” *Id.* Mandatory compliance with fuel consumption standards began with MY 2017 for heavy-duty on-road diesel vehicles and engines. 49 C.F.R. §§ 535.5(a)(4), (d)(1).

3. Pursuant to 49 C.F.R. § 535.8, manufacturers are required to submit pre-model year reports, applications for certificates of conformity, and end of the year and final reports to an EPA database. This electronic database was designed to be the “single point of entry for all information required,” with “both agencies [NHTSA and EPA having] access to the information.” 49 C.F.R. § 535.8(a)(2).

4. The applications for certificates of conformity must include fuel consumption information for each given model year. 49 C.F.R. §§ 535.8(a)(2), (c). Fuel consumption standards for each category of heavy-duty on-road diesel engine are prescribed in 49 C.F.R. § 535.5(d).

5. At the end of each model year, NHTSA may assess each manufacturer’s fuel consumption performance against the applicable standards. If a manufacturer’s engines perform better than the applicable standard, the manufacturer can earn credits through NHTSA’s averaging, banking, and trading (“ABT”) credit program. 49 C.F.R. § 535.7

6. If a manufacturer’s engines perform worse than the applicable standards and the manufacturer does not have or does not acquire sufficient credits to offset the shortfall, the manufacturer is liable for a civil penalty. 49 C.F.R. §§ 535.7, 535.9(a)(2)-(4).

7. Defendants did not participate in NHTSA’s ABT credit program for MY 2017 or MY 2018. By opting out of the fuel consumption credit program, Defendants represented that they complied with NHTSA’s specific fuel consumption standards for their MY 2017 J05E and MY 2018 J05E engines. Attesting to this compliance was a required part of the application process to obtain a certificate of conformity for the engines. 49 C.F.R. § 535.10(a)(5).

8. Based on NHTSA’s investigation and Defendants’ admissions, NHTSA contends that for MY 2017 J05E and MY 2018 J05E, Defendants submitted, or used, false and fraudulent

CO₂ emissions test data which, in turn, resulted in false fuel consumption values being submitted for Defendants' heavy-duty diesel engines. For MY 2017 J05E and MY 2018J05E, Defendants falsely certified that the information in the applications, including the data used to support Defendants' assertion that its engines complied with applicable fuel consumption standards, was true.

9. NHTSA enters into this Settlement Agreement pursuant to its authority under the Energy Policy and Conservation Act and the Energy Independence and Security Act, 49 U.S.C. Chapter 329, as delegated by the Secretary of Transportation. 49 C.F.R. §§ 1.95, 501.2; 49 C.F.R. § 501.8. This authority includes, among other things, the need to adopt and implement appropriate test methods, measurement metrics, fuel consumption standards, and compliance and enforcement protocols that are appropriate, cost-effective, and technologically feasible for commercial medium- and heavy-duty on-highway vehicles, work trucks, and engines; and the ability to compromise civil penalties. 49 U.S.C. §§ 32902(k)(2), 32913(a).

10. In consideration of Defendants' entry into this Settlement Agreement and their representations herein, Defendants and NHTSA AGREE as follows:

II. GENERAL PROVISIONS

Admissions and Representations

11. For MY 2017 J05E and MY 2018 J05E, Defendants admit that HML submitted, or used, false and fraudulent CO₂ emissions test data which, in turn, resulted in false fuel consumption values being submitted for Hino heavy-duty on-road diesel engines.

12. Defendants represent that future Hino submissions required by NHTSA's fuel consumption program will be timely, complete, and accurate.

Civil Penalty

13. Defendants shall pay a civil penalty of \$525,000,000, as required by the Federal Decree (the “Settlement Amount”), of which \$442,500,000 will be paid to the United States. Defendants and NHTSA agree and acknowledge that payment of the Settlement Amount will resolve NHTSA’s claims concerning the subject matter addressed herein. Defendants and NHTSA agree and acknowledge that the payment obligation in this paragraph is contingent upon entry of the Federal Decree by the District Court. Defendants and NHTSA acknowledge that the payment obligation in this paragraph also resolves the civil claims of CBP addressed in the CBP Agreement, and the claims of EPA addressed in the Federal Decree.

14. At the time of payment of the civil penalty, Defendants shall notify NHTSA that payment has been made. Defendants shall make this notification to NHTSA via email to Michael Kuppersmith, Trial Attorney, Office of the Chief Counsel at Michael.Kuppersmith@dot.gov.

III. AMENDMENT

15. This Settlement Agreement may not be altered, amended, modified, or otherwise changed except by writing a duly executed amendment executed by or on behalf of NHTSA and Defendants.

IV. MISCELLANEOUS

16. This Settlement Agreement shall in all respects be interpreted, enforced, and governed under the laws of the United States and is enforceable in any court of competent jurisdiction. Any material failure to comply with the payment terms of this Settlement Agreement may result in a judicial enforcement action or, alternatively, initiation of penalty proceedings under 49 U.S.C. Chapter 329.

17. Nothing in this Settlement Agreement may be interpreted or construed in a manner inconsistent with, or contravening, any federal law, rule, or regulation at the time of the execution of this Settlement Agreement, or as amended thereafter.

18. Nothing in this Settlement Agreement shall preclude NHTSA or the United States from taking appropriate action against Defendants regarding any matter other than the subject matter of this Settlement Agreement. Nothing in this Settlement Agreement should be interpreted as affecting any other current or future NHTSA investigation or enforcement action. Nothing in this Settlement Agreement discharges Defendants from any obligation to comply with any other applicable NHTSA statutory or regulatory requirement or orders thereunder.

19. Upon payment of the civil penalty, NHTSA will be deemed to have released Defendants, including their current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns from liability for civil penalties pursuant to 49 U.S.C. Chapter 329, in connection with any and all violations of Defendants' obligations related to the specified subject matter of this Settlement Agreement including the Subject Engines. This Settlement Agreement does not release Defendants from civil or criminal liabilities, if any, that may be asserted by the United States, DOT, NHTSA, or any other governmental entity, other than as described in this Settlement Agreement.

20. In the event of Defendants' breach of, or failure to perform, any term of this Settlement Agreement, NHTSA reserves the right to pursue any and all appropriate remedies, including, but not limited to, initiation of penalty proceedings under 49 U.S.C. Chapter 329, actions compelling specific performance of the terms of this Settlement Agreement, assessing interest for untimely settlement payments, and/or commencing litigation to enforce this Settlement Agreement in any United States District Court. Hino agrees that, in any such

enforcement action, it will not raise any objection as to venue. Defendants expressly waive any and all defenses, at law or in equity, and agree not to plead, argue, or otherwise raise any defenses other than (i) that the payment of the civil penalty was made to NHTSA as set forth herein, and (ii) that Defendants have substantially complied with the terms of this Settlement Agreement.

21. The Parties will each bear their own respective attorneys' fees, costs, and expenses.

22. The Parties who are the signatories to this Settlement Agreement have the legal authority to enter into this Settlement Agreement, and each Party has authorized its undersigned to execute this Settlement Agreement on its behalf.

23. The Parties agree and acknowledge that each Party has had a full opportunity to negotiate the terms of this Settlement Agreement. The rule of construction that interprets contracts against the drafter, therefore, shall not apply to this Settlement Agreement.

24. Defendants agree that they will not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, local, or foreign tax for any fine or civil penalty paid pursuant to this Settlement Agreement.

25. This Settlement Agreement shall be binding upon, and inure to the benefit of, Defendants and their current and former directors, officers, employees, agents, parents, predecessors, subsidiaries, heirs, executors, administrators, affiliates, successors, and assigns. Defendants agree to waive any and all defenses that may exist or arise in connection with any person or entity succeeding to the interests or obligations herein, including as a result of any changes to the corporate structure or relationships among or between Defendants and any of their parents, subsidiaries, or affiliates.

26. Should any condition or other provision contained herein be held invalid, void, or illegal by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Settlement Agreement and shall in no way affect, impair or invalidate any other provision of this Settlement Agreement.

27. This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party that is not a party to this Settlement Agreement.

28. This Settlement Agreement may be executed in counterparts, each of which shall be considered effective as an original signature.

29. The effective date of this Settlement Agreement is the effective date of the Federal Decree or the Criminal Plea, or the date upon which the Settlement Agreement has been fully executed by all duly authorized individuals or Parties listed as signatories below, whichever is later.

As evidence of their consent to this Settlement Agreement, the Parties, through their duly authorized representatives, sign below.

[SIGNATURES ON NEXT PAGE]

APPROVED AND AGREED:

NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

Dated: 01/13/2025

By: SOPHIE M SHULMAN Digitally signed by SOPHIE M SHULMAN
Date: 2025.01.13 09:37:58 -05'00'

Sophie Shulman
Deputy Administrator

Dated: 01/13/2025

By: ADAM RAVIV Digitally signed by ADAM RAVIV
Date: 2025.01.13 09:21:27 -05'00'

Adam Raviv
Chief Counsel

Dated: 01/13/2025

By: KERRY ELIZABETH KOLODZIEJ Digitally signed by KERRY ELIZABETH KOLODZIEJ
Date: 2025.01.13 09:17:48 -05'00'

Kerry Kolodziej
Assistant Chief Counsel for
Litigation and Enforcement

Dated: 01/13/2025

By: MICHAEL LOUIS KUPPERSMITH Digitally signed by MICHAEL LOUIS KUPPERSMITH
Date: 2025.01.13 09:12:55 -05'00'

Michael Koppersmith
Trial Attorney

AGREED:

Dated: 1/10/2025

HINO MOTORS LTD.

By: 

Satoshi Ogiso
President & Chief Executive Officer
Hino Motors, Ltd.

Dated: 1/10/2025

HINO MOTORS MANUFACTURING U.S.A.,
INC.

By: 

Davey Jung
President & Chief Executive Officer
Hino Motors Manufacturing U.S.A., Inc.

Dated: 1/10/2025

HINO MOTORS SALES U.S.A., INC.

By: 

Glenn Ellis
President & Chief Executive Officer
Hino Motors Sales U.S.A., Inc.