

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA – MIAMI DIVISION**

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

EXPRESS FREIGHT INTERNATIONAL,
EFI EXPORT & TRADING CORP.,
MARDERS, and REDLANDS OFFICE
CLEANING SOLUTIONS, LLC, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

HINO MOTORS, LTD., TOYOTA MOTOR
CORPORATION, HINO MOTORS
MANUFACTURING U.S.A., INC., and
HINO MOTORS SALES U.S.A., INC.,

Defendants.

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**DECLARATION OF PROPOSED SETTLEMENT CLASS COUNSEL IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT AND DIRECTION OF CLASS NOTICE**

We, Roland Tellis, David Stellings, and Peter Prieto declare as follows:

1. Peter Prieto is an attorney licensed to practice before this Court and all courts of the State of Florida, and Roland Tellis and David Stellings are admitted to practice before this Court *pro hac vice*. We are partners in the law firms of Podhurst Orseck, P.A., Baron & Budd, P.C. and Lieff Cabraser Heimann & Bernstein, LLP, respectively. Mr. Tellis, Mr. Stellings, and Mr. Prieto are proposed Settlement Class Counsel for Plaintiffs in the above-captioned matter.
2. The undersigned have personal knowledge of the following facts, and if called as witnesses, could and would testify competently to them.

3. The undersigned each have decades of experience in litigating complex class action cases. This includes serving as court-appointed plaintiffs' counsel in multidistrict litigation involving emissions cheating claims and automotive defects, such as the *Volkswagen "Clean Diesel"* MDL (N.D. Cal.), the *FCA EcoDiesel* MDL (N.D. Cal.), and the *Takata Airbags* MDL (S.D. FL.).¹

4. We make this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Direction of Class Notice under Fed. R. Civ. P. 23(e).

Plaintiffs' Investigation, Litigation, and Discovery Efforts

5. On March 4, 2022, Hino revealed that it had identified "past misconduct" comprising falsification of engine performance in relation to its applications for certification certain engines sold in in Japan.² Over the next several months, Plaintiffs and their experts investigated whether the misconduct described in the public admissions from Japan impacted Plaintiffs' trucks and other Hino diesel trucks in the United States. After that pre-filing investigation, and in light of its results, Plaintiffs filed this case on August 5, 2022.

6. Investigating and prosecuting this complex litigation throughout the nearly fifteen months that followed required significant work, effort, and expense. This included robust Rule 12 motion practice, wherein Hino raised potentially case dispositive issues, and Plaintiffs researched and drafted thorough oppositions. After briefing on the motions completed, the parties continued those efforts as Hino continued to file supplemental authorities purportedly supporting dismissal and Plaintiffs worked quickly to distinguish and oppose them. Those motions are pending before the Court. Hino also moved to stay discovery during the pendency of its pleading challenges. Plaintiffs strongly opposed, and the Court ultimately denied Hino's motion.

¹ See firm resumes for LCHB, Baron & Budd, and Podhurst Orseck:
https://www.lieffcabraser.com/pdf/Lieff_Cabraser_Firm_Resume.pdf;
<https://baronandbudd.com/wp-content/uploads/FirmResume10-11-23.pdf>;
<https://www.podhurst.com/landmark-cases/>.

² See Misconduct concerning Engine Certification – Press Release (March 4, 2022),
<https://www.hino-global.com/corp/news/assets/1f350e73535af44c2a8c90c2f916eae2.pdf>

7. With Hino's stay motion resolved, the parties met and conferred extensively on the terms of the ESI and protective orders, and the terms of a proposed inspection protocol for Plaintiffs' trucks. Over the next nine months, Plaintiffs served Hino with three sets of substantive document requests, comprised of 67 individual requests, along with additional sets of jurisdictional discovery to the Japanese Hino and Toyota entities.

8. The parties hotly contested the scope and relevance of discovery topics implicated in Plaintiffs' requests. This led to dozens of hours of video meet and confer conferences and the exchange of numerous discovery dispute letters. These discussions culminated in two multi-hour hearings before Magistrate Judge Torres covering a range of disputed issues, many of which the Court decided in Plaintiffs' favor (including, for example, the scope of relevance and the production of regulatory documents Hino had previously withheld).

9. Hino ultimately produced to Plaintiffs over 750,000 pages of responsive documents and ESI. This included a key corpus of materials that Hino also produced to the U.S. regulators in their investigations. Plaintiffs further sought and obtained relevant materials from third party DWS Fleet Management, which performed testing and analysis for Hino trucks in the U.S., and through a Freedom of Information Act request to the California Air Resources Board ("CARB"), totaling an additional 9,000 pages.

10. To accurately analyze these materials, Plaintiffs had to grasp complicated diesel engine emissions technologies and the evolving regulatory framework in both the U.S. and Japan throughout the relevant time period. To do so, Plaintiffs retained technical experts and carefully crafted discovery requests to obtain important data files and test documents. Many of the responsive documents that Hino produced included Japanese language materials because the Hino engines sold in the U.S. were developed and tested in Japan. To ensure meaningful and accurate analysis of these documents, Plaintiffs hired attorneys fluent in Japanese to analyze them.

11. Each of the named Plaintiffs responded to Hino's 60+ document requests and conducted thorough searches for documents and responsive ESI. In total, Plaintiffs produced over

a thousand pages of responsive documents. Each Plaintiff also provided detailed responses to Hino's 35+ Interrogatories, and supplemented those responses twice at Hino's request.

12. This extensive factual record informed Plaintiffs' understanding of the strengths and weaknesses of their claims, and of Hino's defenses.

Settlement Negotiations and the Confirmatory Discovery Process

13. Pursuant to the district's local rules and this Court's order setting a deadline for mediation (ECF 87), the parties conferred and agreed on the Honorable Layn R. Phillips (Ret.) as a mediator, and a July 25, 2023 mediation date. The parties prepared extensively for this mediation, and communicated regularly with Judge Phillips in the weeks and months beforehand. At the close of an extended day of arm's length negotiations in the mediation, the parties reached a tentative agreement on the basic terms of a settlement.

14. Several months of further discovery and negotiations followed from that initial agreement. As part of confirmatory discovery, Plaintiffs' counsel traveled to Tokyo, Japan to meet in person with personnel and representatives from Hino Motors Ltd. ("Hino Japan") to obtain further information about the alleged misconduct in Plaintiffs' Complaint and Hino's public admissions and internal investigations. Hino Japan also produced substantial documents in confirmatory discovery, which it previously did not produce in the litigation due to its pending jurisdictional challenges. Plaintiffs analyzed these materials to evaluate the strength of their allegations and vet the parties' settlement positions.

15. The parties engaged in good faith, arm's-length settlement negotiations, as evidenced by the duration of the settlement discussions, the thoroughness of the information exchanged (both before and after the Settlement was reached), oversight from the mediator, and the excellent compensation secured for the Settlement Class.

Settlement Benefits and Anticipated Recovery

16. The Settlement benefits are discussed at length in the accompanying memorandum and points of authorities and in the proposed notice documents, among other places. In brief, the Settlement secures a non-reversionary Settlement Cash Value of \$237,500,000, a robust Extended

Warranty covering nearly two dozen parts and systems for the Settlement Class Trucks' engine and emissions systems, and a further commitment from Hino to provide a New Parts Warranty if, within three years of the Settlement, Hino engages in a government-mandated or a government-recommended emissions system recall or repair.

17. From the Settlement Cash Value, the proposed Settlement delivers substantial cash payments to any Settlement Class Member who submits a valid claim. At the close of the claims period, the Settlement Cash Value (after deducting Court-approved attorneys' fees, expenses, and notice and administration costs) will be divided on a per-capita basis among all Settlement Class Trucks for which a valid claim is received. If more than one Settlement Class Member submits a valid claim for the same truck, the original owner (who purchased new) will receive 60% of the funds for that truck, and the remaining 40% will be distributed evenly to or among the other valid claimants.³

18. Assuming the median class action claims rate of approximately 10%,⁴ each Settlement Class Truck would be allocated more than \$15,000. With a conservative (and rarely achieved) projected claims rate of 50%, each Settlement Class Truck would receive more than \$3,000, a recovery comparable to settlements of similar diesel emissions cases that resolved later in their respective litigation lifecycles and on arguably stronger records. *See In re Chrysler-Dodge-Jeep EcoDiesel Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. 17-MD-02777-EMC, 2019 WL 2554232, at *1 (N.D. Cal. May 3, 2019) (*FCA EcoDiesel* settlement providing \$3,075 capped payment per vehicle); *In re Mercedes-Benz Emissions Litigation*, No. 216 CV 881 KMES(k), 2021 WL 7833193, at *3 (D.N.J. Aug. 2, 2021) (*Mercedes BlueTec* settlement with manufacturer providing \$3,290 per vehicle).

³ The Settlement Administrator retains discretion to adjust the allocation if a Settlement Class Member owned or leased a Settlement Class Truck for less than six months.

⁴ Federal Trade Commission Staff Report, *Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns* (Sep. 2019), available at https://www.ftc.gov/system/files/documents/reports/consumers-class-actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf (FTC's comprehensive study of class actions, identifying the mean and median claims rates of 5% and 10%, respectively).

19. If there are any funds remaining in the Settlement Cash Value after all valid, complete, and timely claims are paid, the parties anticipate a redistribution of the remaining funds to Settlement Class Members unless and until it is economically infeasible to do so. Finally, subject to Court approval, any final balance will be directed *cy pres* to environmental remediation efforts. This ensures that all of the money secured by the Settlement will inure to the benefit of the Settlement Class and the interests advanced in this litigation.

20. Importantly, Settlement Class Members' rights or ability to participate in any future truck buyback or repurchase program that any federal or state government entity recommends or orders post-Settlement are not released in the proposed Settlement. The timing and likelihood of such a program remain unknown, but the Settlement does not affect Settlement Class Members' right to participate in a future program of this kind and receive additional compensation, should it materialize.

21. In our opinion, based on decades of experience in plaintiffs' complex class action litigation and prior successful resolutions of numerous similar litigations at this scale, this is an excellent result for the Settlement Class. It is particularly so given the stage of the proceedings and the material risks and expenses from continued litigation ahead.

The Proposed Settlement Class Representatives

22. Plaintiffs, who all seek to be Settlement Class Representatives, have no interests in conflict with the Settlement Class Members.

23. Plaintiffs have actively participated in this litigation from its inception through the date of the Settlement. Each of them also worked with counsel to evaluate the terms of the proposed Settlement Agreement, and has endorsed the Settlement's terms. Each Plaintiff has expressed its willingness to continue to vigorously protect Settlement Class Members' interests in overseeing the Settlement administration and through any appeals, as they have throughout this litigation.

Proposed Settlement Class Counsel’s Anticipated Motion for Attorneys’ Fees

24. With their motion for final settlement approval, proposed Settlement Class Counsel will move for an award of reasonable attorneys’ fees and reimbursement of their litigation expenses. Fed. R. Civ. P. 23(e)(2)(C)(iii).

25. Proposed Settlement Class Counsel currently anticipate requesting that the Court award up to one third the Settlement Cash Value (\$237.5 million) in attorneys’ fees and reasonable expenses. Although this anticipated request is described as 33.33%, the percentage of the total Settlement value will be much lower after appropriately accounting for the economic value of the robust Extended Warranty protections. Plaintiffs will present testimony from a respected warranty valuation expert in support of their final approval and attorneys’ fees motions. Based on prior experience with similar settlements and warranty valuations, proposed Settlement Class Counsel anticipate this testimony will show the Extended Warranty provides significant, calculable economic value to the Settlement Class—likely nine figures’ worth of benefits. This will result in a material reduction of the requested fee percentage.

26. Proposed Settlement Class Counsel’s forthcoming motion for attorneys’ fees and reasonable expenses will include the rationale and necessary detail to support their request.

The undersigned declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct. Executed this 27 day of October 2023 at Miami, Florida by Peter Prieto, Encino, California by Roland Tellis, and New York, New York by David Stellings.

/s/ David Stellings

David Stellings

/s/ Roland Tellis

Roland Tellis

/s/ Peter Prieto

Peter Prieto